



2015/2010(INL)

4.9.2015

DRAFT REPORT

with recommendations to the Commission on Bringing transparency, coordination and convergence to Corporate Tax policies in the Union (2015/2010(INL))

Committee on Economic and Monetary Affairs

Rapporteurs: Anneliese Dodds, Luděk Niedermayer

(Initiative – Rule 46 of the Rules of Procedure)

CONTENTS

	Page
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION.....	3
ANNEX.....	11
DETAILED RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED.....	11
EXPLANATORY STATEMENT	20

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**with recommendations to the Commission on bringing transparency, coordination and convergence to Corporate Tax policies in the Union
(2015/2010(INL))**

The European Parliament,

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
- having regard to the draft report of the Special Committee on Tax Rulings and Other Measures Similar in Nature and Effect (2015/2066(INI))(the TAXE Committee)
- having regard to Rules 46 and 52 of its Rules of Procedure,
- having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Industry, Research and Energy (A8-0000/2015),

KEY FINDINGS FROM LUXLEAKS SCANDAL

- A. whereas a consortium of journalists, the International Consortium of Investigative Journalists (ICIJ), on tax rulings and other harmful practices in Luxembourg (LuxLeaks) revealed in November 2014 that nearly 340 multinational companies secured secret deals from Luxembourg that allowed many of them to slash their global tax bills, while creating little or no economic activity within Luxembourg;
- B. whereas the revelations showed that tax advisors have helped multinational companies to obtain at least 548 tax rulings in Luxembourg between 2002 and 2010; whereas those secret deals feature complex financial structures designed to create substantial tax reductions; whereas the tax rulings provide written assurance that multinational companies' tax-saving plans would be viewed favourably by Luxembourg authorities;
- C. whereas, as a result of those tax rulings, some companies have enjoyed effective tax rates of less than 1 % on the profits they have shifted into Luxembourg;
- D. whereas in many cases Luxembourg subsidiaries handling hundreds of millions of euros in business maintain little presence and conduct little economic activity in Luxembourg, with some addresses being home to more than 1,600 companies;
- E. whereas the investigations carried out under the TAXE Committee revealed that the practice of tax rulings does not exclusively take place in Luxembourg but is common across the Union; whereas the practice of tax rulings can be used legitimately to provide legal certainty for business, but is nevertheless open to potential abuse; whereas regard is had to the report from the Organisation for Economic Cooperation and Development (OECD) published on 12 February 2013 entitled 'Addressing Base Erosion and Profit Shifting' proposed new international standards to combat base erosion and profit shifting (BEPS); whereas regard is also had to the Communiqué issued following the Meeting of Finance Ministers and Central Bank Governors of the G20 which took place on [to be inserted];

CORPORATE TAXATION AND AGGRESSIVE TAX PLANNING

- F. whereas corporate income tax revenue for the 28 Member States of the Union amounted to an average of 2,6% of GDP in 2012¹;
- G. whereas aggressive tax planning consists in taking advantage of the technicalities of a tax system, or of mismatches between two or more tax systems, for the purpose of reducing tax liability; whereas aggressive tax planning schemes often result in the use of a combination of international tax mismatches, very favourable specific national tax rules and the use of tax havens; whereas, unlike aggressive tax planning, tax fraud and tax evasion constitute an illegal activity of evading tax liabilities;
- H. whereas a study² estimates that revenue losses for the Union due to tax avoidance from corporate taxation could amount to around EUR 50-70 billion, this figure representing the sum lost to profit shifting; whereas the same study estimates that those revenue losses for the Union due to tax avoidance from corporate taxation could in reality amount to around EUR 160-190 billion if special tax arrangements, inefficiencies in collection and other such activities were taken into account;
- I. whereas the same study estimates corporate income tax efficiency to be 75 %, although the study also confirms that this does not represent the amounts that could be expected to be recovered by tax authorities, because a certain percentage of those sums would be excessively expensive or technically difficult to collect; whereas according to the study, if a complete solution to the problem of base erosion and profit shifting (BEPS) were available and implementable across the Union, the estimated positive impact on tax revenues for Member State governments would be 0,2 % of total tax revenues ; whereas loss arising from BEPS represents a threat to the proper functioning of the internal market and to the credibility, efficiency and fairness of corporate tax systems within the Union; whereas the same study also makes clear that its calculations do not include estimates of activity within the shadow economy, and that the opacity of certain companies' structures and payments mean it is difficult to estimate the impact on tax revenues accurately, and therefore there may be a significantly larger impact than the report estimates for;
- J. whereas the loss arising from BEPS also demonstrates the lack of a level playing-field between those companies which operate only in one country and pay their taxes there, and certain multinational companies which are able to shift profits from high tax to low tax jurisdictions and engage in aggressive tax planning, thereby reducing their overall tax base and placing additional pressure on public finances;
- K. whereas multinational companies' use of aggressive tax planning practices conflicts with the principle of fair competition and corporate responsibility;
- L. whereas aggressive tax planning is facilitated by increasing business complexity and by

1

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

² European added value of legislative report on bringing Transparency, coordination and convergence to corporate tax policies in the European Union' by Dr Benjamin Ferrett, Daniel Gravino and Silvia Merler – To be published.

the digitalisation and globalisation of the economy, among other factors, leading to distortions of competition harmful to Union undertakings and growth;

- M. whereas the fight against aggressive tax planning cannot be tackled by Member States individually; whereas the lack of coordinated action is causing many Member States to adopt unilateral national measures¹ ; whereas such measures have often proven ineffective, insufficient and in some cases even detrimental to the cause; whereas what is needed is therefore a coordinated and multi-pronged approach at national, Union and international level;
- N. whereas the Union has been a pioneer in the global fight against aggressive tax planning, notably in promoting progress at OECD level on the BEPS project ; whereas the Union should continue to play a pioneering role as the BEPS project develops;
- O. whereas the power to legislate on corporate taxation is currently vested in the Member States;
- P. whereas the lack of coordinated tax policies in the Union leads to significant cost and administrative burden for citizens and businesses operating cross-border within the Union, and results in unintended non-taxation or facilitates aggressive tax planning;
- Q. whereas the revelations of the LuxLeaks scandal and the work carried out by the TAXE Committee clearly show the need for Union legislative measures to improve transparency, coordination and convergence within corporate tax policies in the Union;
- R. whereas the European Commission and the Member States should continue to play a very active role in the international arena in order to work for the establishment of international standards based at least on principles of transparency, exchange of information and abolition of harmful tax measures;
- S. whereas the principle of 'Policy Coherence for Development', as set out in the Treaty on the Functioning of the European Union (TFEU), requires the Union to ensure that all stages of policy-making in every field, including in relation to corporate taxation, do not militate against, and instead promote, the goal of sustainable development;

TRANSPARENCY

- T. whereas increased transparency in the area of corporate taxation can improve tax collection, make work of tax authorities more efficient or can increase public confidence in tax systems and governments;
 - (i) whereas increased transparency regarding the activities of large multinational companies, and in particular regarding profits made, taxes on profit paid, subsidies received and tax returns, is essential for ensuring that tax administrations tackle BEPS efficiently; whereas one vital form for this transparency to take is country-by-country reporting; whereas any Union proposals for country-by-country reporting should in the first instance be based on the OECD guidelines; whereas it is possible for the Union to go further than the OECD guidelines, and the European Parliament voted in favour of

¹ Such as the UK's 'diverted profits tax'.

full public country-by-country reporting in its amendments adopted on 8 July 2015¹ on the proposal for a revised Shareholder Rights Directive; whereas the European Commission conducted a consultation on this subject between 17 June and 9 September 2015 in order to explore different options for the implementation of country-by-country reporting²;

- (ii) whereas some companies within the Union have already begun to demonstrate that they are fully tax compliant by applying for and promoting their ownership of a 'Fair Tax Payer' label³; whereas firms and citizens alike across the Union would benefit from wider take-up of such labels by companies who are fully tax compliant in order to set a high standard for others to emulate;
- (iii) whereas increased transparency would be achieved if Member States inform each other and the Commission of any new allowance, relief, exception, incentive or similar measure that could have a material impact on their effective tax rate; whereas such notification would help Member States in identifying harmful tax practices;
- (iv) whereas there is evidence that Member States do not communicate sufficiently between themselves about the possible impact that their tax arrangements with certain companies might have on tax collection in other Member States; whereas national tax authorities should automatically exchange all tax rulings without delay after they have been issued; whereas tax rulings signed up to by tax authorities should be subject to greater transparency, providing that confidential information and business sensitive information is preserved;
- (v) whereas customs-free ports are reported to be used to hide transactions from tax authorities;
- (vi) whereas progress in the fight against tax avoidance and aggressive tax planning can only be monitored with a harmonised methodology that can be used to estimate the size of the direct and indirect tax gaps in all Member States, and across the Union as a whole;
- (vii) whereas the current Union-wide legal framework to protect whistleblowers is insufficient, and there exists significant variation between the ways in which different Member States provide protection for whistleblowers; whereas in the absence of such protection, those employees who hold vital information will understandably be reluctant to come forward and therefore that information will not be made available; whereas since whistleblowers helped to mobilise public attention on the issue of unfair taxation, Member States should consider measures that will protect such activity; whereas it would therefore be appropriate to offer Union-wide protection for whistleblowers who report suspected misconduct, wrongdoing, fraud or illegal activity to national regulators or, in cases of persistently unaddressed illegal activity that could affect the public interest, to the public as a whole; whereas such protection should be coherent with the overall legal system;

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

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

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

COORDINATION

- U. whereas the power to legislate on corporate taxation is vested in the Member States, yet the vast majority of problems linked to aggressive tax planning are of a multinational nature; whereas more coordination of national tax policies therefore represents the only feasible way to address the problems of BEPS and aggressive tax planning;
- (i) whereas a mandatory Union-wide Common Consolidated Corporate Tax Base (CCCTB) would be a major step towards solving those problems associated with aggressive tax planning within the Union; whereas the ultimate goal should remain a full, mandatory CCCTB with possible exemptions for small- and medium-sized enterprises and companies with no cross-border activity; whereas until a full CCCTB is in place, the Commission is considering temporary measures to counteract profit shifting opportunities; whereas it is necessary to ensure that those measures, including the offsetting of cross-border losses, do not increase the risk of BEPS;
 - (ii) whereas despite the work of the Code of Conduct Group on harmful corporate taxation, aggressive tax planning measures continue to exist throughout the Union; whereas therefore the functioning of the Group needs to be improved and made more transparent;
 - (iii) whereas the overall principle of corporate taxation in the Union should be that taxes are paid in the countries where a company's actual economic activity and value creation takes place; whereas criteria should be developed to ensure that this occurs; whereas any use of 'patent box' or other preferential tax regimes must also ensure that taxes are paid in the place where value is generated;
 - (iv) whereas some Member States have unilaterally introduced Controlled Foreign Corporation (CFC) rules, in order to adequately ensure that profits parked in low or no tax countries are effectively taxed; whereas those rules need to be coordinated in order to prevent the diversity of national CFC rules within the Union from distorting the functioning of the internal market;
 - (v) whereas Council Directive 2011/16/EU of 15 February 2011¹ provides for cooperation between Member States on tax inspections and audits and encourages the exchange of best practices between tax authorities; whereas, however, the instruments provided for in that Directive are not effective enough and divergent national approaches to auditing companies contrast with the highly organised tax planning techniques of certain companies;
 - (vi) whereas for automatic exchange of information in general and on tax rulings in particular to be effective, a common European Tax Identification Number regime is required;
 - (vii) whereas the Commission decided to prolong the mandate of the Platform for Tax Good Governance - which was due to expire in 2016 - as well as expand its scope

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

and enhance its working methods; whereas the Platform can help deliver on the new Action Plan to strengthen the fight against tax fraud and tax evasion, facilitate discussions on Member States' tax rulings in light of the proposed new information exchange rules, and provide feedback on new anti-avoidance initiatives; whereas however the Commission needs to boost the profile and increase the effectiveness of the Platform for Tax Good Governance;

- (viii) whereas the Commission should analyse the fiscal impact of reforms to tax administrations within the European Semester process, to enhance the capacity of national and European-level tax administrations in order to carry out their roles effectively;
- (ix) whereas, in addition to the issues mentioned in this report, the Commission should clearly set out how it will implement all 15 of the OECD/G20 BEPS project deliverables, and consider in which areas the Union should go further than the minimum standards which the OECD recommends;

CONVERGENCE

- V. whereas improved coordination alone will not solve fundamental problems arising from the fact that different rules regarding corporate taxation exist in different Member States; whereas part of the overall response to aggressive tax planning must involve the convergence of a limited number of national tax practices; whereas this can be achieved while still preserving the sovereignty of Member States in relation to other elements of their corporate tax systems;
 - (i) whereas aggressive tax planning practices may sometimes arise from the cumulative benefits of double taxation treaties concluded by different Member States, perversely resulting in double non-taxation instead; whereas the proliferation of double tax treaties signed up to by individual Member States with third countries may lead to opportunities for new loopholes; whereas, in line with Action 15 of the OECD/G20 BEPS project, there is a need to develop a multilateral instrument for amending bilateral tax treaties;
 - (ii) whereas the Union should have its own up to date list of 'tax havens';
 - (iii) whereas the Union should apply counter measures towards companies who make use of such tax havens; whereas this has already been called for in the European Parliament's Report on the Annual Tax Report 2014¹, which asked for the 'introduction of strong sanctions to prevent companies breaching or dodging tax standards, by refraining from granting EU funding and access to state aid or to public procurement to fraudulent companies or companies located in tax havens or countries distorting competition with favourable tax conditions; urges MSs to recover all types of public support given to companies if they are involved in breaching EU tax standards';
 - (iv) whereas a new binding definition of 'permanent establishment' is needed to ensure

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

that taxation takes place where economic value is created; whereas this should be accompanied by minimum binding criteria to determine whether economic activity has sufficient substance to be taxed in a Member State in order to avoid the problem of 'letterbox companies';

- (v) whereas the current framework on rules for transfer pricing is too vague and gives too much flexibility to companies in shifting profits between different entities within the same group; whereas although the OECD/G20 BEPS project will bring forward principles intended to bring transfer pricing outcomes into line with value creation, those principles could still be too broad to address the problem of profit shifting; whereas the Union could go further in specifying particular guidelines to use for the assessment of transfer pricing, in order to increase the clarity of the rules and reduce the risk of their misuse for profit shifting purposes;
- (vi) whereas hybrid mismatch arrangements can be used to achieve double non-taxation, be it through a financial instrument being classified as debt in one Member State and equity in another, through Member States having different rules for the treatment of transparent and opaque legal entities, through assets and liabilities being attributed differently, or through costs and profits being allocated differently in different Member States;
- (vii) whereas the Commission's ongoing investigations into alleged breaches of the Union state aid rules have revealed a degree of uncertainty regarding the way in which those rules should be applied; whereas to rectify this, the Commission should publish binding guidelines to clarify how it will determine instances of tax-related state aid, thereby providing more legal certainty for companies and Member States alike;
- (viii) whereas one of the unintended effects of the Council Directive 2003/49/EC¹ is that cross-border interest and royalties income may be untaxed (or taxed at a very low level); whereas a general anti-abuse rule should be introduced in that Directive as well as in the Council Directive 2005/19/EC² and other relevant Union legislation;
- (ix) whereas the current Union framework on double taxation dispute resolution between Member States does not work effectively and would benefit from clearer rules and more stringent timelines;

W. whereas the overall efficiency of tax collection, the notion of tax fairness and the credibility of national tax administrations are not undermined only by aggressive tax planning and BEPS activities; whereas the Union should take similarly decisive action to address the problems of tax evasion and tax fraud within both corporate and individual taxation as well as problems relating to the collection of taxes other than

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

² Council Directive 2005/19/EC of 17 February 2005 amending Directive 90/434/EEC 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (OJ L 58, 4.3.2005, p. 19).

corporate taxes; whereas those other elements of tax collection and administration represent a substantial part of the existing tax gap;

- X. whereas the Commission should therefore also consider how it will address those wider issues, including difficulties in the collection of VAT (which in some Member States constitutes a major source of national income) and the negative consequences of some tax amnesties or non-transparent 'tax forgiveness' schemes; whereas any such new measures should involve consideration of the balance of costs and benefits.
1. Requests the Commission to submit to Parliament by June 2016 one or more legislative proposals, following the detailed recommendations in the Annex hereto;
 2. Confirms that the recommendations respect the principle of subsidiarity and the fundamental rights of citizens;
 3. Considers that the financial implications of the requested proposal should be covered by appropriate budgetary allocations;
 4. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission, the Council, and the parliaments and governments of the Member States.

DETAILED RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED

A. Transparency

Recommendation A1. Country-by-country reporting for all sectors by multinational companies

The European Parliament calls once again on the European Commission to bring forward a legislative proposal by June 2016 to introduce country-by-country reporting (CBC-R) for multinational companies in all sectors.

- This proposal should be developed on the basis of the requirements put forward by the OECD in its CBC-R data template published in September 2014 (Action 13 of the OECD/G20 BEPS project).
- When developing the proposal, the Commission should also consider:
 - the results of the Commission's consultation into CBC-R, conducted between 17 June and 9 September 2015, which examined different options for the possible implementation of CBC-R in the Union;
 - the proposals for full public CBC-R outlined in the revised Shareholder Rights Directive as voted for by the European Parliament on 8 July 2015.¹

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

The European Parliament calls on the European Commission to bring forward a proposal as soon as possible on a voluntary European 'Fair Tax Payer' label, as a 'soft measure' promoting a standard for companies wishing to indicate they are fully tax compliant.

- The proposal should include a European framework of eligibility criteria, under which the label could be awarded by national bodies.
- This framework of eligibility criteria should make clear that the 'Fair Tax Payer' label is only awarded to those companies that have gone above and beyond the letter of what is required of them under Union and national law.

Recommendation A3. Mandatory notification of new tax measures

The European Parliament calls on the European Commission to bring forward a proposal as soon as possible on a new mechanism whereby Member States are compelled to inform other Member States (initially via the Code of Conduct Group) if they intend to introduce a new allowance, relief, exception, incentive or similar measure that could have a material impact

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

on the effective tax rate in the Member State or on the tax base of another Member State.

- These notifications by Member States shall contain spillover analyses of the material impact of the new tax measures on other Member States and developing countries, to support the action of the Code of Conduct Group in identifying harmful tax practices.
- These new tax measures should also be assessed by the European Commission, included in the European Semester process, and recommendations should be made for follow-up.

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

The European Parliament calls on the European Commission to complement its proposal from March 2015 amending the Directive 2011/16/EU , which includes proposals for the automatic exchange of information (AEOI) on tax rulings, by:

- Extending the scope of the automatic exchange of information beyond cross-border tax rulings to include all tax rulings in the corporate tax area.
- Significantly increasing the transparency of tax rulings at the EU level, with due consideration given to business confidentiality and trade secrets and taking into account the current best practices applicable in some Member States via one of the following methods:
 - requiring Member States or the Commission to produce an annual list, published in a fully public directory accessible to all, of companies with which they have concluded tax rulings, one year at the most after the tax ruling is signed by tax authorities ;
 - requiring Member States or the Commission to publish a summary of the main important (anonymised) tax rulings that have been agreed in the previous year.
- Assuming full responsibility as proposed in the tax transparency package presented by the Commission on 18 March 2015, which includes the Commission ensuring that it plays a full and meaningful role in the mandatory exchange of information on tax rulings and the creation of a secure central directory accessible by the Member States and the Commission concerning all tax rulings agreed in the Union.

Recommendation A5. Transparency of customs-free ports

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

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

Recommendation A6. Commission estimate of the corporate tax gap

The European Parliament calls on the European Commission to:

- Create, on the basis of best practices currently used by Member States, a harmonised methodology that can be used to estimate the size of the direct and indirect corporate tax gaps - the difference between corporate taxes owed and corporate taxes paid - in all Member States, and across the Union as a whole.
- Work with Member States to ensure the provision of necessary data to be analysed using the methodology in order to produce the most accurate figures possible.
- Use the agreed methodology and necessary data in order to produce and publish, biannually, an estimate of the direct and indirect corporate tax gaps in all Member States and across the Union.

Recommendation A7. Protection of whistleblowers

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

- Protect whistleblowers who act in the public interest only (and not also for money or any other personal agenda) in order to expose misconduct, wrongdoing, fraud or illegal activity in relation to corporate taxation in any Member State in the European Union. Such whistleblowers should be protected if they report suspected misconduct, wrongdoing, fraud or illegal activity to their relevant competent authority, and should also be protected if, in cases of persistently unaddressed illegal activity in relation to corporate taxation that could affect the public interest, they report their concerns to the public as a whole;
- Ensure that the right to freedom of expression and information in relation to corporate taxation is preserved in the European Union;
- Such protection should be coherent with the overall legal system;
- Such a legislative proposal should take as its basis the existing Market Abuse Regulation, as well as the text of the Directive on the Protection of Trade Secrets once it has been agreed by the European Parliament and European Council;
- Such a legislative proposal could also take into consideration the Council of Europe's 'Recommendation CM/Rec(2014)7¹ on the protection of whistleblowers'.

B. Coordination

Recommendation B1. Introduction of a Common Corporate Tax Base

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

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

As a first step, by June 2016, a mandatory Common Corporate Tax Base (CCTB) in the Union, with an exemption for small- and medium-sized enterprises and companies with no cross-border activity, in order to have only one set of rules for companies operating in several Member States to calculate their taxable profits.

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

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

The Commission should consider to what extent it would be necessary to harmonise accounting principles in order to prepare the underlying accounting data to be used for CCCTB purposes.

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

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

- The Code of Conduct group (CoC Group) shall become more transparent and more accountable, including through:
 - Regular provision, update and publication of its oversight of the extent to which Member States meet the recommendations set out by the Group in its six-monthly progress report to finance ministers;
 - Regular provision, update and publication of a list every two years of harmful tax practices;
 - Regular provision and publication of its minutes;
 - Regular participation of Finance Ministers or senior officials, to raise the profile of the body.
- The tasks of the CoC Group shall include:
 - Identifying harmful tax practices in the Union;
 - Proposing measures and timelines for the elimination of harmful tax practices, and monitoring the results of the recommendations/measures proposed;
 - Reviewing the reports on spillover effects of new tax measures provided by Member States as stipulated above, and assessing whether action is required;
 - Proposing other initiatives focused on tax measures in the external policy of the Union;
 - Improving enforcement mechanisms against those practices which facilitate aggressive tax planning.

Recommendation B3. Patent box and other preferential regimes: Linking preferential

regimes to where value is generated

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

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

Recommendation B4. Controlled Foreign Corporation

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

- To coordinate national Controlled Foreign Corporation rules, in order to ensure that profits parked in low or no tax countries are effectively taxed and to prevent the diversity of national CFC rules within the EU from distorting the functioning of the internal market.

Recommendation B5. Improving Member States' coordination on tax audits

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

- Ensure more effective simultaneous tax audits and controls where two or more national tax authorities decide to conduct controls of one or more persons of common or complementary interests.
- Ensure that a parent company and its subsidiaries located in the Union are audited by their respective tax authorities at the same period of time, under the leadership of the tax authorities of the parent company, in order to ensure efficient flows of information between tax authorities. As part of this:
 - Tax authorities should regularly exchange information on their investigations in order to ensure that groups do not benefit from mismatches or loopholes in the combination of various national tax systems.
 - Time limits to exchange information on ongoing audits should be reduced to a minimum.
 - Tax authorities of a company should systematically inform the tax authorities of the other entities within the same group regarding the outcome of a tax audit.

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

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

- The proposal shall be based on the outline for a European TIN in the Commission's Action Plan on the fight against tax fraud and tax evasion of 2012 (action 22)¹, and the outcome of the subsequent consultation of 2013².

C. Convergence

Recommendation C1. A new approach to international tax arrangements

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

- The Commission should negotiate tax agreements with third countries on behalf of the EU instead of the current practice under which bilateral negotiations are conducted, which produce sub-optimal results.
- A common Union multilateral double tax agreement should be introduced to replace the multitude of bilateral tax agreements agreed between Member States themselves and with other countries.
- All new international trade agreements concluded by the Union should include a clause on good tax governance.

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

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

- Those criteria should be based on comprehensive, transparent, robust, objectively verifiable and commonly accepted indicators, further developing the good governance principles as defined by the Commission in its communication of 2009 'Promoting Good Governance in Tax Matters'³: Exchange of information and administrative cooperation; Fair tax competition; and transparency.
- On the basis of those criteria, the Commission should put forward a revised list of tax havens, which would replace its interim list as put forward in June 2015.
- The Commission should review the list on at least a biannual basis, or upon the justified request of a jurisdiction on the list.

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

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

- Those counter-measures should include:

¹ COM(2012) 722 final

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

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

- Being banned from accessing state aid or public procurement opportunities at Union or national level
- Being banned from accessing certain Union funds
- This should be achieved via, amongst other measures:
 - Amending the European Investment Bank (EIB) Statute (Protocol No. 5 annexed to the treaties) to ensure that no EIB funding can go to ultimate beneficiaries or financial intermediaries which make use of tax havens or harmful tax practices¹
 - Amending the European Fund for Strategic Investment (EFSI) Regulation to ensure that no EFSI funds can go to such companies²
 - Amending the four Common Agricultural Policy (CAP) Regulations to ensure that no CAP funding can go to such companies
 - Continuing the process of State Aid Modernisation to ensure that Member States do not provide State Aid to any such companies³
 - Amending the Common Provisions Regulation to ensure that no money from the five European Structural and Investment Funds (European Regional Development Fund, European Social Fund, Cohesion Fund, European Agricultural Fund for Rural Development, European Maritime and Fisheries Fund) can go to any such companies⁴
 - Amending the Agreement Establishing the European Bank for Reconstruction and Development (EBRD) to ensure no EBRD funding can go to any such companies⁵
 - Forbidding the conclusion of trade agreements by the EU with jurisdictions defined by the Commission as 'tax havens'

Recommendation C4. Permanent Establishment

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

- To adjust the definition of "permanent establishment" so that companies cannot artificially avoid having a taxable presence in Member States in which they have economic activity.
- To introduce a Union definition of minimum "economic substance".

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

Recommendation C5. Improving the Transfer Pricing framework in the EU

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

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

² http://ec.europa.eu/priorities/jobs-growth-investment/plan/docs/proposal_regulation_efs_i_en.pdf

³ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0026+0+DOC+XML+V0//EN>

⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1303&:PDF>

⁵ <http://www.ebrd.com/news/publications/institutional-documents/basic-documents-of-the-ebrd.html>

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

Recommendation C6. Hybrid mismatches

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

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

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

The European Parliament calls on the European Commission to bring forward a proposal in the medium term for:

- Binding guidelines that clarify how the Commission will determine instances of tax-related state aid, thereby providing more legal certainty for businesses and Member States.
- Tax policies that are not consistent with state aid policy should be specified by the Commission in order to give companies and Member States guidance and improved legal certainty.

Recommendation C8. Amend Council Directive 90/435/EC¹, Directive 2003/49/EC, Directive 2005/19/EC and other relevant Union legislation and introduction of a general anti-abuse rule

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

- Following the introduction of a General Anti-Abuse Rule (GAAR) into Directive 90/435/EC, to proceed as soon as possible with the introduction of a GAAR into the Directive 2003/49/EC and to bring forward proposals for a GAAR to be introduced into the Directive 2005/19/EC and other relevant Union legislation.
- To include such a GAAR in any future Union legislation that covers tax matters or has tax implications.
- In relation to the Directive 2003/49/EC, in addition to the introduction of a GAAR, also remove the requirement for Member States to give beneficial treatment to interest and royalty payments if there is no effective taxation elsewhere in the Union.

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

- In relation to the Directive 2005/19/EC, in addition to the introduction of a GAAR, also introduce additional transparency obligations and - if these changes prove insufficient to prevent aggressive tax planning - introduce a minimum tax provision as the requirement for the use of "tax advantages" (such as, no taxation of dividends) or other measures of similar impact.

Recommendation C9. Improving cross-border taxation dispute resolution mechanisms

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

- To improve the current mechanisms to resolve cross-border taxation disputes in the Union, not only focusing on cases of double taxation but also double non-taxation. The aim is to create a coordinated EU approach to dispute resolution, with clearer rules and more stringent timelines, building on the systems already in place.

D. Other measures

Recommendation D1. Additional measures to address the tax gap

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

- Investigating sources of low efficiency regarding tax collection, including VAT collection;
- Investigating sources of tax unfairness or weak credibility of tax administrations in the areas other than corporate taxation;
- Setting principles for tax amnesties, in order to eliminate the negative consequences of these policies on future tax collection;
- Proposing a minimum level of transparency for 'tax forgiveness' schemes run by national governments;
- Ensuring that tax authorities have full and meaningful access to central registers of beneficial ownership for both companies and trusts, and that those registers are properly maintained and verified.

EXPLANATORY STATEMENT

According to article 225 TFEU, the European Parliament may, acting by a majority of its component Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Union act is required for the purpose of implementing the Treaties. If the Commission does not submit a proposal, it shall inform the European Parliament of the reasons.

The European Parliament decided in December 2014 to authorise the drafting of a legislative own initiative report "Bringing transparency, coordination and convergence to Corporate Tax policies in the European Union". This decision was a direct follow-up to the Luxleaks revelations by a consortium of journalists in November 2014, which revealed that many multinational companies concluded secret deals with the Luxembourgish authorities that allowed them to reduce their tax liability, in some cases to almost 1 percent, while creating little or no economic activity in that country.

Subsequent public discussions, notably those under the auspices of the newly-formed European Parliament TAXE Committee, have shown that these "aggressive tax planning" practices are by no means limited to Luxembourg, and in fact are rife throughout the EU. The phenomenon of "aggressive tax planning" consists of taking advantage of the technicalities of a tax system, or of mismatches between two or more tax systems, for the purpose of reducing tax liability. While this differs from tax fraud and tax evasion, which constitute illegal activities of evading tax liabilities, in essence all three practices serve to reduce the tax base, undermining faith in governments and businesses alike.

According to a study¹ commissioned by the European Parliament, the EU loses around EUR 50-70 billion every year because of corporate tax avoidance achieved via profit shifting alone. That figure rises to around EUR 160-190 billion if special tax arrangements, inefficiencies in collection and other such elements are factored in.

Such practices should not be acceptable at any time, but in difficult economic circumstances such as those that Europe is facing right now, your co-rapporteurs consider it essential that all economic actors should contribute on a fair basis. If certain multinational businesses do not contribute, then the effect is of an un-level playing field on which smaller, national businesses struggle to compete - which is completely at odds with the principle of the Single Market. Further impacts are then felt by national governments, who - in the face of a declining tax base - are forced to contemplate cutting public services, raising taxes on citizens, or borrowing more money.

Recent experiences have shown that Member States cannot act individually in the fight against aggressive tax planning. The very fact that we are supposed to have a Single Market within the European Union necessitates coordinated action. While respecting Member States' sovereignty in relation to tax policy, your co-rapporteurs consider that there is a need for EU legislative measures to improve transparency, coordination and convergence within corporate tax policies in the Union.

¹ See the study written by Dr Benjamin Ferrett, Daniel Gravino, and Silvia Merler, at the request of the European Added value Unit of the Directorate for Impact Assessment and European Added Value, within the Directorate General for Parliamentary Research Services (DG EPRS) of the General Secretariat of the European Parliament

The present report lists a series of measures that your co-rapporteurs are calling for the Commission to propose as legislative acts. For the sake of clarity, the measures are listed under the separate headings of: (i) transparency, (ii) coordination and (iii) convergence.