REPORT

on the proposal for a Council directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market (COM(2016)0026 – C8-0031/2016 – 2016/0011(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Hugues Bayet
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

Amendments by Parliament set out in two columns

Deletions are indicated in bold italics in the left-hand column. Replacements are indicated in bold italics in both columns. New text is indicated in bold italics in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in bold italics. Deletions are indicated using either the symbol or strikeout. Replacements are indicated by highlighting the new text in bold italics and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.
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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market

(Special legislative procedure – consultation)

The European Parliament,

– having regard to the Commission proposal to the Council (COM(2016)0026),
– having regard to Article 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C8-0031/2016),
– 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 Maltese Parliament and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
– having regard to Rule 59 of its Rules of Procedure,
– having regard to the report of the Committee on Economic and Monetary Affairs (A8-0189/2016),

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 substantially amend the Commission proposal;
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 | Amendment
---|---
(1) The current political priorities in international taxation highlight the need for ensuring that tax is paid where profits and

EN
value are generated. It is thus imperative to restore trust in the fairness of tax systems and allow governments to effectively exercise their tax sovereignty. These new political objectives have been translated into concrete action recommendations in the context of the initiative against Base Erosion and Profit Shifting (BEPS) by the Organisation for Economic Cooperation and Development (OECD). In response to the need for fairer taxation, the Commission, in its Communication of 17 June 2015 sets out an Action Plan for Fair and Efficient Corporate Taxation in the European Union\(^3\) (the Action Plan).


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**Amendment 2**

**Proposal for a directive**

**Recital 1 a (new)**

generated and value is created. It is thus imperative to restore trust in the fairness of tax systems and allow governments to effectively exercise their tax sovereignty. These new political objectives have been translated into concrete action recommendations in the context of the initiative against Base Erosion and Profit Shifting (BEPS) by the Organisation for Economic Cooperation and Development (OECD). In response to the need for fairer taxation, the Commission, in its Communication of 17 June 2015 sets out an Action Plan for Fair and Efficient Corporate Taxation in the European Union\(^3\) (the Action Plan) *in which it recognises that a fully-fledged Common Consolidated Corporate Tax Base (CCCTB), with an appropriate and fair distribution key, would be the genuine "game changer" in the fight against artificial BEPS strategies. In light of this, the Commission should publish an ambitious proposal for a CCCTB as soon as possible, and the legislative branch to conclude negotiations on that crucial proposal as soon as possible.*

Due regard should be had to the European Parliament legislative resolution of 19 April 2012 on the proposal for a Council directive on a Common Consolidated Corporate Tax Base (CCCTB).

Amendment

Text proposed by the Commission

Amendment

(1a) The Union believes that combatting fraud, tax evasion and tax avoidance are overriding political priorities, as aggressive tax planning practices are unacceptable from the point of view of the integrity of the internal market and social justice.

Amendment 3

Proposal for a directive
Recital 2

Text proposed by the Commission

(2) Most Member States, in their capacity as OECD members, have committed to implement the output of the 15 Action Items against base erosion and profit shifting, released to the public on 5 October 2015. It is therefore essential for the good functioning of the internal market that, as a minimum, Member States implement their commitments under BEPS and more broadly, take action to discourage tax avoidance practices and ensure fair and effective taxation in the Union in a sufficiently coherent and coordinated fashion. In a market of highly integrated economies, there is a need for common strategic approaches and coordinated action, to improve the functioning of the internal market and maximise the positive effects of the initiative against BEPS. Furthermore, only a common framework could prevent a fragmentation of the market and put an end to currently existing mismatches and market distortions. Finally, national implementing measures which follow a common line across the Union would provide taxpayers with legal certainty in that those measures would be compatible with Union law.

(2) Most Member States, in their capacity as OECD members, have committed to implement the output of the 15 Action Items against genuine base erosion and profit shifting, released to the public on 5 October 2015. It is therefore essential for the good functioning of the internal market that, as a minimum, Member States implement their commitments under BEPS and more broadly, take action to discourage tax avoidance practices and ensure fair and effective taxation in the Union in a sufficiently coherent and coordinated fashion. In a market of highly integrated economies, there is a need for common strategic approaches and coordinated action, to improve the functioning of the internal market and maximise the positive effects of the initiative against genuine BEPS strategies, whilst at the same time taking adequate care of the competitiveness of the companies operating within that internal market. Furthermore, only a common framework could prevent a fragmentation of the market and put an end to currently existing mismatches and market distortions. Finally, national implementing measures which follow a common line across the
Union would provide taxpayers with legal certainty in that those measures would be compatible with Union law. In a Union characterised by very diverse national markets, an encompassing impact assessment of all anticipated measures remains crucial to ensure that this common line finds widespread support among Member States.

Amendment 4
Proposal for a directive
Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) Given that tax havens can be classified as transparent by the OECD, proposals should be brought forward to increase the transparency of trust funds and foundations.

Amendment 5
Proposal for a directive
Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) It is essential to give tax authorities the appropriate means to fight effectively against BEPS, and, in so doing, improve transparency in respect of the activities of large multinationals, in particular with regard to profits, tax paid on profits, subsidies received, tax rebates, numbers of employees and assets held.

Amendment 6
Proposal for a directive
Recital 4 b (new)
Text proposed by the Commission

Amendment

(4b) To ensure consistency with regard to the treatment of permanent establishments, it is essential that Member States apply, both in relevant legislation and bilateral tax treaties, a common definition of permanent establishments in accordance with Article 5 of the OECD Model Convention on Tax and Income.

Amendment 7

Proposal for a directive
Recital 4 c (new)

Text proposed by the Commission

Amendment

(4c) To avoid inconsistent allocation of profits to permanent establishments, Member States should follow rules for profits attributable to permanent establishment which are in accordance with Article 7 of the OECD Model Convention on Tax and Income and should align their applicable law and bilateral treaties to those rules, when such rules are reviewed.

Amendment 8

Proposal for a directive
Recital 5

Text proposed by the Commission

Amendment

(5) It is necessary to lay down rules against the erosion of tax bases in the internal market and the shifting of profits out of the internal market. Rules in the following areas are necessary in order to contribute to achieving that objective: limitations to the deductibility of interest, exit taxation, a switch-over clause, a general anti-abuse rule, controlled foreign company rules and a framework to tackle

and royalty payments, basic defence measures against the use of secrecy or low tax jurisdictions for BEPS, exit taxation, a
hybrid mismatches. Where the application of those rules gives rise to double taxation, taxpayers should receive relief through a deduction for the tax paid in another Member State or third country, as the case may be. Thus, the rules should not only aim to counter tax avoidance practices but also avoid creating other obstacles to the market, such as double taxation.

clear definition of permanent establishment, precise rules governing transfer pricing, a framework for patent box systems, a switch-over clause in the absence of a sound tax treaty of similar effect with a third country, a general anti-abuse rule, controlled foreign company rules and a framework to tackle hybrid mismatches. Where the application of those rules gives rise to double taxation, taxpayers should receive relief through a deduction for the tax paid in another Member State or third country, as the case may be. Thus, the rules should not only aim to counter tax avoidance practices but also avoid creating other obstacles to the market, such as double taxation. To get correct application of those rules, tax authorities in Member States must be properly resourced. Nevertheless, it is also urgent and necessary to lay down a single set of rules for calculating taxable profits of cross-border companies in the Union by treating corporate groups as a single entity for tax purposes, in order to strengthen the internal market and eliminate many of the weaknesses in the current corporate tax framework enabling aggressive tax planning.

Amendment 9
Proposal for a directive Recital 6

Text proposed by the Commission

(6) In an effort to reduce their global tax liability, cross-border groups of companies have increasingly engaged in shifting profits, often through inflated interest payments, out of high tax jurisdictions into countries with lower tax regimes. The interest limitation rule is necessary to discourage such practices by limiting the deductibility of taxpayers' net financial costs (i.e. the amount by which financial expenses exceed financial

Amendment

(6) In an effort to reduce their global tax liability, cross-border groups of companies have increasingly engaged in shifting profits, often through inflated interest or royalty payments, out of high tax jurisdictions into countries with lower tax regimes. The interest and royalty limitation rules are necessary to discourage such genuine BEPS practices by limiting the deductibility of taxpayers' net financial costs (i.e. the amount by which financial
revenues). It is therefore necessary to fix a ratio for deductibility which refers to a taxpayer’s earnings before interest, tax, depreciation and amortisation (EBITDA). Tax exempt financial revenues should not be set off against financial expenses. This is because only taxable income should be taken into account in determining up to how much of interest may be deducted. To facilitate taxpayers which run reduced risks related to base erosion and profit shifting, net interest should always be deductible up to a fixed maximum amount, which is triggered where it leads to a higher deduction than the EBITDA-based ratio. Where the taxpayer is part of a group which files statutory consolidated accounts, the indebtedness of the overall group should be considered for the purpose of granting taxpayers entitlement to deduct higher amounts of net financial costs. The interest limitation rule should apply in relation to a taxpayer's net financial costs without distinction of whether the costs originate in debt taken out nationally, cross-border within the Union or with a third country. Although it is generally accepted that financial undertakings, i.e. financial institutions and insurance undertakings, should also be subject to limitations to the deductibility of interest, it is equally acknowledged that these two sectors present special features which call for a more customised approach. As the discussions in this field are not yet sufficiently conclusive in the international and Union context, it is not yet possible to provide specific rules in the financial and insurance sectors.

Amendment 10

Proposal for a directive
Recital 6 a (new)
(6a) In the event of the funding of long term infrastructure projects that are in public interest by debt to a third party, where that debt is higher than the threshold for exemption established by this Directive, it should be possible for Member States to grant an exemption to third party loans funding public infrastructure projects under certain conditions, as the application of the proposed provisions on interest limitation in such cases would be counterproductive.

Amendment 11

Proposal for a directive
Recital 6 b (new)

(6b) Profit shifting into secrecy or low tax jurisdictions poses a particular risk to Member States’ tax proceeds as well as to fair and equal treatment between tax avoiding and tax compliant firms, large and small. In addition to the generally applicable measures proposed in this Directive for all jurisdictions, it is essential to deter secrecy and low tax jurisdictions from basing their corporate tax and legal environment on sheltering profits from tax avoidance while at the same time not adequately implementing global standards as regards tax good governance, such as the automatic exchange of tax information, or engaging in tacit non-compliance by not properly enforcing tax laws and international agreements, despite political commitments to implementation. Specific measures are therefore proposed to use this directive as a tool to ensure compliance by current secrecy and low tax jurisdictions with the international push for tax transparency.
Amendment 12
Proposal for a directive
Recital 7

**Text proposed by the Commission**

(7) Exit taxes have the function of ensuring that where a taxpayer moves assets or its tax residence out of the tax jurisdiction of a State, that State taxes the economic value of any capital gain created in its territory even if this gain has not yet been realised at the time of the exit. It is therefore necessary to specify cases in which taxpayers are subject to exit tax rules and taxed on unrealised capital gains which have been built in their transferred assets. In order to compute the amounts, it is critical to fix a market value for the transferred assets based on the arm's length principle. Within the Union, it is necessary to address the application of exit taxation and illustrate the conditions for being compliant with Union law. In those situations, taxpayers should have the right to either immediately pay the amount of exit tax assessed or defer payment of the amount of tax, possibly together with interest and a guarantee, over a certain number of years and to settle their tax liability through staggered payments. Exit tax should not be charged where the transfer of assets is of a temporary nature and as long as the assets are intended to revert to the Member State of the transferor, where the transfer takes place in order to meet prudential requirements or for the purpose of liquidity management or when it comes to securities' financing transactions or assets posted as collateral.

**Amendment**

(7) Exit taxes have the function of ensuring that where a taxpayer moves assets and profits or its tax residence out of the tax jurisdiction of a State, that State taxes the economic value of any capital gain created in its territory even if this gain has not yet been realised at the time of the exit. It is therefore necessary to specify cases in which taxpayers are subject to exit tax rules and taxed on unrealised capital gains which have been built in their transferred assets or profits. In order to compute the amounts, it is critical to fix a market value for the transferred assets or profits based on the arm's length principle. Within the Union, it is necessary to address the application of exit taxation and illustrate the conditions for being compliant with Union law. In those situations, taxpayers should have the right to either immediately pay the amount of exit tax assessed or defer payment of the amount of tax, possibly together with interest and a guarantee, over a certain number of years and to settle their tax liability through staggered payments. Exit tax should not be charged where the transfer of assets or profits is of a temporary nature and as long as the assets or profits are intended to revert to the Member State of the transferor, where the transfer takes place in order to meet prudential requirements or for the purpose of liquidity management or when it comes to securities' financing transactions or assets posted as collateral. However, it should be possible for Member States to...
provide for deduction in such cases.

Amendment 13
Proposal for a directive
Recital 7 a (new)

Text proposed by the Commission

(7a) Too often, multinational companies make arrangements to transfer their profits to tax havens without paying any tax or paying very low rates of tax. The concept of permanent establishment will provide a precise, binding definition of the criteria which must be met if a multinational company is to prove that it is situated in a given country. This will compel multinational companies to pay their taxes fairly.

Amendment 14
Proposal for a directive
Recital 7 b (new)

Text proposed by the Commission

(7b) The term 'transfer pricing' refers to the conditions and arrangements surrounding transactions effected within a multinational company, including subsidiaries and shell companies whose profits are divested to a parent multinational. It denotes the prices charged between associated undertakings established in different countries for their intra-group transactions, such as the transfer of goods and services. As the prices are set by non-independent associates within the same multinational undertaking, they might not reflect the objective market price. The Union must satisfy itself that the taxable profits generated by multinational undertakings...
are not being transferred outside the jurisdiction of the Member State concerned and that the tax base declared by multinational undertakings in their country reflects the economic activity undertaken there. In the interests of taxpayers, it is essential to limit the risk of double non-taxation which might result from a difference of opinion between two countries regarding the determination of the arm's length charge for their international transactions with associated undertakings. This system does not rule out the use of a range of artificial arrangements, in particular involving products for which there is no market price (for example a franchise or services provided to undertakings).

Amendment 15

Proposal for a directive
Recital 7 c (new)

Text proposed by the Commission

(7c) The OECD has developed the modified nexus approach in an effort to regulate the patent box system. This method guarantees that, under the patent box system, a favourable rate of tax is charged only on revenue directly linked to spending on research and development. However, the difficulty for Member States in applying the concepts of nexus and economic substance to their patent boxes can already be seen. If, by January 2017, the Member States have still not fully implemented the modified nexus approach in a uniform manner in order to eliminate current harmful patent box regimes, the Commission should submit a new, binding legislative proposal under Article 116 of the Treaty on the Functioning of the European Union. The CCCTB should eliminate the issue of profit shifting through tax planning as
regards intellectual property.

Amendment 16
Proposal for a directive
Recital 7 d (new)

Text proposed by the Commission

(7d) Exit tax should not be charged where the transferred assets are tangible assets generating active income. Transfers of such assets are an inevitable part of effective allocation of resources by an enterprise and are not primarily intended for tax optimisation and tax avoidance, and should therefore be exempt from those provisions.

Amendment 17
Proposal for a directive
Recital 8

Text proposed by the Commission

(8) Given the inherent difficulties in giving credit relief for taxes paid abroad, States tend to increasingly exempt from taxation foreign income in the State of residence. The unintended negative effect of this approach is however that it encourages situations whereby untaxed or low-taxed income enters the internal market and then, circulates – in many cases, untaxed - within the Union, making use of available instruments within the Union law. Switch-over clauses are commonly used against such practices. It is therefore necessary to provide for a switch-over clause which is targeted against some types of foreign income, for example, profit distributions, proceeds from the disposal of shares and permanent establishment profits which are tax exempt in the Union and originate in third

(8) Given the inherent difficulties in giving credit relief for taxes paid abroad, States tend to increasingly exempt from taxation foreign income in the State of residence. The unintended negative effect of this approach is however that it encourages situations whereby untaxed or low-taxed income enters the internal market and then, circulates – in many cases, untaxed - within the Union, making use of available instruments within the Union law. Switch-over clauses are commonly used against such practices. It is therefore necessary to provide for a switch-over clause which is targeted against some types of foreign income, for example, profit distributions, proceeds from the disposal of shares and permanent establishment profits which are tax exempt in the Union.
countries. This income should be taxable in the Union, if it has been taxed below a certain level in the third country. Considering that the switch-over clause does not require control over the low-taxed entity and therefore access to statutory accounts of the entity may be unavailable, the computation of the effective tax rate can be a very complicated exercise. Member States should therefore use the statutory tax rate when applying the switch-over clause. Member States that apply the switch-over clause should give a credit for the tax paid abroad, in order to prevent double taxation.

Amendment 18

Proposal for a directive
Recital 9

Text proposed by the Commission

(9) General anti-abuse rules (GAARs) feature in tax systems to tackle abusive tax practices that have not yet been dealt with through specifically targeted provisions. GAARs have therefore a function aimed to fill in gaps, which should not affect the applicability of specific anti-abuse rules. Within the Union, the application of GAARs should be limited to arrangements that are ‘wholly artificial’ (non-genuine); otherwise, the taxpayer should have the right to choose the most tax efficient structure for its commercial affairs. It is furthermore important to ensure that the GAARs apply in domestic situations, within the Union and vis-à-vis third countries in a uniform manner, so that their scope and results of application in domestic and cross-border situations do not differ.

Amendment

(9) General anti-abuse rules (GAARs) feature in tax systems to tackle abusive tax practices that have not yet been dealt with through specifically targeted provisions. GAARs have therefore a function aimed to fill in gaps, which should not affect the applicability of specific anti-abuse rules. Within the Union, the application of GAARs should be applied to arrangements that are considered harmful. It is furthermore important to ensure that the GAARs apply in domestic situations, within the Union and vis-à-vis third countries in a uniform manner, so that their scope and results of application in domestic and cross-border situations do not differ.

In order to properly tackle the potential conflicts of interests audit companies are exposed to when giving tax advice, Regulation (EU) No 537/2014 of the
Amendment 19
Proposal for a directive
Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) An arrangement or a series of arrangements can be regarded as non-genuine insofar as it leads to different taxation of certain types of income, such as those generated by patents.

Amendment 20
Proposal for a directive
Recital 9 b (new)

Text proposed by the Commission

Amendment

(9b) Member States should implement more detailed provisions that clarify what is meant by non-genuine arrangements that make use of its tax jurisdiction. Companies that incentivise such non-genuine arrangements should be subject to penalties. In order to provide for a higher level of protection against tax avoidance practices, Member States should target arrangements which have been put in place of which the main purpose or one of the main purposes is to obtain an unfair tax advantage.

Amendment 21
Proposal for a directive
Recital 9 c (new)

Text proposed by the Commission

Amendment

(9c) Member States should have in place a system of penalties as provided for
in national law and should inform the Commission thereof.

Amendment 22
Proposal for a directive
Recital 9 d (new)

Text proposed by the Commission

Amendment

(9d) In order to prevent the creation of special purpose entities such as ‘letterbox companies’ or shell companies with a lower tax treatment, enterprises should correspond to the definitions of permanent establishment and minimum economic substance laid down in Article 2.

Amendment 23
Proposal for a directive
Recital 9 e (new)

Text proposed by the Commission

Amendment

(9e) The use of letterbox companies by taxpayers operating in the Union should be prohibited. Taxpayers should communicate to tax authorities evidence demonstrating the economic substance of each of the entities in their group, as part of their annual country-by-country reporting obligations.

Amendment 24
Proposal for a directive
Recital 9 f (new)

Text proposed by the Commission

Amendment

(9f) In order to improve the current mechanisms to resolve cross-border taxation disputes in the Union, focusing not only on cases of double taxation but
also on double non-taxation, a dispute resolution mechanism with clearer rules and more stringent timelines should be introduced by January 2017.

Amendment 25
Proposal for a directive
Recital 9 g (new)

Text proposed by the Commission

(9g) Proper identification of taxpayers is essential to effective exchange of information between tax administrations. The creation of a harmonised, common European taxpayer identification number (TIN) would provide the best means for this identification. It would allow any third party to quickly, easily and correctly identify and record TINs in cross-border relations and serve as a basis for effective automatic exchange of information between Member States tax administrations. The Commission should also actively work for the creation of a similar identification number on a global level, such as the Regulatory Oversight Committee's global Legal Entities Identifier (LEI).

Amendment 26
Proposal for a directive
Recital 10

Text proposed by the Commission

(10) Controlled Foreign Company (CFC) rules have the effect of re-attributing the income of a low-taxed controlled subsidiary to its parent company. Then, the parent company becomes taxable to this attributed income in the State where it is resident for tax purposes. Depending on the policy priorities of that State, CFC rules may
target an entire low-taxed subsidiary or be limited to income which has artificially been diverted to the subsidiary. It is desirable to address situations both in third-countries and in the Union. To comply with the fundamental freedoms, the impact of the rules within the Union should be limited to arrangements which result in the artificial shifting of profits out of the Member State of the parent company towards the CFC. In this case, the amounts of income attributed to the parent company should be adjusted by reference to the arm’s length principle, so that the State of the parent company only taxes amounts of CFC income to the extent that they do not comply with this principle. CFC rules should exclude financial undertakings from their scope where those are tax resident in the Union, including permanent establishments of such undertakings situated in the Union. This is because the scope for a legitimate application of CFC rules within the Union should be limited to artificial situations without economic substance, which would imply that the heavily regulated financial and insurance sectors would be unlikely to be captured by those rules.

Amendment 27

Proposal for a directive
Recital 11

Text proposed by the Commission

(11) Hybrid mismatches are the consequence of differences in the legal characterisation of payments (financial instruments) or entities and those differences surface in the interaction between the legal systems of two jurisdictions. The effect of such mismatches is often a double deduction (i.e. deduction in both states) or a deduction of the income in one state.
without inclusion in the tax base of the other. To prevent such an outcome, it is necessary to lay down rules whereby one of the two jurisdictions in a mismatch should give a legal characterisation to the hybrid instrument or entity and the other jurisdiction should accept it. Although Member States have agreed guidance, in the framework of the Group of the Code of Conduct on Business Taxation, on the tax treatment of hybrid entities and hybrid permanent establishments within the Union as well as on the tax treatment of hybrid entities in relations with third countries, it is still necessary to enact binding rules. Finally, it is necessary to limit the scope of these rules to hybrid mismatches between Member States. Hybrid mismatches between Member States and third countries still need to be further examined.

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Amendment 28

Proposal for a directive
Recital 11 a (new)

Text proposed by the Commission

(11a) An Union-wide definition and an exhaustive 'black list' should be drawn up of the tax havens and countries, including those in the Union, which distort competition by granting favourable tax arrangements. The black list should be complemented with a list of sanctions for non-cooperative jurisdictions and for financial institutions that operate within tax havens.
Amendment 29
Proposal for a directive
Recital 12 a (new)

Text proposed by the Commission

(12a) One of the main problems encountered by the tax authorities is the impossibility of gaining access in due time to comprehensive and relevant information about MNEs' tax planning strategies. Such information should be made available, in order for tax authorities to react quickly to tax risks, by assessing those risks more effectively, targeting checks and highlighting changes required to the laws in force.

Amendment 30
Proposal for a directive
Recital 14

Text proposed by the Commission

(14) Considering that a key objective of this Directive is to improve the resilience of the internal market as a whole against cross-border tax avoidance practices, this cannot be sufficiently achieved by the Member States acting individually. National corporate tax systems are disparate and independent action by Member States would only replicate the existing fragmentation of the internal market in direct taxation. It would thus allow inefficiencies and distortions to persist in the interaction of distinct national measures. The result would be lack of coordination. Rather, by reason of the fact that much inefficiency in the internal market primarily gives rise to problems of a cross-border nature, remedial measures should be adopted at Union level. It is
therefore critical to adopt solutions that function for the internal market as a whole and this can be better achieved at Union level. Thus, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective. By setting a minimum level of protection for the internal market, this Directive only aims to achieve the essential minimum degree of coordination within the Union for the purpose of materialising its objectives. However, overhauling the legal framework for tax in order to address practices which erode the tax base by means of regulation would have made it possible to secure a better outcome as regards guaranteeing equal conditions throughout the internal market.

Amendment 31

Proposal for a directive
Recital 14 a (new)

*Text proposed by the Commission*

*Amendment*

(14a) The Commission should carry out a cost-benefit analysis and assess the possible impact of high levels of tax on the repatriation of capital from third countries with low tax rates.

Amendment 32

Proposal for a directive
Recital 14 b (new)

*Text proposed by the Commission*

*Amendment*

(14b) All trade agreements and economic partnership agreements to which the Union is party should include
provisions on the promotion of good governance in tax matters, with the aim of increasing transparency and of combating harmful tax practices.

Amendment 33
Proposal for a directive
Recital 15

Text proposed by the Commission

(15) The Commission should evaluate the implementation of this Directive three years after its entry into force and report to the Council thereon. Member States should communicate to the Commission all information necessary for this evaluation,

Amendment

(15) The Commission should put in place a specific monitoring mechanism to ensure the proper implementation of this Directive and the homogeneous interpretation of its measures by Member States. It should evaluate the implementation of this Directive three years after its entry into force and report to the European Parliament and the Council thereon. Member States should communicate to the European Parliament and the Commission all information necessary for this evaluation.

Amendment 34
Proposal for a directive
Article 2 – paragraph 1 – point 1 a (new)

Text proposed by the Commission

(1a) 'taxpayer' means a corporate entity covered under the scope of this Directive;

Amendment

Amendment 35
Proposal for a directive
Article 2 – paragraph 1 – point 4 a (new)
(4a) 'royalty cost' means costs arising from payments of any kind made as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films and software, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, or any other intangible asset; payments for the use of, or the right to use, industrial, commercial or scientific equipment shall be regarded as royalty costs;

Amendment 36

Proposal for a directive
Article 2 – paragraph 1 – point 4 b (new)

(4b) 'secrecy or low tax jurisdiction' means any jurisdiction which, from 31 December 2016, meets any of the following criteria:

(a) a lack of automatic exchange of information with all signatories of the multilateral competent authority agreement in line with OECD's Common Reporting Standard;

(b) no register of the ultimate beneficial owners of corporations, trusts and equivalent legal structures at least compliant with the minimum standard defined in the Directive (EU) 2015/849 of the European Parliament and of the Council;

(c) legal or administrative provisions or practices which grant favourable tax treatment to undertakings irrespective of whether they engage in genuine economic activity or have a significant economic
presence in the country in question;
(d) a statutory corporate tax rate of less than 60 % of the weighted average corporate tax in the Union.

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Amendment 37

Proposal for a directive
Article 2 – paragraph 1 – point 7 a (new)

Text proposed by the Commission

Amendment

(7a) 'permanent establishment' means a fixed place of business situated in a Member State through which the business of a company of another Member State is wholly or partly carried on; 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 presence in the economy of that country;

Amendment 38

Proposal for a directive
Article 2 – paragraph 1 – point 7 b (new)
Text proposed by the Commission

Amendment

(7b) 'tax haven' means a jurisdiction characterised by one or several of the following criteria:

(a) no or only nominal taxation for non-residents;

(b) laws or administrative practices preventing the effective exchange of tax information with other governments;

(c) legal or administrative provisions preventing tax transparency or the absence of requirement of a substantial economic activity to be carried out.

Amendment 39

Proposal for a directive
Article 2 – paragraph 1 – point 7 c (new)

Text proposed by the Commission

Amendment

(7c) 'minimum economic substance' means the factual criteria, including in the context of the digital economy, which can be used to define an undertaking, such as the existence of human and physical resources specific to the entity, its management autonomy, its legal reality and, where appropriate, the nature of its assets;

Amendment 40

Proposal for a directive
Article 2 – paragraph 1 – point 7 d (new)

Text proposed by the Commission

Amendment

(7d) 'European tax identification number' or 'TIN' means a number as defined in the Commission's Communication of 6 December 2012 containing an Action plan to strengthen the fight against tax fraud and tax
Amendment 41

Proposal for a directive
Article 2 – paragraph 1 – point 7 e (new)

Text proposed by the Commission

Amendment

(7e) 'transfer prices' means the prices at which an undertaking transfers tangible goods or intangible assets or provides services to associated undertakings;

Amendment 42

Proposal for a directive
Article 2 – paragraph 1 – point 7 f (new)

Text proposed by the Commission

Amendment

(7f) 'patent box' means a system used to calculate the income deriving from intellectual property (IP) which is eligible for tax benefits by establishing a link between the eligible expenditure effected when the IP assets were created (expressed as a proportion of the overall expenditure linked to the creation of the IP assets) and the income deriving from those IP assets; this system restricts the IP assets to patents or intangible goods with an equivalent function and provides the basis for the definition of 'eligible expenditure', 'overall expenditure' and 'income deriving from IP assets';

Amendment 43

Proposal for a directive
Article 2 – paragraph 1 – point 7 g (new)
(7g) 'letterbox company' means any type of legal entity which has no economic substance and which is set up purely for tax purposes.

Amendment 44

Proposal for a directive
Article 2 – paragraph 1 – point 7 h (new)

(7h) 'a person or enterprise associated to a taxpayer' means a situation where the first person holds a participation of more than 25% in the second, or there is a third person that holds a participation of more than 25% in both.

Amendment 45

Proposal for a directive
Article 2 – paragraph 1 – point 7 i (new)

(7i) 'hybrid mismatch' means a situation between a taxpayer in one Member State and an associated enterprise, as defined under the applicable corporate tax system, in another Member State or a third country where the following outcome is attributable to differences in the legal characterisation of a financial instrument or entity:

(a) a deduction of the same payment, expenses or losses occurs both in the Member State in which the payment has its source, the expenses are incurred or the losses are suffered and in the other Member State or third country ('double deduction'); or
there is a deduction of a payment in the Member State or third country in which the payment has its source without a corresponding inclusion of the same payment in the other Member State or third country ('deduction without inclusion').

Amendment 46

Proposal for a directive
Article 4 – paragraph 2

2. Exceeding borrowing costs shall be deductible in the tax year in which they are incurred only up to 30 percent of the taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA) or up to an amount of EUR 1 000 000, whichever is higher. The EBITDA shall be calculated by adding back to taxable income the tax-adjusted amounts for net interest expenses and other costs equivalent to interest as well as the tax-adjusted amounts for depreciation and amortisation.

Amendment 47

Proposal for a directive
Article 4 – paragraph 2 a (new)

2a. Member States may exclude from the scope of paragraph 2 excessive borrowing costs incurred on third party loans used to fund a public infrastructure project, that last at least 10 years and are considered to be in the general public interest by a Member State or the Union.
Amendment 48

Proposal for a directive
Article 4 – paragraph 4

Text proposed by the Commission

4. The EBITDA of a tax year which is not fully absorbed by the borrowing costs incurred by the taxpayer in that or previous tax years may be carried forward for future tax years.

Amendment

4. The EBITDA of a tax year which is not fully absorbed by the borrowing costs incurred by the taxpayer in that or previous tax years may be carried forward for future tax years for a period of five years.

Amendment 49

Proposal for a directive
Article 4 – paragraph 5

Text proposed by the Commission

5. Borrowing costs which cannot be deducted in the current tax year under paragraph 2 shall be deductible up to the 30 percent of the EBITDA in subsequent tax years in the same way as the borrowing costs for those years.

Amendment

5. Borrowing costs which cannot be deducted in the current tax year under paragraph 2 shall be deductible up to the 20% of the EBITDA in the five following subsequent tax years in the same way as the borrowing costs for those years.

Amendment 50

Proposal for a directive
Article 4 – paragraph 6

Text proposed by the Commission

6. Paragraphs 2 to 5 shall not apply to financial undertakings.

Amendment

6. Paragraphs 2 to 5 shall not apply to financial undertakings. The Commission must review the scope of this Article if and when an agreement is reached at OECD level and when the Commission determines that the OECD agreement can be implemented at Union level.
Amendment 51

Proposal for a directive
Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Permanent establishment

1. A fixed place of business that is used or maintained by a taxpayer shall be deemed to give rise to a permanent establishment if the same taxpayer or a closely related person carries business activities at the same place or at another place in the same State and:

(a) that place or other place constitutes a permanent establishment for the taxpayer or the closely related person under the provisions of this article, or

(b) the overall activity resulting from the combination of the activities carried out by the taxpayer and the closely related person at the same place, or by the same taxpayer or closely related persons at the two places, is not of a preparatory or auxiliary character, provided that the business activities carried on by the taxpayer and the closely related person at the same place, or by the same taxpayer or closely related persons at the two places, constitute complementary functions that are part of a cohesive business operation.

2. Where a person is acting in a State on behalf of a taxpayer and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the taxpayer, and these contracts are:

(a) in the name of the taxpayer, or

(b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that taxpayer or that the taxpayer has the right to use, or
(c) for the provision of services by that taxpayer, that taxpayer shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the taxpayer, unless the activities of such person are of auxiliary or preparatory character so that, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of this paragraph.

3. Member States shall align their applicable legislation and any bilateral Double Tax Treaties to this definition.

4. The Commission is empowered to adopt delegated acts concerning the notions of preparatory or auxiliary character.

Amendment 52
Proposal for a directive
Article 4 b (new)

Text proposed by the Commission

Amendment

Article 4b

Profits attributable to permanent establishment

1. Profits in a Member State that are attributable to the permanent establishment referred to in Article 4a are also the profits it might be expected to make, in particular in its dealing with other parts of the enterprise, if they were separate and independent enterprises engaged in the same activity and similar conditions, taking into the account the assets and risks of the permanent establishments involved.

2. Where a Member State adjusts the profit attributable to the permanent establishment referred to in paragraph 1 and taxes it accordingly, the profit and tax in other Member States should be adjusted accordingly, in order to avoid
double taxation.

3. As part of the OECD BEPS Action 7, the OECD is currently reviewing the rules defined in Article 7 OECD Model Convention dealing with profits attributable to permanent establishments and, once those rules are updated, the Member states shall align their applicable legislation accordingly.

Amendment 53

Proposal for a directive
Article 4 c (new)

Text proposed by the Commission

Amendment

Article 4c

Secrecy or low tax jurisdictions

1. Member States may impose a withholding tax on payments from an entity in that Member State to an entity in a secrecy or low tax jurisdiction.

2. Payments which are not directly directed to an entity in a secrecy or low tax jurisdiction, but which can be reasonably assumed to be directed to an entity in a secrecy or low tax jurisdiction indirectly, e.g. by means of mere intermediaries in other jurisdictions, shall also be covered by paragraph 1.

3. In due course, Member States shall update any Double Tax Agreements which currently preclude such a level of withholding tax with a view to removing any legal barriers to this collective defence measure.

Amendment 54

Proposal for a directive
Article 5 – paragraph 1 – introductory part
1. A taxpayer shall be subject to tax at an amount equal to the market value of the transferred assets, at the time of exit, less their value for tax purposes, in any of the following circumstances:

**Amendment 55**

**Proposal for a directive**
**Article 5 – paragraph 1 – point a**

**Text proposed by the Commission**

(a) a taxpayer transfers assets from its head office to its permanent establishment in another Member State or in a third country;

**Amendment**

(a) a taxpayer transfers assets from its head office to its permanent establishment in another Member State or in a third country *insofar as the Member State of the head office no longer has the right to tax the transferred assets due to the transfer*;

**Amendment 56**

**Proposal for a directive**
**Article 5 – paragraph 1 – point b**

**Text proposed by the Commission**

(b) a taxpayer transfers assets from its permanent establishment in a Member State to its head office or another permanent establishment in another Member State or in a third country;

**Amendment**

(b) a taxpayer transfers assets from its permanent establishment in a Member State to its head office or another permanent establishment in another Member State or in a third country *insofar as the Member State of the permanent establishment no longer has the right to tax the transferred assets due to the transfer*;

**Amendment 57**

**Proposal for a directive**
**Article 5 – paragraph 1 – point d**
(d) a taxpayer transfers its permanent establishment \textit{out of a} Member State.

(\textbf{Amendment} 58)

\textit{Proposal for a directive}

\textbf{Article 5 – paragraph 1 – subparagraph 2}

\textit{Text proposed by the Commission}

For the purposes of point (c) of the first subparagraph, any subsequent transfer to a third country of assets out of the permanent establishment which is situated in the first Member State and which the assets are effectively connected with shall be deemed to be a disposal at market value.

\textit{Amendment}

For the purposes of point (c) of the first subparagraph, any subsequent transfer to a third country of assets, \textit{including profits}, out of the permanent establishment which is situated in the first Member State and which the assets are effectively connected with shall be deemed to be a disposal at market value.

(\textbf{Amendment} 59)

\textit{Proposal for a directive}

\textbf{Article 5 – paragraph 2 – point a}

\textit{Text proposed by the Commission}

(a) a taxpayer transfers assets from its head office to its permanent establishment in another Member State or in a third country that is party to the European Economic Area Agreement (EEA Agreement);

\textit{Amendment}

(a) a taxpayer transfers assets, \textit{including profits}, from its head office to its permanent establishment in another Member State or in a third country that is party to the European Economic Area Agreement (EEA Agreement);

(\textbf{Amendment} 60)

\textit{Proposal for a directive}

\textbf{Article 5 – paragraph 2 – point b}

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RR\1096272EN.doc 37/54 PE578.569v02-00
(b) a taxpayer transfers assets from its permanent establishment in a Member State to its head office or another permanent establishment in another Member State or a third country that is party to the EEA Agreement;

Amendment 61

Proposal for a directive
Article 5 – paragraph 4 – point b

(b) the transferred assets are subsequently transferred to a third country;

Amendment

(b) the transferred assets, including profits, are subsequently transferred to a third country;

Amendment 62

Proposal for a directive
Article 5 – paragraph 4 – point d

(d) the taxpayer goes bankrupt or is wound up.

Amendment

(d) the taxpayer is engaged in a settlement procedure with its creditors, goes bankrupt or is wound up.

Amendment 63

Proposal for a directive
Article 5 – paragraph 7

7. This article shall not apply to asset transfers of a temporary nature where the assets are intended to revert to the Member State of the transferor.

Amendment

7. This article shall not apply to asset transfers of a temporary nature where the assets are intended to revert to the Member State of the transferor, nor to transfers of tangible assets transferred in order to generate income from active business. In order to benefit from the exemption, the
taxpayer will have to prove to its tax authorities that the foreign income arises from an active business. This could be done through a certificate from the foreign tax authorities.

Amendment 64

Proposal for a directive
Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5a

Transfer pricing

1. In accordance with the OECD’s 2010 document entitled ‘Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations’, the profits that would have been made by an enterprise but have not been made as a result of the following conditions may be included in the profits of that enterprise and taxed accordingly:

(a) an enterprise of a State participates directly or indirectly in the management, control or capital of an enterprise of the other State; or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one State and an enterprise of the other State; and

(c) in either case, the two enterprises are linked, in their commercial or financial relations, by agreed or imposed conditions that differ from those that would be agreed between independent enterprises,

2. Where a State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other State has been charged to tax in that other State and the profits so included are profits which the
enterprise of the first-mentioned State
would have made if the conditions
between the two enterprises had been
those which would have existed between
independent enterprises, then that other
State shall make an appropriate
adjustment to the amount of the tax
charged on those profits. In determining
such adjustment, due regard shall be had
to the other provisions of this Directive
and the tax authorities of the States shall,
if necessary, consult each other.

Amendment 65

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission

1. Member States shall not exempt a
taxpayer from tax on foreign income which
the taxpayer received as a profit
distribution from an entity in a third
country or as proceeds from the disposal of
shares held in an entity in a third country or
as income from a permanent establishment
situated in a third country where the entity
or the permanent establishment is subject,
in the entity’s country of residence or the
country in which the permanent
establishment is situated, to a tax on profits
at a statutory corporate tax rate lower than
40 percent of the statutory tax rate that
would have been charged under the
applicable corporate tax system in the
Member State of the taxpayer. In those
circumstances, the taxpayer shall be
subject to tax on the foreign income with a
deduction of the tax paid in the third
country from its tax liability in its state of
residence for tax purposes. The deduction
shall not exceed the amount of tax, as
computed before the deduction, which is
attributable to the income that may be
taxed.

Amendment

1. Member States shall not exempt a
taxpayer from tax on foreign income, that
does not arise from active business, which
the taxpayer received as a profit
distribution from an entity in a third
country or as proceeds from the disposal of
shares held in an entity in a third country or
as income from a permanent establishment
situated in a third country where the entity
or the permanent establishment is subject,
in the entity’s country of residence or the
country in which the permanent
establishment is situated, to a tax on profits
at a corporate tax rate below than 15 %.
In those circumstances, the taxpayer shall be
subject to tax on the foreign income with a
deduction of the tax paid in the third
country from its tax liability in its state of
residence for tax purposes. The deduction
shall not exceed the amount of tax, as
computed before the deduction, which is
attributable to the income that may be
taxed. In order to benefit from the
exemption, the taxpayer will have to prove
to its tax authorities that the foreign
income arises from an active business.
This could be done through a certificate.
of the foreign tax authorities.

Amendment 66

Proposal for a directive
Article 6 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Paragraph 1 shall also apply within the Union.

Amendment 67

Proposal for a directive
Article 6 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. Paragraph 1 shall not apply to the following types of losses:

foreign losses.

Amendment 68

Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission

Amendment

1. Non-genuine arrangements or a series thereof carried out for the essential purpose of obtaining a tax advantage that defeats the object or purpose of the otherwise applicable tax provisions shall be ignored for the purposes of calculating the corporate tax liability. An arrangement may comprise more than one step or part.

Amendment 69

Proposal for a directive

1. Non-genuine arrangements or a series thereof which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the otherwise applicable tax provisions, are not genuine taking into consideration all relevant facts and circumstances, shall be ignored for the purposes of calculating the corporate tax liability. An arrangement may comprise more than one step or part.
Article 7 – paragraph 3

Text proposed by the Commission

3. Where arrangements or a series thereof are ignored in accordance with paragraph 1, the tax liability shall be calculated by reference to economic substance in accordance with national law.

Amendment

3. Where arrangements or a series thereof are ignored in accordance with paragraph 1, the tax liability shall be calculated by reference to economic substance in accordance with Article 2.

Amendment 70

Proposal for a directive
Article 7 – paragraph 3 a (new)

Text proposed by the Commission

3a. Member States shall allocate adequate staff, expertise and budget resources to their national tax administrations, in particular tax audit staff, as well as resources for the training of tax administration staff focusing on cross-border cooperation on tax fraud and avoidance, and on automatic exchange of information in order to ensure full implementation of this Directive.

Amendment

Amendment 71

Proposal for a directive
Article 8 – paragraph 1 – introductory part

Text proposed by the Commission

1. The tax base of a taxpayer shall include the non-distributed income of an entity where the following conditions are met:

Amendment

1. The tax base of a taxpayer shall include the income of an entity where the following conditions are met:
Amendment 72

Proposal for a directive
Article 8 – paragraph 1 – point b

Text proposed by the Commission

(b) under the general regime in the country of the entity, profits are subject to an effective corporate tax rate lower than 40 percent of the effective tax rate that would have been charged under the applicable corporate tax system in the Member State of the taxpayer;

Amendment

(b) profits of the entity, are subject to an corporate tax rate lower than 15%; that rate shall be assessed on the basis of the profit before implementation of the operations introduced by these countries to reduce the taxable base subject to the rate; that rate shall be revised each year in line with economic developments in world trade;

Amendment 73

Proposal for a directive
Article 8 – paragraph 1 – point c – introductory part

Text proposed by the Commission

(c) more than 50 percent of the income accruing to the entity falls within any of the following categories:

Amendment

(c) more than 25 percent of the income accruing to the entity falls within any of the following categories:

Amendment 74

Proposal for a directive
Article 8 – paragraph 1 – point c – point vii a (new)

Text proposed by the Commission

(viia) income from goods traded with the taxpayer or its associated enterprises except such standardised goods that are regularly traded between independent parties and for which publicly observable prices exist;

Amendment 75

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 2
Point (c) of the first subparagraph shall apply to financial undertakings only if more than 50 percent of the entity’s income in these categories comes from transactions with the taxpayer or its associated enterprises.

Amendment 76

Proposal for a directive
Article 8 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Member States shall not apply paragraph 1 where an entity is tax resident in a Member State or in a third country that is party to the EEA Agreement or in respect of a permanent establishment of a third country entity which is situated in a Member State, unless the establishment of the entity is wholly artificial or to the extent that the entity engages, in the course of its activity, in non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage.

Amendment

2. Member States shall not apply paragraph 1 where an entity is tax resident in a Member State or in a third country that is party to the EEA Agreement or in respect of a permanent establishment of a third country entity which is situated in a Member State, unless the establishment of the entity does not pass a substance test or to the extent that the entity engages, in the course of its activity, in non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage. In the specific case of insurance companies, the fact that a parent company reinsures its risks through its own subsidiaries shall be considered as non-genuine.

Amendment 77

Proposal for a directive
Article 10 – title

Text proposed by the Commission

Hybrid mismatches

Amendment

Hybrid mismatches between Member States
Amendment 78
Proposal for a directive
Article 10 – paragraph 1

Text proposed by the Commission

Where two Member States give a different legal characterisation to the same taxpayer (hybrid entity), including its permanent establishments in one or more Member State, and this leads to either a situation where a deduction of the same payment, expenses or losses occurs both in the Member State in which the payment has its source, the expenses are incurred or the losses are suffered and in another Member State or a situation where there is a deduction of a payment in the Member State in which the payment has its source without a corresponding inclusion of the same payment in the other Member State, the legal characterisation given to the hybrid entity by the Member State in which the payment has its source, the expenses are incurred or the losses are suffered shall be followed by the other Member State.

Amendment

Where two Member States give a different legal characterisation to the same taxpayer (hybrid entity), including its permanent establishments in one or more Member States, and this leads to either a situation where a deduction of the same payment, expenses or losses occurs both in the State in which the payment has its source, the expenses are incurred or the losses are suffered and in another State or a situation where there is a deduction of a payment in the State in which the payment has its source without a corresponding inclusion of the same payment in the other State, the legal characterisation given to the hybrid entity by the State in which the payment has its source, the expenses are incurred or the losses are suffered shall be followed by the other State.

Amendment 79
Proposal for a directive
Article 10 – paragraph 2

Text proposed by the Commission

Where two Member States give a different legal characterisation to the same payment (hybrid instrument) and this leads to a situation where there is a deduction in the Member State in which the payment has its source without a corresponding inclusion of the same payment in the other Member State, the legal characterisation given to the hybrid instrument by the Member State in which the payment has its source shall be followed by the other Member State.

Amendment

Where two States give a different legal characterisation to the same payment (hybrid instrument) and this leads to a situation where there is a deduction in the State in which the payment has its source without a corresponding inclusion of the same payment in the other State, the legal characterisation given to the hybrid instrument by the State in which the payment has its source shall be followed by the other State.
Amendment 80
Proposal for a directive
Article 10 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

Member States shall update their Double Tax Agreements with third countries or negotiate collectively equivalent agreements in order to make the provisions of this Article applicable in cross-border relations between Member States and third countries.

Amendment 81
Proposal for a directive
Article 10 a (new)

Text proposed by the Commission

Amendment

Article 10a

Hybrid mismatches related to third countries

Where a hybrid mismatch between a Member State and a third country results in a double deduction, the Member State shall deny the deduction of such a payment, unless the third country has already done so.

Where a hybrid mismatch between a Member State and a third country results in a deduction without inclusion, the Member State shall deny the deduction or non-inclusion of such a payment, as appropriate, unless the third country has already done so.

Amendment 82
Proposal for a directive
Article 10 b (new)
Text proposed by the Commission

Amendment

Article 10b

Effective tax rate

1. The Commission shall develop a common method of calculation of the effective tax rate in each Member State, so as to make it possible to draw up a comparative table of the effective tax rates across the Member States.

Amendment 83

Proposal for a directive

Article 10c (new)

Text proposed by the Commission

Amendment

Article 10c

Measures against tax treaty abuses

1. Member States shall amend their bilateral tax treaties to include the following provisions:

(a) a clause ensuring that both parties to the treaties commit that tax will be paid where economic activities are taking place and value is created,

(b) an addendum to clarify that the objective of bilateral conventions, beyond avoiding double taxation is to fight tax evasion and tax avoidance,

(c) a clause for a principal purpose test based general anti-avoidance rule, as defined in the Commission recommendation of 28 January 2016 on the implementation of measures against tax treaty abuse (C (2016) 271 final),

(d) a definition of permanent establishment, as defined in Article 5 of the OECD Model Tax Convention;

2. The Commission shall make a proposal by 31 December 2017 for a "European approach to tax treaties" in
order to set up a European model of tax treaty which could ultimately replace the thousands bilateral treaties concluded by each Member States;

3. Member States shall denounce or refrain from signing bilateral treaties with jurisdictions not respecting minimum standards of Union agreed principles of good governance in tax matters.

Amendment 84
Proposal for a directive
Article 10 d (new)

Text proposed by the Commission

Article 10d
Good governance in tax matters

1. The Commission shall include provisions on the promotion of good governance in tax matters, with the aim of increasing transparency and of combating harmful tax practises, in international trade agreements and economic partnership agreements to which the Union is party.

Amendment 85
Proposal for a directive
Article 10 e (new)

Text proposed by the Commission

Article 10e
Penalties

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall, without
delay, notify the Commission of those rules and of those measures and shall notify it of any subsequent amendment affecting them.

Amendment 86

Proposal for a directive
Article 11 – title

Text proposed by the Commission

Review

and monitoring

Amendment 87

Proposal for a directive
Article 11 – paragraph 1

Text proposed by the Commission

Amendment

1. The Commission shall evaluate the implementation of this Directive three years after its entry into force and report to the Council thereon.

Amendment 88

Proposal for a directive
Article 11 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall communicate to the Commission all information necessary for evaluating the implementation of this Directive.

Amendment 89

Proposal for a directive
Article 11 – paragraph 2 a (new)
2a. The Commission shall put into place a specific monitoring mechanism to ensure the full and adequate transposition of this Directive and the correct interpretation of all definitions provided and actions required by Member States, in order to have a coordinated European approach on the fight against BEPS.

Amendment 90

Proposal for a directive
Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11a

European tax identification number

The Commission shall present a legislative proposal for a harmonised, common European taxpayer identification number by 31 December 2016, in order to make automatic exchange of tax information more efficient and reliable within the Union.

Amendment 91

Proposal for a directive
Article 11 b (new)

Text proposed by the Commission

Amendment

Article 11b

Mandatory automatic exchange of information on tax matters

In order to guarantee full transparency and the proper implementation of the provisions of this Directive, the exchange of information on tax matters shall be automatic and mandatory, as laid down by Council Directive 2011/16/EU1a.
EXPLANATORY STATEMENT

An OECD study has estimated that aggressive tax optimisation by multinationals causes losses to state budgets all over the world amounting to between USD 100 and 240 billion every year. This represents between 4 and 10% of global corporate tax revenues. Above all, it represents a significant loss of revenue for States, thus reducing their ability to invest in action that would promote employment, combat poverty and develop effective health systems for all.

Building economic and monetary union must be achieved through a harmonisation of European taxation. Fair and effective corporate taxation must become the cornerstone of the single market.

If we are to have a reliable single market, the Member States must come to an agreement on tax matters.

A coordinated and harmonised approach to the implementation of tax systems is vital in order to guarantee the proper functioning of the single market and the success of the capital markets union.

The rapporteur welcomes the Commission's proposal as a positive step towards limiting tax evasion by multinationals. He nevertheless considers that the proposal would gain in clarity and effectiveness with the proposed amendments.

The main aim of this report is to ensure that enterprises pay their taxes where they make their profits.

To this end, the rapporteur has decided to introduce a precise, binding definition of the criteria which must be met if a multinational company is to prove that it is situated in a given country. This is the only way of forcing it to pay its taxes fairly. Too often, multinational companies currently make arrangements to transfer their profits to tax havens without having paid any tax.

The rapporteur has clarified and unified legislation on patents. Until now, multinationals have used patent incentives to artificially reduce their profits. This has an adverse impact on genuinely innovative countries. Parliament is proposing that these multinationals should be subject to an exit tax where they repatriate proceeds from patents to countries with lower tax rates.

The rapporteur has also strengthened the European Parliament’s role. The European Parliament should be the body responsible for verifying that this directive is being implemented effectively in the 28 Member States. It should also be able to carry out an independent assessment to gauge its effectiveness.

Finally, the rapporteur regrets that the Commission has not yet submitted a legislative proposal on the CCCTB. The common consolidated corporate tax base would offer enterprises a one-stop-shop system for filling in their tax declarations and consolidating the profits and losses they record throughout the European Union.
MINORITY OPINION

pursuant to Rule 56(3) of the Rules of Procedure
by Bernd Lucke

The report calls for the tax deductibility of interest payments to be capped at 20% of EBITDA. I regard that as an inappropriate and harmful provision that will hamper investment. Interest payments are investment project costs; it should be possible at all times to claim them back against tax, otherwise taxable profits will be overstated. In that respect, the 30% cap recommended in the OECD’s anti-BEPS plan is also problematic.

Many firms with serious investment plans will be harmed by the proposal in the Bayet report. To combat improper tax conduct, it is wrong to adopt provisions detrimental to firms that pay their taxes honestly. Furthermore, it is mainly loans within a group that are used for tax evasion purposes in order to shift profits to low-tax jurisdictions. It would therefore have made more sense to limit the tax deductibility of interest to intra-group loans only. Interest payments to external third parties, however, should be fully deductible.

The option, provided for in the Bayet report, of carrying forward non-deductible interest payments for up to five years will be of little use to, in particular, firms financing real investment. A large-scale investment project involves a considerable interest payment burden over a number of years, meaning that there is no scope for carrying interest forward.
**PROCEDURE – COMMITTEE RESPONSIBLE**

| Title | Rules against tax avoidance practices that directly affect the functioning of the internal market |
| Date of consulting Parliament | 10.2.2016 |
| Committee responsible | ECON |
| Date announced in plenary | 25.2.2016 |
| Date announced in plenary | |
| Date of decision | |
| Rapporteurs | Hugues Bayet |
| Date appointed | 21.1.2016 |
| Discussed in committee | 11.4.2016 23.5.2016 |
| Date adopted | 24.5.2016 |
| Result of final vote | +: 20 –: 15 0: 21 |
| Substitutes present for the final vote | Laura Agea, Enrique Calvet Chambon, David Coburn, Eva Joly, Thomas Mann, Emmanuel Maurel, Siôn Simon, Roberts Zife |
| Substitutes under Rule 200(2) present for the final vote | Kostas Chrysogonos, Sylvie Guillaume, Sabine Lösing, Virginie Rozière, Jutta Steinruck, Jarosław Wałęsa |
| Date tabled | 27.5.2016 |