REPORT

on the proposal for a Council directive on a Common Consolidated Corporate Tax Base (CCCTB)

Committee on Economic and Monetary Affairs

Rapporteur: Marianne Thyssen
Symbols for procedures

* Consultation procedure
*** Consent procedure
***I Ordinary legislative procedure (first reading)
***II Ordinary legislative procedure (second reading)
***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in **bold italics**. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].
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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION


(Special legislative procedure – consultation)

The European Parliament,

– having regard to the Commission proposal to the Council (COM(2011)0121),

– having regard to Article 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C7-0092/2011),

– having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,

– having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Bulgarian Parliament, the Irish House of Representatives, the Maltese Parliament, the Netherlands House of Representatives, the Polish Diet, the Romanian Chamber of Deputies, the Slovak Parliament, the Swedish Parliament and the House of Commons of the United Kingdom, asserting that the draft legislative act does not comply with the principle of subsidiarity,

– having regard to Rule 55 and 37 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 the Internal Market and Consumer Protection (A7-0080/2012),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.
Amendment 1

Proposal for a directive
Recital 1

Text proposed by the Commission

(1) Companies which seek to do business across frontiers within the Union encounter serious obstacles and market distortions owing to the existence of 27 diverse corporate tax systems. These obstacles and distortions impede the proper functioning of the internal market. They create disincentives for investment in the Union and run counter to the priorities set in the Communication adopted by the Commission on 3 March 2010 entitled Europe 2020 – A strategy for smart, sustainable and inclusive growth. They also conflict with the requirements of a highly competitive social market economy.

Amendment

(1) Companies which seek to do business across frontiers within the Union encounter serious obstacles and market distortions owing to the existence of 27 diverse corporate tax systems. These obstacles and distortions impede the proper functioning of the internal market. They create disincentives for investment in the Union and run counter to the priorities set in the Communication adopted by the Commission on 3 March 2010 entitled Europe 2020 – A strategy for smart, sustainable and inclusive growth, to the Euro Plus Pact and to the economic, budgetary and fiscal integration needed in order to establish a highly competitive social market economy.

Justification

Updating.

Amendment 2

Proposal for a directive
Recital 1 b (new)

Text proposed by the Commission

(1b) More cooperation among tax authorities can lead to a significant decrease on costs and administrative burdens for business operating cross-border within the Union.

Amendment

(1b) More cooperation among tax authorities can lead to a significant decrease on costs and administrative burdens for business operating cross-border within the Union.

Amendment 3

Proposal for a directive
Recital 2
(2) Tax obstacles to cross-border business are particularly severe for small and medium enterprises, which commonly lack the resources to resolve market inefficiencies.

Amendment 4
Proposal for a directive
Recital 2 a (new)

Text proposed by the Commission

(2a) Fair competition on tax rates should be encouraged at Member State level and also at regional level for those regions with fiscal and legislative powers.

Amendment 5
Proposal for a directive
Recital 3 a (new)

Text proposed by the Commission

(3a) Improving the internal market is the key factor for encouraging growth and job creation. The introduction of a CCCTB should improve growth and lead to more jobs in the Union by reducing the administrative costs and red tape for companies, particularly for small businesses operating in several Member States.

Amendment 6
Proposal for a directive
Recital 4 a (new)
(4a) As the internal market encompasses all Member States, a Common Consolidated Corporate Tax Base (CCCTB) should be introduced in all Member States. However, if the Council fails to adopt a unanimous decision on the proposal to establish a CCCTB, it is appropriate to initiate without delay the procedure for a Council decision authorising enhanced cooperation in the area of the CCCTB. Such enhanced cooperation should be initiated by the Member States whose currency is the euro but should be open at any time to other Member States in accordance with the Treaty on the Functioning of the European Union.

Amendment 7

Proposal for a directive
Recital 4 b (new)

(4b) Some pronounced forms of tax competition, tax optimisation and tax arbitrage could erode some Member States' revenues and create distortions concerning taxation between capital, which is mobile, and labour, which is less mobile. The reinforced Stability and Growth Pact and the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union require Member States, in particular those whose currency is the euro, to comply with strict fiscal discipline, simultaneously applying spending controls and generating sufficient tax revenues. For these reasons, and because the Euro Plus Pact agreed by the euro area Heads of State or government provides that the development of a CCCTB "could be a revenue neutral
way forward to ensure consistency among national tax systems while respecting national tax strategies, and to contribute to fiscal sustainability and the competitiveness of European businesses”, It is of vital importance that Member States whose currency is the euro are able to meet their budgetary commitments, in order to safeguard the stability of the euro area as a whole, and it is desirable that the CCCTB is applied as soon as possible to as many companies as possible.

Amendment 8
Proposal for a directive
Recital 4 c (new)

Text proposed by the Commission

(4c) In light of the vital role that SMEs play in the internal market, the Commission should develop and make available to SMEs that have cross-border activities, a tool that mitigates the administrative burden and costs and that thus enables them to voluntary opt into the CCCTB system.

Amendment 9
Proposal for a directive
Recital 5

Text proposed by the Commission

(5) Since differences in rates of taxation do not give rise to the same obstacles, the system (the Common Consolidated Corporate Tax Base (CCCTB)) need not affect the discretion of Member States regarding their national rate(s) of company taxation.

Amendment

(5) Since differences in rates of taxation do not give rise to the same obstacles, the system (the Common Consolidated Corporate Tax Base (CCCTB)) need not affect the discretion of Member States regarding their national rate(s) of company taxation. The Member States therefore also should retain the power to adopt certain incentives for businesses,
particularly in the form of tax credit.

**Justification**

Self-explanatory.

**Amendment 10**

**Proposal for a directive**

**Recital 5 a (new)**

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(5a) This Directive is not about harmonisation of the corporate tax rates of the Member States. If, however, it becomes apparent that the economic efficiency, effectiveness and equitability of corporate taxation would benefit from an introduction of minimum rates, the Commission should consider whether such harmonisation is appropriate when reviewing the application of this Directive. This is all the more important as the evolution of corporate tax rates in the Member States makes it clear that tax competition within the internal market has got an impact. It is therefore useful, in the spirit of Report on a New Strategy for the single market (the Monti report), to determine whether the impact of such competition is beneficial or harmful for a tax culture that fits the internal market of the 21st century. In particular, attention should be given to whether the removal of the underlying tension between market integration and tax sovereignty is one of the ways to reconcile the market and the social dimension of the internal market.

**Justification**

Although the harmonisation of tax rates is not at issue now, we must not entirely exclude the possibility for the future.

**Amendment 11**
Proposal for a directive
Recital 6

Text proposed by the Commission

(6) Consolidation is an essential element of such a system, since the major tax obstacles faced by companies in the Union can be tackled only in that way. It eliminates transfer pricing formalities and intra-group double taxation. Moreover, losses incurred by taxpayers are automatically offset against profits generated by other members of the same group.

Amendment

(6) Consolidation is an essential element of such a system, since the major tax obstacles faced by companies of the same group that operate cross-border in the Union can be tackled only in that way. It eliminates transfer pricing formalities and intra-group double taxation. Moreover, losses incurred by taxpayers are automatically offset against profits generated by other members of the same group.

Amendment 12

Proposal for a directive
Recital 6 a (new)

Text proposed by the Commission

(6a) The broad tax base, the consolidation and the discretionary powers of the Member States with regard to their national corporate taxation rates make the CCCTB a tax-neutral operation.

Amendment

(6a) In so far as the use of the CCCTB would affect the tax revenue of regional or local authorities, Member States are able to take measures to remedy this in accordance with their constitutional

Justification

Self-explanatory.

Amendment 13

Proposal for a directive
Recital 6 b (new)

Text proposed by the Commission

(6b) In so far as the use of the CCCTB would affect the tax revenue of regional or local authorities, Member States are able to take measures to remedy this in accordance with their constitutional
systems and in a manner compatible with this Directive.

**Justification**

The existence of particularly pronounced regional systems of government in some Member States is no obstacle to the introduction of the CCCTB.

**Amendment 14**

Proposal for a directive
Recital 8

**Text proposed by the Commission**

(8) Since such a system is primarily designed to serve the needs of companies that operate across borders, it should be an optional scheme, accompanying the existing national corporate tax systems.

**Amendment**

(8) Since this Directive is primarily designed for the benefit of companies that operate across borders, without however excluding other companies, it is set up as an optional system, allowing all eligible companies to opt in. However, European Companies and European Cooperative Societies, which are, by definition, transnational, are considered to have opted to apply the system provided for by this Directive from two years after the date on which the Member States apply the provisions of this Directive. All other companies that qualify under this Directive, except for micro, small and medium-sized enterprises, as defined in Commission Recommendation 2003/361/EC\(^1\) (SMEs), should also apply this Directive not later than by the end of the fifth year on which the Member States apply this Directive. When evaluating the impact of the CCCTB, the Commission should examine whether it should also be made mandatory for SMEs.

\(^1\) OJ L 124, 20.5.2003, p. 36.
Recital 20

Text proposed by the Commission

(20) The system should include a general anti-abuse rule, supplemented by measures designed to curb specific types of abusive practices. These measures should include limitations on the deductibility of interest paid to associated enterprises resident for tax purposes in a low-tax country outside the Union which does not exchange information with the Member State of the payer based on an agreement comparable to Council Directive 2011/16/EU concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums and rules on controlled foreign companies.

Amendment

(20) The system should include an effective general anti-abuse rule, supplemented by measures designed to curb specific types of abusive practices. These measures should include limitations on the deductibility of interest paid to associated enterprises resident for tax purposes in a low-tax country outside the Union which does not exchange information with the Member State of the payer based on an agreement comparable to Council Directive 2011/16/EU concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums and rules on controlled foreign companies. Member States should not be prevented from introducing and coordinating additional measures among each other in order to reduce the negative effects of low-tax countries outside the Union, which do not exchange necessary tax information.

Amendment 16

Recital 21

Text proposed by the Commission

(21) The formula for apportioning the consolidated tax base should comprise three equally weighted factors (labour, assets and sales). The labour factor should be computed on the basis of payroll and the number of employees (each item counting for half). The asset factor should consist of all fixed tangible assets. Intangibles and financial assets should be excluded from the formula due to their mobile nature and the risks of circumventing the system. The

Amendment

(21) The formula for apportioning the consolidated tax base should comprise three factors (labour, assets and sales). While the labour and asset factors should have a weight of 45 % each, the sales factor should have a weight of 10 %. The labour factor should be computed on the basis of payroll and the number of employees (each item counting for half). The asset factor should consist of all fixed tangible assets. Intangibles and financial...
use of these factors gives appropriate weight to the interests of the Member State of origin. Finally, sales should be taken into account in order to ensure fair participation of the Member State of destination. Those factors and weightings should ensure that profits are taxed where they are earned. As an exception to the general principle, where the outcome of the apportionment does not fairly represent the extent of business activity, a safeguard clause provides for an alternative method.

Amendment 17
Proposal for a directive
Recital 21 a (new)

Text proposed by the Commission

(21a) The common rules on the calculation of the CCCTB should not give rise to disproportionate administrative costs for companies, in order to avoid damaging their competitiveness.

Amendment 18
Proposal for a directive
Recital 23

Text proposed by the Commission

(23) Groups of companies should be able to deal with a single tax administration ('principal tax authority'), which should be that of the Member State in which the parent company of the group ('principal taxpayer') is resident for tax purposes. This Directive should also lay down procedural rules for the administration of the system. It should also provide for an advance ruling mechanism. Audits should be initiated and

assets should be excluded from the formula due to their mobile nature and the risks of circumventing the system. The use of these factors gives appropriate weight to the interests of the Member State of origin. Finally, sales should be taken into account in order to ensure fair participation of the Member State of destination. Those factors and weightings should ensure that profits are taxed where they are earned. As an exception to the general principle, where the outcome of the apportionment does not fairly represent the extent of business activity, a safeguard clause provides for an alternative method.
coordinated by the principal tax authority but the authorities of any Member State in which a group member is subject to tax may request the initiation of an audit. The competent authority of the Member State in which a group member is resident or established may challenge a decision of the principal tax authority concerning the notice to opt or an amended assessment before the courts of the Member State of the principal tax authority. Disputes between taxpayers and tax authorities should be dealt with by an administrative body which is competent to hear appeals at first instance according to the law of the Member State of the principal tax authority.

Audits should be initiated and coordinated by the principal tax authority but the authorities of any Member State in which a group member is subject to tax may request the initiation of an audit. The competent authority of the Member State in which a group member is resident or established may challenge a decision of the principal tax authority concerning the notice to opt or an amended assessment before the courts of the Member State of the principal tax authority. Disputes between taxpayers and tax authorities should be dealt with by an administrative body which is competent to hear appeals at first instance according to the law of the Member State of the principal tax authority.

Amendment 19

Proposal for a directive
Recital 23 a (new)

Text proposed by the Commission

(23a) The Commission should initiate a new CCCTB forum, similar to the Joint Transfer Pricing Forum, to which companies and Member States can address issues and disputes relating to the CCCTB. That forum should be able to give guidance to companies and Member States.

Amendment

(27a) This Directive contains a radical new approach to an essential component of corporate taxation. The Commission

Amendment 20

Proposal for a directive
Recital 27 a (new)

Text proposed by the Commission

(27a) This Directive contains a radical new approach to an essential component of corporate taxation. The Commission
should therefore conduct a thorough analysis and an independent assessment as soon as this can be done in a meaningful way. Because of the cycle that is inherent in the application and implementation of corporate taxation, no such analysis and assessment should be made before the end of five years after entry into force of this Directive. The Commission’s analysis and assessment should include an examination of the following points: the optional character of the CCCTB, the restriction of harmonisation to the tax base, the apportionment formula, the considerations of practicality for SMEs and the impact on the tax revenues of the Member States.

Amendment 21
Proposal for a directive
Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6 a
European Companies and European Cooperative Societies

From ... *, eligible European Companies and European Cooperative Societies, as referred to in points (a) and (b) of Annex I, shall be considered to be companies that have opted to apply the system provided for by this Directive from ... *

* OJ: Please insert the date first day of the month following two years after the date of application of this Directive.

Amendment 22
Proposal for a directive
Article 6 b (new)
Text proposed by the Commission

Amendment

Article 6b

SMEs

From ... *, eligible companies other than micro, small and medium-sized enterprises as defined in Commission Recommendation 2003/361/EC, shall apply this Directive (SMEs).

_____________

* OJ: Please insert the date first day of the month following five years after the date of application of this Directive.

Amendment 23
Proposal for a directive
Article 12 – paragraph 1

Text proposed by the Commission

Deductible expenses shall include all costs of sales and expenses net of deductible value added tax incurred by the taxpayer with a view to obtaining or securing income, including costs of research and development and costs incurred in raising equity or debt for the purposes of the business.

Amendment

Deductible expenses shall include all costs of sales and expenses net of deductible value added tax incurred by the taxpayer with a view to obtaining or securing income, including costs of research and development and costs incurred in raising equity or debt for the purposes of the business. Recurring costs relating to environmental protection and reduction of carbon emissions shall also be regarded as deductible expenses.

Amendment 24
Proposal for a directive
Article 14 – paragraph 1 – point j

Text proposed by the Commission

(j) taxes listed in Annex III, with the exception of excise duties imposed on energy products, alcohol and alcoholic beverages, and manufactured tobacco.

Amendment

(j) taxes listed in Annex III.
Amendment 25
Proposal for a directive
Article 30 – paragraph 1 – point c

Text proposed by the Commission
(c) the technical provisions of insurance undertakings established in compliance with Directive 91/674/EEC shall be deductible, with the exception of equalisation provisions. A Member State may provide for the deduction of equalisation provisions. In the case of a group, any such deduction of equalisation provisions shall be applied to the apportioned share of the group members resident or situated in that Member State. Amounts deducted shall be reviewed and adjusted at the end of every tax year. In calculating the tax base in future years account shall be taken of amounts already deducted.

Amendment
(c) the technical provisions of insurance undertakings established in compliance with Directive 91/674/EEC shall be deductible, with the exception of equalisation provisions. A Member State which, pursuant to Article 62 of Directive 91/674/EEC, has opted to introduce a commercial law requirement to constitute equalisation provisions must also make such provisions tax deductible. In the case of a group, any such deduction of equalisation provisions shall be applied to the apportioned share of the group members resident or situated in that Member State. Amounts deducted shall be reviewed and adjusted at the end of every tax year. In calculating the tax base in future years account shall be taken of amounts already deducted.

Justification
Member States which, pursuant to Article 62 of Directive 91/674/EEC, have introduced a commercial law requirement to constitute equalisation provisions, as provided for in Article 30 of that directive, must also, in the context of the CCCTB, make such provisions tax deductible. Otherwise, the requirement is unacceptable. Equalisation provisions are a proven method of coping with large-scale losses.

Amendment 26
Proposal for a directive
Article 48

Text proposed by the Commission
Where a taxpayer incurred losses before opting into the system provided for by this Directive which could be carried forward

Amendment
Where a taxpayer incurred losses before opting into the system provided for by this Directive which could be carried forward
under the applicable national law but had not yet been set off against taxable profits, those losses may be deducted from the tax base to the extent provided for under that national law.

Amendment 27
Proposal for a directive
Article 73 – paragraph 1 – point a

Text proposed by the Commission
(a) a tax on profits, under the general regime in that third country, at a statutory corporate tax rate lower than 40% of the average statutory corporate tax rate applicable in the Member States;

Amendment
(a) a tax on profits, under the general regime in that third country, at a statutory corporate tax rate lower than 70% of the average statutory corporate tax rate applicable in the Member States;

Amendment 28
Proposal for a directive
Article 80 – paragraph 1

Text proposed by the Commission
Artificial transactions carried out for the sole purpose of avoiding taxation shall be ignored for the purposes of calculating the tax base.

Amendment
Artificial transactions carried out mainly for the purpose of avoiding taxation shall be ignored for the purposes of calculating the tax base.

Justification
The general anti-abuse rule rightly takes into account both the factual aspect and the intention. However, your rapporteur takes the view that, in the event of artificial transactions being undertaken (the factual aspect), it should be sufficient that there is clearly an intention of evading tax.

Amendment 29
Proposal for a directive
Article 82 – paragraph 1 – point b
Text proposed by the Commission

Amendment

(b) under the general regime in the third country, profits are taxable at a statutory corporate tax rate lower than 40% of the average statutory corporate tax rate applicable in the Member States, or the entity is subject to a special regime that allows for a substantially lower level of taxation than that of the general regime;

(b) under the general regime in the third country, profits are taxable at a statutory corporate tax rate lower than 70% of the average statutory corporate tax rate applicable in the Member States, or the entity is subject to a special regime that allows for a substantially lower level of taxation than that of the general regime;

Amendment 30

Proposal for a directive
Article 86 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. The consolidated tax base shall be shared between the group members in each tax year on the basis of a formula for apportionment. In determining the apportioned share of a group member A, the formula shall take the following form, giving equal weight to the factors of sales, labour and assets:

1. The consolidated tax base shall be shared between the group members in each tax year on the basis of a formula for apportionment. In determining the apportioned share of a group member A, the formula shall take the following form, covering the factors of sales, labour and assets:

Amendment 31

Proposal for a directive
Article 86 – paragraph 1 – formula

Text proposed by the Commission

Amendment

\[
\text{Share } A = \frac{1}{3} \text{Sales}^A_{\text{group}} + \frac{1}{3} \left( \frac{1}{2} \text{Payroll}^A_{\text{group}} + \frac{1}{2} \text{No of employees}^A_{\text{group}} \right) + \frac{1}{3} \text{Assets}^A_{\text{group}} \times \text{Con'd Tax Base}
\]

\[
\text{Amendment}
\]

\[
\text{Share } A = \frac{1}{10} \text{Sales}^A_{\text{group}} + \frac{9}{20} \left( \frac{1}{2} \text{Payroll}^A_{\text{group}} + \frac{1}{2} \text{No of employees}^A_{\text{group}} \right) + \frac{9}{20} \text{Assets}^A_{\text{group}} \times \text{Con'd Tax Base}
\]
Justification

A formula where sales, labour and assets are weighted at 10%, 45% and 45% respectively would in two ways be a more reasonable solution. It would make sure that the CCCTB system does not deviate too much from the internationally accepted principle of attributing ultimate taxing rights to the source state. It would also ensure that small and medium-sized Member States with limited domestic markets are not disproportionately disadvantaged in the apportionment of the tax base.

Amendment 32

Proposal for a directive
Article 110 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The uniform tax return format shall be designed by the Commission in cooperation with the tax administrations of the Member States.

Amendment 33

Proposal for a directive
Article 122 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

The principal tax authority may initiate and coordinate audits of group members. An audit may also be initiated on the request of a competent authority.

The principal tax authority may initiate and coordinate audits of group members. An audit may also be initiated on the request of a competent authority in the Member State where the group member is established.

Amendment 34

Proposal for a directive
Article 123 a (new)

Text proposed by the Commission

Amendment

Article 123a

CCCTB forum

The Commission shall initiate a new CCCTB forum, similar to the Joint
Transfer Pricing Forum, to which companies and Member States can address issues and disputes relating to the CCCTB and which shall provide guidance.

Amendment 35

Proposal for a directive
Article 130 – paragraph 1

Text proposed by the Commission

The European Parliament shall be informed of the adoption of delegated acts by the Commission of any objection formulated to them, or the revocation of the delegation of powers by the Council.

Amendment

The European Parliament shall be informed of the adoption of delegated acts by the Commission of any objection formulated to them, or the revocation of the delegation of powers by the Council. Any future assessment of the instrument should be communicated to the members of the competent committee of the European Parliament.

Justification

self-explanatory

Amendment 36

Proposal for a directive
Article 132 a (new)

Text proposed by the Commission

Article 132 a

Cross-border SMEs

By ... *, the Commission shall provide a tool enabling SMEs active on a cross-border basis to opt into the CCCTB scheme on a voluntary basis.

Amendment

* OJ: Please insert a day falling on the first day of the month following two years after the entry into force of this Directive.
Amendment 37

Proposal for a directive
Article 133

Text proposed by the Commission

Article 133
Review

The Commission shall, five years after the entry into force of this Directive, review its application and report to the Council on the operation of this Directive. The report shall include an analysis of the impact of the mechanism set up in Chapter XVI of this Directive on the distribution of the tax bases between the Member States.

Amendment

Article 133
Review

The Commission shall, five years after the entry into force of this Directive, review its application and report to the European Parliament and to the Council on the operation of this Directive. The report shall include an analysis, based on an independent assessment, of

(a) the impact of the mechanism set up in Chapter XVI of this Directive on the distribution of the tax bases between the Member States and the impact on their tax revenues;

(b) the use and practicability of this Directive by SMEs;

(c) the advantages and disadvantages of making the system mandatory for SMEs;

(d) the socio-economic implications of this Directive, including the impact on the global operations of companies and on the competitiveness of eligible and non-eligible companies;

(e) the impact on a fair and just tax collection in the Member States;

(f) the advantages and disadvantages of introducing minimum tax rates.

Where appropriate, the Commission shall make a proposal for amending this Directive at the latest by 2020. By ..., the Commission shall present a report to the European Parliament and the Council on the potential consequences of this directive on the internal market with
particular regard to possible distortions of
competition between companies subject to
the arrangements laid down in this
directive and those not fulfilling the
consolidation criteria.

* OJ please insert date: two years after
the entry into force of this Directive.

Amendment 38
Proposal for a directive
Annex 3 – paragraph 15

Text proposed by the Commission Amendment

Versicherungsteuer deleted

Justification

It will be generally assumed that a corporate tax or any other similar tax is not tax-deductible
as an operating expense. Otherwise the tax would reduce its own tax base. However, in the
case of Germany, for example, insurance tax is a transaction tax and is therefore not
comparable to a tax on income. Insurance tax (‘Versicherungsteuer’) should therefore be
deductible.
EXPLANATORY STATEMENT

The directive on a Common Consolidated Corporate Tax Base (CCCTB) lays down common rules for the calculation of the tax base applicable to companies operating in the European Union.

This EU tax framework comprises a full set of rules to consolidate the individual fiscal results of each company or branch, to consolidate those results (profits and losses) when there are other group members and to apportion the consolidated tax base to all relevant Member States if it is positive.

The consolidated tax base is to be apportioned on the basis of a fixed formula comprising three equally weighted factors: turnover, labour and assets.

Each Member State will apply its own tax rate to the share of the tax base assigned to it. Only the calculation and apportionment of the tax base is being harmonised. Member States will retain the power to set the tax rates.

The harmonisation also does not apply to national rules on financial reporting.

The Commission proposes a CCCTB which would be optional. All companies, both small and big and irrespective of whether they have cross-border operations, will be able to apply the CCCTB. However, none of them will be compelled to do so. A business which opts for the CCCTB will be committed for five years at a time, and the application of the system will be automatically extended for three years at a time unless the business opts out three months before a period of applicability expires.

The proposal also includes anti-abuse rules and stipulates how Member States should administer the CCCTB under a 'one-stop-shop' approach.

There are four respects in which the directive empowers the Commission, for an indefinite period, to adopt delegated acts.

The directive contains a review clause which, in particular, explicitly applies to the operation of the formula for reapportionment of the tax base.

Lastly, in transposing the directive, Member States must supply the Commission with a correlation table.

Rapporteur's position

Your rapporteur believes the CCCTB to be an indispensable instrument for completion of the European internal market on the one hand and for the European economic integration which is necessary for the stability of the Eurozone on the other hand. The current crisis must not be allowed to constitute an obstacle: rather, it must catalyse the introduction of the CCCTB. Your rapporteur is happy, therefore, that the conclusions of each European or Eurozone
summit which preceded this report explicitly mention the CCCTB. She would observe that on 18 August 2011 the German Chancellor and the President of France wrote a joint letter to the President of the European Council calling for the CCCTB negotiations to be completed before the end of 2012 and explicitly stating (as a way of bringing pressure to bear?) that they were working on a bilateral Franco-German intergovernmental initiative.

This expression of interest in the CCCTB should be music to the European Parliament’s ears, particularly because in recent years Parliament itself has likewise repeatedly called for the introduction of a CCCTB.

As rapporteur I should therefore like to lend my full support to this proposal for a directive and I would ask the Council to debate the proposal further without hesitation and adopt a positive decision on it.

Some national parliaments have expressed objections, believing the Commission to have breached the subsidiarity principle. Your rapporteur does not endorse these objections. Various distortions of the internal market can only be remedied if a common system of rules is adopted with common administrative procedures and a one-stop shop system of administration. Your rapporteur therefore supports the Commission's decision not to reconsider its proposal for a directive.

Your rapporteur wishes to stress the principal advantages of introducing the CCCTB:

- greater fiscal transparency, which will make the tax system more equitable and efficient;
- reduced enforcement costs and red tape, which will improve the prospects for growth of businesses with cross-border operations, make the European Union more attractive to foreign investors and promote the accessibility of the internal market for SMEs and for businesses which are not yet operating across borders;
- the expectation that allocation decisions on the internal market will be taken more in the light of social and economic considerations of a tax-neutral nature than they are at present;
- a reduction in two types of tax problem: tax evasion and fraud on the one hand and double taxation on the other.

The greater the participation in the CCCTB system, the greater the benefits which will be achieved. Your rapporteur therefore proposes a roadmap (a phased plan) which would result in the CCCTB becoming compulsory after a brief transition period:

- during the first phase, the CCCTB system would apply to European companies and European cooperatives which by their nature operate across borders (after 2 years);
- after 5 years, the CCCTB system should be made compulsory for all companies except SMEs. In order to determine what an SME is, the definition from Commission Recommendation 2003/361/EC would be applied;
- when the time comes for the European Commission to assess the application of the directive, consideration must be given to whether it is desirable, worthwhile or necessary also to make the CCCTB system compulsory for SMEs and if appropriate draft a proposal for amending the directive.

In order to maximise the benefits of the CCCTB, it is desirable to introduce it throughout the
European Union. However, if the Council does not succeed in reaching a satisfactory agreement with all Member States, your rapporteur advocates that the closer cooperation procedure should be initiated without delay. In that case the objective during the first phase must be for all Member States to participate which belong to the Eurozone, and the procedure must always be open to all other Member States as well.

Another point for discussion is the extent of harmonisation. Your rapporteur on the one hand perceives advantages in bringing rates closer together (with minimums or a limited range). On the other hand, she acknowledges that this is not genuinely necessary in order for the internal market to function properly and that during this period, when most Member States are struggling either to restore order to their public finances or keep them sound, it is not appropriate to seek radical harmonisation. Nonetheless, if after a certain period it becomes apparent that tax competition between Member States is causing more harm than good, a step further can always be taken. Although this directive should not in any respect be seen as anticipating harmonisation of corporate tax rates, your rapporteur proposes that the question of rates should be mentioned in the review clause.

Your rapporteur is absolutely in favour of the principle of consolidation, both in the interests of the effectiveness of the internal market and in order to make the CCCTB attractive to businesses. Particularly because the tax base under the CCCTB system is broader than the average national bases and because the rates are set by the Member States themselves, consolidation cannot be an obstacle from the Member States’ points of view.

Between them, the breadth of the tax base, the sovereign right of Member States to set the rates and consolidation will allow the CCCTB to be ‘tax-neutral’ in terms of impact both on business and on public finances.

The fixed apportionment formula for which the directive provides will not affect the tax base but only its apportionment among the Member States. The apportionment must be legally certain, predictable, economically relevant and fair. The three determinants in the proposal have been well chosen in this respect: the data are known and are apparent from the books, they are difficult to manipulate, and they are indicative of profits. The factor labour is rightly divided into wage costs and numbers of staff, as this largely cancels out the impact of differences in wage levels between Member States. In order to reconcile the various points of view about the factor ‘turnover’, your rapporteur has by way of a compromise reduced the weight of this factor in the apportionment formula but not eliminated it altogether. For the reasons stated above, it is on the one hand desirable to retain the three factors. On the other hand, the relative weight of the factors must be thoroughly examined again with a view to achieving a result which is both economically relevant and at the same time fair from the budgetary angle. Your rapporteur therefore supports the apportionment formula subject to a minor change and agrees with the Commission that it would make sense to include this formula in the review clause.

Naturally your rapporteur welcomes the one-stop shop principle and increased cooperation between national tax administrations. She only wonders whether the basis for identifying the principal tax authority accords sufficiently with economic reality and will guarantee a sufficient spread among Member States.
Lastly, your rapporteur has no objection to the proposal that the CCCTB should be independent of book-keeping rules. The alternative would be a system based on the IFRS. In that case, the determination of the tax base would have been indirectly contracted out to the private sector and a system would result which might not be suitable for SMEs.
Dear Madam Chair,


The Commission submitted the proposal on the basis of Article 115 TFEU. Your request bears on whether "to include also as a legal basis Article 136 TFEU".

By letter of 23 January 2012, Parliament's Legal Service provided an analysis of the question and concluded that it was not justified to amend the legal basis of the proposal by adding Article 136 TFEU, and that Article 115 TFEU was the right legal basis.

Background

I. The proposal

The proposal aims at reducing compliance costs for companies in the internal market in the area of taxation by establishing a system for a common base for company taxation. More specifically, it proposes to establish a CCCTB as a system of common rules for computing the tax base of companies which are tax resident in the EU and of EU-located branches of third-country companies. The CCCTB would be an optional system available to all companies whatever their size. For groups of companies the CCCTB aims at providing a single set of tax rules across the Union, so that they would have to deal with one administration only. The proposal includes a complete set of rules for company taxation. A company that opted for the CCCTB would no longer be subject to the national corporate tax arrangements in respect of all matters covered by the common rules.

II. The legal bases in question

1. Legal basis of the Commission proposal
The Commission proposal is based on Article 115 TFEU which reads as follows:

"Article 115

Without prejudice to Article 114, the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market."

The choice of the legal basis is explained by the Commission in the explanatory memorandum as follows:

"Direct tax legislation falls within the ambit of Article 115 of the Treaty on the Functioning of the EU (TFEU). The clause stipulates that legal measures of approximation under that article shall be vested the legal form of a Directive."

2. Proposed change of the legal basis
You have requested on behalf of ECON the opinion of the Committee on Legal Affairs on the addition of Article 136 TFEU as a legal basis, based on the following reasoning: "If EU-wide application to all 27 Member States of the CCCTB is not possible, there are two possible options for proceeding with a smaller number of Member States:
- the ordinary enhanced cooperation under the TFEU, or
- measures specific to those Member States whose currency is the euro, based on Article 136 TFEU."

An amendment that changes the legal base accordingly with this justification has been tabled in ECON (Amendment 15).

Article 136 TFEU reads as follows:

"Article 136

1. In order to ensure the proper functioning of economic and monetary union, and in accordance with the relevant provisions of the Treaties, the Council shall, in accordance with the relevant procedure from among those referred to in Articles 121 and 126, with the exception of the procedure set out in Article 126(14), adopt measures specific to those Member States whose currency is the euro:

(a) to strengthen the coordination and surveillance of their budgetary discipline;

(b) to set out economic policy guidelines for them, while ensuring that they are compatible with those adopted for the whole of the Union and are kept under surveillance.

2. For those measures set out in paragraph 1, only members of the Council representing Member States whose currency is the euro shall take part in the vote.

A qualified majority of the said members shall be defined in accordance with Article 238(3)(a)."
Article 121 TFEU contains provisions on the coordination of economic policies between Member States, and Article 126 TFEU stipulates the procedure to follow in cases of excessive government deficits.

III. Analysis

Certain principles emerge from the case law of the Court as regards the choice of legal basis. First, in view of the consequences of the legal basis in terms of substantive competence and procedure, the choice of the correct legal basis is of constitutional importance. Secondly, under Article 13(2) TEU, each institution is to act within the limits of the powers conferred upon it by the Treaty. Thirdly, according to the case-law of the Court of Justice, "the choice of legal basis for a Community measure must rest on objective factors amenable to judicial review, including in particular the aim and the content of the measure." Finally, as regards multiple legal bases, where a measure has several contemporaneous objectives or components which are indissolubly linked with each other without one being secondary and indirect in respect of the others, the measure must be based on the various relevant Treaty provisions. However, recourse to a dual legal basis is not possible where the procedures laid down for each legal basis are incompatible with each other or where the use of two legal bases is liable to undermine the rights of Parliament.

The general objective of the proposal in question is "to tackle some major fiscal impediments to growth in the Single Market". Its scope is defined in Article 1 as follows: "This Directive establishes a system for a common base for the taxation of certain companies and groups of companies and lays down rules relating to the calculation and use of that base."

The TFEU contains two legal bases for the "approximation of laws, regulations and administrative provisions" of the Member States within the internal market: Article 114 TFEU is applicable where the objective is "the establishment and functioning of the internal market", and Article 115 where the measures in question "directly affect the establishment and functioning of the internal market". Article 114(1) TFEU provides for the adoption of "any measure" by Council and the European Parliament in accordance with the ordinary legislative procedure, which requires a qualified majority in Council; under Article 115 TFEU the Council is to adopt directives unanimously after consulting the European Parliament. In practice, Article 115 is relevant above all in the areas which Article 114(2) excludes from the application of Article 114(1). One of these exclusions concerns "fiscal provisions". This points to Article 115 as appropriate legal basis to choose for the proposed measure.

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6 Explanatory Memorandum, p. 1.
As regards the question whether to include Article 136 TFEU as legal basis, the criteria for multiple legal bases would have to be applied, i.e. a second objective or component under Article 136 TFEU which is indissolubly linked to the first one and of the same value would have to be identifiable. The proposal does not contain any measures specific to those Member States whose currency is the euro with a view to ensure the proper functioning of economic and monetary union. Furthermore, the procedures under Article 121 and 126 TFEU are completely different and thus irreconcilable from the consultation procedure under which the act in question was proposed.

The Committee on Legal Affairs considered the above question at its meeting of 26 January 2012. At this meeting, it accordingly decided, by 22 votes in favour, with one abstention¹, to recommend that the appropriate legal basis for the proposal for a Council Directive on a Common Consolidated Corporate Tax Base should be Article 115 TFEU, and that Article 136 TFEU should not be included as legal basis.

Yours sincerely,

Klaus-Heiner Lehne

¹ The following were present for the final vote: Klaus-Heiner Lehne (Chair), Raffaele Baldassarre (Vice-Chair), Evelyn Regner (Vice-Chair), Sebastian Valentin Bodu, Marielle Gallo, Eva Ortiz Vilella, Tadeusz Zwięck, Françoise Castex, Lidia Joanna Geringer de Oedenberg, Antonio Masip Hidalgo, Bernhard Rapkay, Alexandra Thein, Diana Wallis, Cecilia Wikström, Jiří Maštálka, Francesco Enrico Speroni, Dimitar Stoyanov, Jean-Marie Cavada, Vytautas Landsbergis, Kurt Lechner, Dagmar Roth-Behrendt, Jan Philipp Albrecht, Eva Lichtenberger.
OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

for the Committee on Economic and Monetary Affairs


Rapporteur: Olle Schmidt

SHORT JUSTIFICATION

The Rapporteur supports the proposal from the EU Commission to introduce an EU-wide voluntary common consolidated corporate tax base, CCCTB, in the EU.

EU countries have different tax bases which in practise function as trade barriers to growth and employment.

The CCCTB proposal would lead to significant changes in corporate taxation in Europe with the potential to create improvements for companies operating across borders by reducing the administrative costs and reduce red tape. Thereby achieving a more efficient single market, an increased competitiveness of EU companies and improving the EU market's global attractiveness in comparison to other big markets such as the US and China.

The Rapporteur's main concerns are:

The CCCTB must be optional for companies. An obligatory system will lead to higher costs for especially SMEs and therefore not create more growth and competitiveness in the European market. There is also a value in having competing systems and institutional competition. It is not recommended to make the system mandatory before practical experience and the effects of the system are known.

1. The level of tax rate should remain a decision for national parliaments. The objective is to enhance the system of taxation of companies, not to harmonise tax rates.

2. Cross border obstacles should be removed. Therefore the system must allow for consolidation of profit and losses from the outset, in order to facilitate more cross border business activity.
3. The CCCTB must allow for simplification in that only one statement need be submitted for the entire group, "one-stop shop". Reducing the administrative burden and red tape is essential for the CCCTB system. This will reduce compliance costs, but also give incentives for reaching a common tax treatment.

4. The system should be so attractive that companies choose to participate in the CCCTB - creating real advantages.

The rapporteur suggests the following changes:

Changes to the formula - take out the sales factor: The formula for apportioning the consolidated tax base should be based on only two factors: labour and assets. Sales by destination impose a significant shift from the current principle of attributing the ultimate taxing rights to the source state. The source principle has a strong conceptual position among the EU Member States and has been the guiding principle in the OECD work on international taxation for a long time. Also, small and medium sized Member States with a small home market will severely lose tax revenues with this formula.

Furthermore, a sales factor based on destination would be rather easy to manipulate. An independent sales agent (located in a non-CCCTB State) could be contracted as an intermediary to do the sales on behalf of the group to the relevant market, and thereby move the destination of the sales from the ‘intended’ state to the state of choice. Such tax planning opportunities would undermine the legitimacy of the factor and most likely trigger complex anti-avoidance rules.

CCCTB Forum: Introduction of a CCCTB Forum between Member States for out of court dispute settlement (changes in recital 26 and article 123).

Quicker review: The Commission should conduct a review already after three years to evaluate the effects of the CCCTB, article 133.

Evaluation on the effects of CCCTB in the review of the Directive: after three years the Commission shall consider the pros and cons of introducing a mandatory system, in order to create one CCCTB in the EU.

The Commission shall also analyse the effects of the Directive on Member States tax bases at national, regional and local levels including the socio-economic effects on relocation of economic activity and jobs within the EU.

Extension of the CCCTB to other entities than corporations, such as partnerships, should be considered: In some Member States many enterprises take the form of partnerships. The Commission should analyse if partnerships can be treated as if they were corporate companies.

The percentage of completion element in long-term contracts: Article 24 should be deleted since companies should not be obliged to perform this calculation for just tax
purposes. It is not common in the Member States accounting regimes and increases the complexity of the system.

**Raising the attractiveness of the CCCB:** the provisions in the CCCTB must be more beneficial for the companies than the current national systems.

The rules for depreciation must be generous for companies. In Article 39 the level should be raised from 25 to 35 percent of the depreciation rate of the company's asset pool.

The requirement in Article 59 to record intra-group transactions seems questionable since it would entail an extra administrative burden and costs for companies.

**Clarified provisions on audits:** in Article 122. A situation where any competent authority can initiate an audit of the whole group or part of the group irrespective of tax jurisdiction would lead to unacceptable administrative consequences.

**Stricter abuse rule:** A change is necessary in Article 80, that artificial transactions with the main purpose of avoiding taxation are ignored for calculating the tax base.

## AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

**Amendment 1**

**Proposal for a directive**

**Recital 1**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tr>
<td>(1) Companies which seek to do business across frontiers within the Union encounter serious obstacles and market distortions owing to the existence of 27 diverse corporate tax systems. These obstacles and distortions impede the proper functioning of the internal market. They create disincentives for investment in the Union and run counter to the priorities set in the Communication adopted by the Commission on 3 March 2010 entitled</td>
<td>(1) Companies which seek to do business across frontiers within the Union encounter serious obstacles and market distortions owing to the existence of 27 diverse corporate tax systems. These obstacles and distortions impede the proper functioning of the internal market. They create disincentives for investment in the Union and run counter to the priorities set in the Communication adopted by the Commission on 3 March 2010 entitled</td>
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Europe 2020 – A strategy for smart, sustainable and inclusive growth. They also conflict with the requirements of a highly competitive social market economy. Further integration of the tax base is needed in order to enhance a highly competitive social market economy in the Union.

Amendment 2
Proposal for a directive
Recital 3 a (new)

Text proposed by the Commission
(3a) The common consolidated corporate tax base (CCCTB) should lead to a common tax base for all eligible European companies in the Union. However, this Directive should not be considered the first step towards harmonisation of the corporate tax rates of the Member States.

Amendment 3
Proposal for a directive
Recital 3 b (new)

Text proposed by the Commission
(3b) Improving the internal market is the key factor for encouraging growth and job creation. The introduction of a CCCTB should improve growth and lead to more jobs in the Union by reducing the administrative costs and red tape for companies, particularly for small businesses operating in several Member States.

Amendment 4
Proposal for a directive
Recital 5
Text proposed by the Commission

(5) Since differences in rates of taxation do not give rise to the same obstacles, the system (the Common Consolidated Corporate Tax Base (CCCTB)) need not affect the discretion of Member States regarding their national rate(s) of company taxation.

Amendment

(5) Since differences in rates of taxation contribute to the competitiveness of the Union as a whole, the system (the Common Consolidated Corporate Tax Base (CCCTB)) should not affect the discretion of Member States regarding their national rate(s) of company taxation. The Member States should therefore also retain the power to adopt certain incentives for businesses in the sphere of taxes.

Amendment 5

Proposal for a directive
Recital 6 a (new)

Text proposed by the Commission

(6a) The functioning of the CCCTB, according to this Directive, should result in a tax revenue-neutral impact on the Member States.

Amendment

(6a) In so far as the use of the CCCTB would affect the tax revenue of regional or local authorities, Member States should be free to take measures to remedy this in accordance with their constitutional systems and in a manner compatible with this Directive.

Amendment 6

Proposal for a directive
Recital 6 b (new)

Text proposed by the Commission

(6b) In so far as the use of the CCCTB would affect the tax revenue of regional or local authorities, Member States should be free to take measures to remedy this in accordance with their constitutional systems and in a manner compatible with this Directive.

Amendment 7
Proposal for a directive
Recital 16

Text proposed by the Commission

(16) Eligibility for consolidation (group membership) should be determined in accordance with a two-part test based on (i) control (more than 50% of voting rights) and (ii) ownership (more than 75% of equity) or rights to profits (more than 75% of rights giving entitlement to profit). Such a test ensures a high level of economic integration between group members, as indicated by a relation of control and a high level of participation. The two thresholds should be met throughout the tax year; otherwise, the company should leave the group immediately. There should also be a nine-month minimum requirement for group membership.

Amendment

(16) Eligibility for consolidation (group membership) should be determined in accordance with a two-part test based on (i) control (more than 50% of voting rights) and (ii) ownership (more than 75% of equity) or rights to profits (more than 75% of rights giving entitlement to profit). Such a test ensures a high level of economic integration between group members, as indicated by a relation of control and a high level of participation. The two thresholds should be met throughout the tax year; otherwise, the company should leave the group immediately. There should also be a twelve-month minimum requirement for group membership.

Amendment 8

Proposal for a directive
Recital 20

Text proposed by the Commission

(20) The system should include a general anti-abuse rule, supplemented by measures designed to curb specific types of abusive practices. These measures should include limitations on the deductibility of interest paid to associated enterprises resident for tax purposes in a low-tax country outside the Union which does not exchange information with the Member State of the payer based on an agreement comparable to Council Directive 2011/16/EU concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums and rules on controlled foreign companies.

Amendment

(20) The system should include an effective general anti-abuse rule, supplemented by measures designed to curb specific types of abusive practices. These measures should include limitations on the deductibility of interest paid to associated enterprises resident for tax purposes in a low-tax country outside the Union which does not exchange information with the Member State of the payer based on an agreement comparable to Council Directive 2011/16/EU concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums and rules on controlled foreign companies. Member States should not be prevented from

Member States should not be prevented from...
Amendment 9
Proposal for a directive
Recital 21

Text proposed by the Commission

(21) The formula for apportioning the consolidated tax base should comprise **three** equally weighted factors (labour, assets and sales). The labour factor should be computed on the basis of payroll and the number of employees (each item counting for half). The asset factor should consist of all fixed tangible assets. Intangibles and financial assets should be excluded from the formula due to their mobile nature and the risks of circumventing the system. The use of these factors gives appropriate weight to the interests of the Member State of origin. **Finally, sales should be taken into account in order to ensure fair participation of the Member State of destination.** Those factors and weightings should ensure that profits are taxed where they are earned. As an exception to the general principle, where the outcome of the apportionment does not fairly represent the extent of business activity, a safeguard clause provides for an alternative method.

Amendment

(21) The formula for apportioning the consolidated tax base should comprise **two** equally weighted factors (labour and assets). The labour factor should be computed on the basis of payroll and the number of employees (each item counting for half). The asset factor should consist of all fixed tangible assets. Intangibles and financial assets should be excluded from the formula due to their mobile nature and the risks of circumventing the system. The use of these factors gives appropriate weight to the interests of the Member State of origin. Those factors and weightings should ensure that profits are taxed where they are earned. As an exception to the general principle, where the outcome of the apportionment does not fairly represent the extent of business activity, a safeguard clause provides for an alternative method.

Amendment 10
Proposal for a directive
Recital 21 a (new)

Text proposed by the Commission

(21a) The common rules on the calculation of the CCCTB should not give rise to disproportionate administrative
costs for companies, in order to avoid damaging their competitiveness.

Amendment 11
Proposal for a directive
Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) The Commission should initiate a new CCCTB forum, similar to the Joint Transfer Pricing Forum, to which companies and Member States can address issues and disputes relating to the CCCTB. That forum should be able to give guidance to companies and Member States.

Amendment 12
Proposal for a directive
Recital 27 a (new)

Text proposed by the Commission

Amendment

(27a) The analysis on the basis of the review clause should also include an examination of the optional character of the CCCTB and considerations of practicality for SMEs.

Amendment 13
Proposal for a directive
Article 12 – paragraph 1

Text proposed by the Commission

Amendment

Deductible expenses shall include all costs of sales and expenses net of deductible value added tax incurred by the taxpayer with a view to obtaining or securing income, including costs of research and development and costs incurred in raising equity or debt for the purposes of the
Recurring costs relating to environmental protection and reduction of carbon emissions shall also be regarded as deductible expenses.

Amendment 14
Proposal for a directive
Article 24

Text proposed by the Commission

Amendment

Article 24

Long-term contracts

1. A long-term contract is one which complies with the following conditions:
   (a) it is concluded for the purpose of manufacturing, installation or construction or the performance of services;
   (b) its term exceeds, or is expected to exceed, 12 months.

2. Notwithstanding Article 18, revenues relating to a long-term contract shall be recognised, for tax purposes, at the amount corresponding to the part of the contract completed in the respective tax year. The percentage of completion shall be determined either by reference to the ratio of costs of that year to the overall estimated costs or by reference to an expert evaluation of the stage of completion at the end of the tax year.

3. Costs relating to long-term contracts shall be taken account of in the tax year in which they are incurred.

Amendment 15
Proposal for a directive
Article 39 – paragraph 1

Text proposed by the Commission

Amendment

1. Fixed assets other than those referred to
in Articles 36 and 40 shall be depreciated together in one asset pool at an annual rate of 25% of the depreciation base.

Amendment 16
Proposal for a directive
Article 58 – paragraph 2

Text proposed by the Commission

2. Notwithstanding paragraph 1, a taxpayer shall become a member of a group on the date when the thresholds of Article 54 are reached. The thresholds must be met for at least nine consecutive months, failing which a taxpayer shall be treated as if it had never having become a member of the group.

Amendment

2. Notwithstanding paragraph 1, a taxpayer shall become a member of a group on the date when the thresholds of Article 54 are reached. The thresholds must be met for at least twelve consecutive months, failing which a taxpayer shall be treated as if it had never having become a member of the group.

Amendment 17
Proposal for a directive
Article 80 – paragraph 1

Text proposed by the Commission

Artificial transactions carried out for the sole purpose of avoiding taxation shall be ignored for the purposes of calculating the tax base.

Amendment

Artificial transactions carried out for the main purpose of avoiding taxation shall be ignored for the purposes of calculating the tax base.

Amendment 18
Proposal for a directive
Article 86 – paragraph 1 – introductory part

Text proposed by the Commission

1. The consolidated tax base shall be shared between the group members in each tax year on the basis of a formula for apportionment. In determining the apportioned share of a group member A, the formula shall take the following form, giving equal weight to the factors of sales,

Amendment

1. The consolidated tax base shall be shared between the group members in each tax year on the basis of a formula for apportionment. In determining the apportioned share of a group member A, the formula shall take the following form, giving equal weight to the factors of labour,
Amendment 19
Proposal for a directive
Article 86 – paragraph 1 – formula

Text proposed by the Commission

\[
\text{Share A} = \left( \frac{1}{3} \frac{\text{Sales}^A}{\text{Sales}_{\text{Group}}} + \frac{1}{2} \frac{\text{Payroll}^A}{\text{Payroll}_{\text{Group}}} + \frac{1}{2} \frac{\text{No of employees}^A}{\text{No of employees}_{\text{Group}}} + \frac{1}{3} \frac{\text{Assets}^A}{\text{Assets}_{\text{Group}}} \right) \times \text{Con'd Tax Base}
\]

Amendment

\[
\text{Share A} = \left( \frac{1}{2} \frac{\text{Payroll}^A}{\text{Payroll}_{\text{Group}}} + \frac{1}{2} \frac{\text{No of employees}^A}{\text{No of employees}_{\text{Group}}} + \frac{1}{2} \frac{\text{Assets}^A}{\text{Assets}_{\text{Group}}} \right) \times \text{Con'd Tax Base}
\]

Amendment 20
Proposal for a directive
Article 95

Text proposed by the Commission

Article 95 deleted

Composition of the sales factor

1. The sales factor shall consist of the total sales of a group member (including a permanent establishment which is deemed to exist by virtue of the second subparagraph of Article 70(2) as its numerator and the total sales of the group as its denominator.

2. Sales shall mean the proceeds of all sales of goods and supplies of services after discounts and returns, excluding value added tax, other taxes and duties. Exempt revenues, interest, dividends, royalties and proceeds from the disposal of fixed assets shall not be included in the sales factor, unless they are revenues earned in the ordinary course of trade or business. Intra-group sales of goods and
supplies of services shall not be included.

3. Sales shall be valued according to Article 22.

Amendment 21
Proposal for a directive
Article 96

Text proposed by the Commission

Amendment

Article 96 deleted

Sales by destination

1. Sales of goods shall be included in the sales factor of the group member located in the Member State where dispatch or transport of the goods to the person acquiring them ends. If this place is not identifiable, the sales of goods shall be attributed to the group member located in the Member State of the last identifiable location of the goods.

2. Supplies of services shall be included in the sales factor of the group member located in the Member State where the services are physically carried out.

3. Where exempt revenues, interest, dividends and royalties and the proceeds from the disposal of assets are included in the sales factor, they shall be attributed to the beneficiary.

4. If there is no group member in the Member State where goods are delivered or services are carried out, or if goods are delivered or services are carried out in a third country, the sales shall be included in the sales factor of all group members in proportion to their labour and asset factors.

5. If there is more than one group member in the Member State where goods are delivered or services are carried out, the sales shall be included in the sales factor of all group members located in
that Member State in proportion to their labour and asset factors.

Amendment 22
Proposal for a directive
Article 97

Text proposed by the Commission

The Commission may adopt acts laying down detailed rules on the calculation of the labour, asset and sales factors, the allocation of employees and payroll, assets and sales to the respective factor and the valuation of assets. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 131(2).

Amendment

The Commission may adopt acts laying down detailed rules on the calculation of the labour and asset factors, the allocation of employees and payroll and assets to the respective factor and the valuation of assets. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 131(2).

Amendment 23
Proposal for a directive
Article 105 – paragraph 1

Text proposed by the Commission

1. When the notice to opt has been accepted, a single taxpayer or a group, as the case may be, shall apply the system provided for by this Directive for five tax years. Following the expiry of that initial term, the single taxpayer or the group shall continue to apply the system for successive terms of three tax years unless it gives notice of termination. A notice of termination may be given by a taxpayer to its competent authority or, in the case of a group, by the principal taxpayer to the principal tax authority in the three months preceding the end of the initial term or of a subsequent term.

Amendment

1. When the notice to opt has been accepted, a single taxpayer or a group, as the case may be, shall apply the system provided for by this Directive for three tax years. Following the expiry of that initial term, the single taxpayer or the group shall continue to apply the system for successive terms of three tax years unless it gives notice of termination. A notice of termination may be given by a taxpayer to its competent authority or, in the case of a group, by the principal taxpayer to the principal tax authority in the three months preceding the end of the initial term or of a subsequent term.

Amendment 24
Proposal for a directive
Article 122 – paragraph 1 – subparagraph 1
The principal tax authority may initiate and coordinate audits of group members. An audit may also be initiated on the request of a competent authority.

**Amendment 25**

Proposal for a directive
Article 123 a (new)

**Text proposed by the Commission**

Amendment

Article 123a

CCCTB forum - a dispute settlement body

The Commission shall initiate a new CCCTB forum, similar to the Joint Transfer Pricing Forum, to which companies and Member States can address issues and disputes relating to the CCCTB and which shall provide guidance.

**Amendment 26**

Proposal for a directive
Article 130

**Text proposed by the Commission**

Amendment

The European Parliament shall be informed of the adoption of delegated acts by the Commission of any objection formulated to them, or the revocation of the delegation of powers by the Council. *Any future assessment of this Directive shall be communicated to the European Parliament.*

**Amendment 27**
Proposal for a directive

Article 133

**Text proposed by the Commission**

The Commission shall, five years after the entry into force of this Directive, review its application and report to the Council on the operation of this Directive. The report shall in particular include an analysis of the impact of the mechanism set up in Chapter XVI of this Directive on the distribution of the tax bases between the Member States.

**Amendment**

The Commission shall, five years after the entry into force of this Directive, review its application and report to the European Parliament and the Council on the application of this Directive. The report shall include an analysis of the impact of this Directive on the national economies and the effects on national, regional and local public budgets, as well as the socio-economic effects on small and medium-sized enterprises.

Following the presentation of that report the Commission shall carry out an impact assessment and pilot projects with a view to presenting a legislative proposal in order to make the CCCTB obligatory for all eligible companies by 2020, with the exclusion of micro, small and medium-sized companies as defined in Commission Recommendation 2003/361/EC of 6 May 2003¹. The Commission shall also evaluate the possibility of taxing partnerships as if they were corporate companies.

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¹ OJ L 124, 20.5.2003, p. 36.

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**Amendment 28**

Proposal for a directive

Article 133 a (new)

**Text proposed by the Commission**

Article 133a

Safeguard for cases of loss of tax revenue

If the Commission's impact assessment analysis referred to in Article 133 reveals significant losses of tax revenues in several Member States, those Member

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¹ OJ L 124, 20.5.2003, p. 36.
States may suspend the CCCTB provided for in Chapters IX to XII and XVI of this Directive until these negative impacts cease.
# Procedure

<table>
<thead>
<tr>
<th>Title</th>
<th>Common Consolidated Corporate Tax Base (CCCTB)</th>
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<tbody>
<tr>
<td><strong>Committee responsible</strong></td>
<td>ECON 7.4.2011</td>
</tr>
<tr>
<td><strong>Committee(s) asked for opinion(s)</strong></td>
<td>IMCO 7.4.2011</td>
</tr>
<tr>
<td><strong>Discussed in committee</strong></td>
<td>5.12.2011</td>
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<tr>
<td><strong>Date adopted</strong></td>
<td>25.1.2012</td>
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| **Result of final vote**   | +: 19  
|                           | -: 17  
|                           | 0: 0   |

| **Members present for the final vote** | Pablo Arias Echeverría, Adam Bielan, Cristian Silviu Bușoi, Sergio Gaetano Cofferati, Lara Comi, Anna Maria Corazza Bildt, Cornelis de Jong, Vicente Miguel Garcés Ramón, Evelyne Gebhardt, Małgorzata Handzlik, Iliana Ivanova, Philippe Juvin, Sandra Kalniete, Eija-Riitta Korhola, Edvard Kožušník, Kurt Lechner, Toine Manders, Hans-Peter Mayer, Phil Prendergast, Mitro Repo, Robert Rochefort, Zuzana Roithová, Heide Rühle, Christel Schaldemose, Andreas Schwab, Róza Gräfin von Thun und Hohenstein, Bernadette Vergnaud, Barbara Weiler |

| **Substitute(s) present for the final vote** | Frank Engel, Ildikó Gáll-Pelcz, Anna Hedh, Liem Hoang Ngoc, María Irigoyen Pérez, Emma McClarkin, Olle Schmidt, Kyriacos Triantaphyllides |
## PROCEDURE

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<thead>
<tr>
<th>Title</th>
<th>Common Consolidated Corporate Tax Base (CCCTB)</th>
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<tr>
<td>Date of consulting Parliament</td>
<td>6.4.2011</td>
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<td>Committee responsible</td>
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<td>Rapporteur(s)</td>
<td>Marianne Thyssen 10.5.2011</td>
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<tr>
<td>Legal basis disputed</td>
<td>JURI 26.1.2012</td>
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<tr>
<td>Date adopted</td>
<td>21.3.2012</td>
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| Result of final vote | +: 35  
| | -: 7  
| | 0: 1 |
| Members present for the final vote | Burkhard Balz, Elena Băsescu, Sharon Bowles, Udo Bullmann, Pascal Canfin, Nikolaos Chountis, George Sabin Cutaş, Leonardo Domenici, Derk Jan Eppink, Diogo Feio, Markus Ferber, Ildikó Gáll-Pelez, Jean-Paul Gauzès, Sven Giegold, Liem Hoang Ngoc, Gunnar Hökmark, Syed Kamall, Othmar Karas, Jürgen Klute, Rodi Kratsa-Tsagaropoulou, Philippe Lamberts, Astrid Lulling, Sławomir Witold Nitrás, Ivari Padar, Antolín Sánchez Presedo, Olle Schmidt, Edward Scicluna, Peter Simon, Peter Skinner, Theodor Dumitru Stolojan, Ivo Štrejček, Kay Swinburne, Sampo Terho, Marianne Thyssen, Ramon Tremosa i Balcárs, Corien Wortmann-Kool |
| Substitute(s) present for the final vote | Pervenche Berès, Philippe De Backer, Herbert Dorfmann, Enrique Guerrero Salom, Sophia in ’t Veld, Thomas Mann, Mario Mauro |
| Substitute(s) under Rule 187(2) present for the final vote | Veronica Lope Fontagné |
| Date tabled | 29.3.2012 |