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*Plenary sitting*

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**A9-0245/2021**

20.7.2021

# **REPORT**

on reforming the EU policy on harmful tax practices (including the reform of the Code of Conduct Group)  
(2020/2258(INI))

Committee on Economic and Monetary Affairs

Rapporteur: Aurore Lalucq

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on reforming the EU policy on harmful tax practices (including the reform of the Code of Conduct Group) (2020/2258(INI))

*The European Parliament,*

- having regard to Articles 113, 115 and 116 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to the Resolution of the Council and the representatives of the governments of the Member States on a code of conduct for business taxation, adopted on 1 December 1997<sup>1</sup> with the objective of curbing harmful tax competition within the European Union,
- having regard to the Commission communication of 28 April 2009 entitled ‘Promoting Good Governance in Tax Matters’ (COM(2009)0201),
- having regard to the Commission communication of 17 June 2015 entitled ‘A Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action’ (COM(2015)0302),
- having regard to the Commission communication of 28 January 2016 on an external strategy for effective taxation (COM(2016)0024),
- having regard to the Council conclusions of 8 March 2016 on the code of conduct on business taxation<sup>2</sup>,
- having regard to the Commission communication of 5 July 2016 on further measures to enhance transparency and the fight against tax evasion and avoidance (COM(2016)0451), which includes an explanation of the EU listing process for non-cooperative tax jurisdictions,
- having regard to the Council conclusions of 8 November 2016 on the criteria for and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes,
- having regard to the outcome of the Economic and Financial Affairs (Ecofin) Council meeting of 5 December 2017,
- having regard to the Code of Conduct Group (Business Taxation): work programme

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<sup>1</sup> Annex I to the Conclusions of the Economic and Financial Affairs (Ecofin) Council meeting of 1 December 1997 concerning taxation policy – Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 1 December 1997 on a code of conduct for business taxation, OJ C 2, 6.1.1998, p. 2.

<sup>2</sup> <https://www.consilium.europa.eu/en/press/press-releases/2016/03/08/ecofin-conclusions-code-conduct-business-taxation/>

during the Portuguese Presidency<sup>3</sup> of 9 February 2021,

- having regard to the Council’s most recent update to the EU list of non-cooperative jurisdictions for tax purposes of 26 February 2021<sup>4</sup>,
- having regard to the Commission communication of 15 July 2020 entitled ‘An Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy’ (COM(2020)0312),
- having regard to the Commission communication of 15 July 2020 on tax good governance in the EU and beyond (COM(2020)0313),
- having regard to its position on the Commission proposal for a Council Directive on a Common Corporate Tax Base (CCTB)<sup>5</sup> and on the Commission proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)<sup>6</sup>,
- having regard to the Commission communication of 18 May 2021 entitled ‘Business taxation for the 21st century’ (COM(2021)0251),
- having regard to its resolutions of 25 November 2015 on tax rulings and other measures similar in nature or effect<sup>7</sup>, of 6 July 2016 on tax rulings and other measures similar in nature or effect<sup>8</sup>, and of 26 March 2019 on financial crimes, tax evasion and tax avoidance<sup>9</sup>,
- having regard to its resolution of 16 December 2015 with recommendations to the Commission on bringing transparency, coordination and convergence to corporate tax policies in the Union<sup>10</sup>,
- having regard to its recommendation of 13 December 2017 to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion<sup>11</sup>,
- having regard to its resolution of 21 January 2021 on reforming the EU list of tax havens<sup>12</sup> and to its questions to the Commission and to the Council on reforming the EU list of tax havens (O-000082/2020 – B9-0002/2021 and O-000081/2020 – B9-0001/2021),
- having regard to the Commission’s follow-up to the above-mentioned European Parliament resolutions and recommendation<sup>13</sup>,

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<sup>3</sup> <https://data.consilium.europa.eu/doc/document/ST-6004-2021-INIT/en/pdf>

<sup>4</sup> OJ C 331, 7.10.2020, p. 3 and OJ C 66, 26.2.2021, p. 40.

<sup>5</sup> OJ C 162, 10.5.2019, p. 181.

<sup>6</sup> OJ C 162, 10.5.2019, p. 151.

<sup>7</sup> OJ C 366, 27.10.2017, p. 51.

<sup>8</sup> OJ C 101, 16.3.2018, p. 79.

<sup>9</sup> OJ C 108, 26.3.2021, p. 8.

<sup>10</sup> OJ C 399, 24.11.2017, p. 74.

<sup>11</sup> OJ C 369, 11.10.2018, p. 132.

<sup>12</sup> Texts adopted, P9\_TA(2021)0022.

<sup>13</sup> The joint follow-up to the European Parliament (Committee on Economic and Monetary Affairs) resolution

- having regard to the report prepared for the Commission by the Centre for European Economic Research (ZEW) GmbH entitled ‘The Impact of Tax Planning on Forward-Looking Effective Tax Rates’<sup>14</sup>,
- having regard to the report prepared for the Commission entitled ‘Aggressive tax planning indicators’<sup>15</sup>,
- having regard to the study entitled ‘An overview of shell companies in the European Union’, published by its Directorate-General for Parliamentary Research Services on 17 October 2018<sup>16</sup>,
- having regard to the report of February 2021 of the UN High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (FACTI Panel) entitled ‘Financial Integrity for Sustainable Development’<sup>17</sup>,
- having regard to the ongoing work of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) on the tax challenges arising from digitalisation,
- having regard to the inception impact assessment on fighting the use of shell entities and arrangements for tax purposes<sup>18</sup>,
- having regard to the International Monetary Fund report entitled ‘Taxing Multinationals in Europe’<sup>19</sup>,

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with recommendations to the Commission on bringing transparency, coordination and convergence to corporate tax policies in the Union and the European Parliament (Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect (TAXE 1)) resolution on tax rulings and other measures similar in nature or effect, adopted by the Commission on 16 March 2016; the follow-up to the European Parliament (Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect (TAX2)) resolution on tax rulings and other measures similar in nature or effect, adopted by the Commission on 16 November 2016; the follow-up to the European Parliament (Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion (PANA)) non-legislative resolution of 12 December 2017 on the European Parliament draft recommendation to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion, adopted by the Commission in April 2018; and the follow-up of 27 August 2019 to the European Parliament (Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3)) resolution on financial crimes, tax evasion and tax avoidance.

<sup>14</sup> Taxation Papers, Working Paper No 64, 31 August 2016, available at:

[https://ec.europa.eu/taxation\\_customs/sites/taxation/files/taxation\\_paper\\_64.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/taxation_paper_64.pdf)

<sup>15</sup> Taxation Papers, Working Paper No 71, Institute for Advanced Studies in consortium with CPB and DONDENA, 2017, available at:

[https://ec.europa.eu/taxation\\_customs/sites/taxation/files/taxation\\_papers\\_71\\_atp\\_.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/taxation_papers_71_atp_.pdf)

<sup>16</sup> Kiendl Krišto, I. and Thirion, E., *An overview of shell companies in the European Union*, European Parliament, Directorate-General for Parliamentary Research Services, Ex-Post Evaluation Unit and European Added Value Unit, 17 October 2018, available at:

[https://www.europarl.europa.eu/cmsdata/155724/EPRS\\_STUD\\_627129\\_Shell%20companies%20in%20the%20EU.pdf](https://www.europarl.europa.eu/cmsdata/155724/EPRS_STUD_627129_Shell%20companies%20in%20the%20EU.pdf)

<sup>17</sup> [https://www.un.org/pga/75/wp-content/uploads/sites/100/2021/02/FACTI\\_Panel\\_Report-compressed.pdf](https://www.un.org/pga/75/wp-content/uploads/sites/100/2021/02/FACTI_Panel_Report-compressed.pdf)

<sup>18</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12999-Tax-avoidance-fighting-the-use-of-shell-entities-and-arrangements-for-tax-purposes\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12999-Tax-avoidance-fighting-the-use-of-shell-entities-and-arrangements-for-tax-purposes_en)

<sup>19</sup> Crivelli, E., De Mooij, R., De Vrijer, J.E.J., Hebous, S., Klemm, A., *Taxing Multinationals in Europe*, 2021 (<https://www.imf.org/en/Publications/Departmental-Papers-Policy-Papers/Issues/2021/05/25/Taxing->

- having regard to Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (the ‘Anti-Tax Avoidance Directive I’ or ‘ATAD I’)<sup>20</sup> and Council Directive (EU) 2017/952 of 29 May 2017 amending the Directive (EU) 2016/1164 as regards hybrid mismatches with third countries (‘ATAD II’)<sup>21</sup>,
  - having regard to 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 (the ‘Interest and Royalties Directive’)<sup>22</sup>,
  - having regard to Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (the ‘Parent Subsidiary Directive’)<sup>23</sup>,
  - having regard to Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (the ‘Directive on Administrative Cooperation in the Field of Taxation’ or ‘DAC 1’)<sup>24</sup>, Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (‘DAC 3’)<sup>25</sup>, Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (‘DAC 4’)<sup>26</sup> and Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (‘DAC 6’)<sup>27</sup>,
  - having regard to Rule 54 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0245/2021),
- A. whereas since 1997 the Code of Conduct on Business Taxation (CoC) has been the Union’s primary instrument to prevent harmful tax measures; whereas harmful tax measures are defined in the CoC as measures (including administrative practices) which affect, or may affect, in a significant way the location of business activity in the Union, and which provide for a significantly lower level of taxation than those that generally apply in the Member State concerned;

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<sup>20</sup> OJ L 193, 19.7.2016, p. 1.

<sup>21</sup> OJ L 144, 7.6.2017, p. 1.

<sup>22</sup> OJ L 157, 26.6.2003, p. 49.

<sup>23</sup> OJ L 345, 29.12.2011, p. 8.

<sup>24</sup> OJ L 64, 11.3.2011, p. 1.

<sup>25</sup> OJ L 332, 18.12.2015, p. 1.

<sup>26</sup> OJ L 146, 3.6.2016, p. 8.

<sup>27</sup> OJ L 139, 5.6.2018, p. 1.

- B. whereas, according to the Commission’s Annual Report on Taxation 2021, an estimated EUR 36-37 billion of corporate income tax (CIT) revenue are lost per year due to tax avoidance in the EU<sup>28</sup>;
- C. whereas anti-tax avoidance policies have led to a decline in preferential regimes all around the world, particularly in the Union; whereas, according to the OECD BEPS Action 5, a preferential regime is a regime offering some form of tax preference in comparison with the general principles of taxation in the relevant country; whereas a preference offered by a regime may take a wide range of forms, including a reduction in the tax rate or tax base or preferential terms for the payment or repayment of taxes<sup>29</sup>; whereas new forms of harmful tax practices (HTP) have emerged, notably through the transformation of preferential regimes into aggressive general regimes;
- D. whereas 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; whereas tax measures should not impede private-led initiatives that allow for sustainable growth; whereas according to empirical research the effective level of taxation is lower for large multinationals than for domestic SMEs<sup>30</sup>;
- E. whereas the work conducted by the Union against HTP includes the adoption of legislation, soft law, and intergovernmental cooperation; whereas Parliament is consulted in the area of direct taxation and respects the sovereignty of Member States in that area;
- F. whereas concerns about HTP arose in the Union in the early 1990s when a Committee of Independent Experts was set up and delivered a report with recommendations on corporate taxation within the EU (the ‘Ruding Report’)<sup>31</sup>; whereas in 1997 the Council of the European Union established a Code of Conduct on Business Taxation (CoC); whereas a Code of Conduct Group (CoC Group) was set up within the Council to assess tax measures that could fall within the scope of the CoC; whereas empirical research<sup>32</sup> suggests that EU Member States collectively lose most corporate tax revenues to other EU Member States rather than to third countries; underlines that the main cause for this loss of revenue is the lack of legislative action against intra-EU aggressive tax practices and harmful tax competition;
- G. whereas the CoC Group aims to assess the tax measures that may fall within the scope of the CoC and is a space for cooperation and peer review of potential harmful regimes within the EU; whereas the CoC has acquired some authority among Member States,

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<sup>28</sup> Annual Report on Taxation 2021 - Review of taxation policies in the EU Member States

(<https://op.europa.eu/en/publication-detail/-/publication/db46de2a-b785-11eb-8aca-01aa75ed71a1/language-en>)

<sup>29</sup> OECD (2015), *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris <http://dx.doi.org/10.1787/9789264241190-en>

<sup>30</sup> IMF report, *Taxing Multinationals in Europe*, 2021: <https://www.imf.org/en/Publications/Departmental-Papers-Policy-Papers/Issues/2021/05/25/Taxing-Multinationals-in-Europe-50129>

<sup>31</sup> Available at: <https://op.europa.eu/en/publication-detail/-/publication/0044caf0-58ff-4be6-bc06-be2af6610870>

<sup>32</sup> Tørsløv, T., Wier, L., and Zucman, G., *The Missing Profits of Nations*, Working Paper, April 2020, available from <https://missingprofits.world/>.

putting peer pressure on them to reform, and, by mirror effect, on third countries to cooperate in the framework of the EU listing process;

- H. whereas the CoC Group was efficient in deterring preferential tax regimes; whereas tax competition in Europe appears to have influenced the decline in CIT rates that has brought the average European CIT rate below the average rate in OECD countries<sup>33</sup>; whereas the CoC has contributed to preventing aggressive tax competition between Member States by setting out principles for fair competition; whereas the CoC Group has failed to eradicate unfair tax arrangements offered by some Member States to large companies, such as harmful advance pricing arrangements ('tax rulings'), and the consequential unfair competitive advantage created; whereas the latest peer reviews of the CoC Group have focused on intellectual property (IP) regimes; whereas the CoC Group remains of purely intergovernmental nature;
- I. whereas both pillars of the future global agreement are in line with the Commission's vision for a business taxation framework expressed in its recent communication entitled 'Business Taxation for the 21st century'; whereas the Commission announced in that communication a proposal for a directive that will reflect the OECD Model Rules with the necessary adjustments for the implementation of Pillar II on minimum effective taxation;
- J. whereas the CoC Group was successful in opening a dialogue with third-country jurisdictions that are invited to repeal their HTP in order to avoid being included on an EU list of non-cooperative jurisdictions for tax purposes (the 'EU list'); whereas the EU list must be an instrument to deter HTP by third-country jurisdictions in order to preserve global fair competition; whereas the current EU list only comprises 12 third-country jurisdictions<sup>34</sup> and regrettably leaves out certain notorious tax havens; whereas the EU list is established on the basis of criteria defined in the CoC;
- K. whereas the criteria for the EU list still diverge from those used in the context of the EU peer review of HTP, while both assessments are performed by the CoC Group; whereas six Member States have received Country-Specific Recommendations on strengthening their tax system against the risk of aggressive tax planning;
- L. whereas the Commission has adopted a Communication on Tax Good Governance in the EU and beyond and envisages a reform of the Code of Conduct and improvements to the EU list;
- M. whereas the COVID-19 pandemic has plunged the EU's economy into its deepest recession in modern times, with signs of recovery appearing only recently; whereas, as part of their response to the COVID-19 pandemic, governments across the Union were quick to introduce tax measures to provide liquidity to both businesses and households<sup>35</sup>, resulting in lower tax revenues for Member States; whereas business

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<sup>33</sup> IMF, *op.cit.* 2021.

<sup>34</sup> American Samoa; Anguilla; Dominica; Fiji; Guam; Palau; Panama; Samoa; Trinidad and Tobago; US Virgin Islands; Vanuatu; Seychelles.

<sup>35</sup> European Commission, *Annual Report on Taxation 2021*.



taxation should be a tool to support recovery through simple, stable and SME-friendly tax rules that do not hamper economic recovery with an excessive tax burden;

### ***Current EU policies tackling harmful tax practices in the Union***

1. Notes that several tax scandals, notably LuxLeaks, the Panama Papers, the Paradise Papers and, more recently, the OpenLux revelations, as well as public and parliamentary pressure, have boosted the EU policy agenda on HTP; stresses that tax evasion and tax avoidance result in an unacceptable loss of substantial revenue for Member States, currently needed to address the devastating consequences of the pandemic; recalls the conservative estimates by the OECD on BEPS which costs around 4-10 % of global corporate income tax revenues, or USD 100-240 (EUR 84-202) billion annually<sup>36</sup>; recalls that Parliament's estimates of corporate tax avoidance range from EUR 160 to 190 billion when both BEPS and other tax regimes are considered<sup>37</sup>; calls on the Commission to undertake regular assessment of the scale of tax evasion and avoidance;
2. Welcomes the significant actions taken at EU and international level to strengthen the principles of tax transparency, fight harmful tax competition, and ensure that measures against harmful tax practices are respected; welcomes the interinstitutional agreement reached on the directive amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches (public country-by-country reporting); looks forward to a swift adoption by the Council of its first-reading position so that the directive can be adopted and enter into force as soon as possible; highlights the variety of EU instruments adopted to address HTP inside the Union, which include ATAD I and II, the Interest and Royalties Directive, the Parent Subsidiary Directive, the Directive on Administrative Cooperation in the Field of Taxation, and, in particular, DAC 3, 4 and 6 (on tax rulings, country-by-country reporting and mandatory disclosure rules for intermediaries), the various Commission recommendations to the Council, the CoC, and the Council recommendations in the framework of the European Semester dealing with aggressive tax planning;
3. Recalls that Union legislation provides minimum standards for cooperative actions and information exchange in the field of taxation; supports further discussions among Member States in order to strengthen administrative cooperation in the field of taxation; stresses that emphasis should be put on the proper implementation and monitoring of existing rules; highlights that within the EU's social market economy, adequate tax levels and simple and clear tax laws help create jobs, improve the EU's competitiveness, and contribute to combating tax evasion and tax avoidance; recognises that Member States enjoy discretion to decide on their tax policy as they deem appropriate, in light of their own circumstances; recalls, in this regard, that Member States should exercise their competences consistently with Union law;
4. Notes that the CoC works on the premise that, while tax competition among countries is not problematic per se, there need to be common principles on the extent to which they

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<sup>36</sup> <https://www.oecd.org/tax/beps/>

<sup>37</sup> Drover, R., Ferrett, B., Gravino, D., Jones, E. and Merler, S., *Bringing transparency, coordination and convergence to corporate tax policies in the European Union*, European Parliament, Directorate-General for Parliamentary Research, European Added Value Unit, 24 November 2015. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2015/558773/EPRS\\_STU\(2015\)558773\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2015/558773/EPRS_STU(2015)558773_EN.pdf)

can use their tax regimes and policies to attract businesses and profits; highlights that the Commission recognises that both the nature and form of tax competition have changed substantially over the past two decades and that the CoC has not evolved to meet the new challenges, testing the very parameters of fairness<sup>38</sup>;

5. Welcomes the internal and external dimension of the work conducted by the CoC Group on HTP; notes that the external dimension of HTP is mainly dealt with by the CoC Group with the application of the ‘Fair Taxation’ criterion; considers that the EU listing process needs to be reformed; recommends that this process be formalised in EU law, notably via a binding instrument; calls on the Commission to provide further information to assess the coherence between the weak criteria on HTP applied to Member States and the tougher criteria, in particular on economic substance, applied to third-country jurisdictions in the listing process; highlights that the ‘Transparency’ criterion should also be respected by Member States as per the implementation of the DAC Directive; notes that the influence of the Union in combating tax evasion and HTP worldwide depends on the example it sets at home; welcomes in this regard the announcement on stepping up the fight against the abusive use of shell companies and looks forward to the proposal on substance rules on shell companies mentioned in the Commission communication on Business Taxation for the 21st century, aimed at addressing aggressive tax-planning opportunities linked to the use of companies with no or minimal substantial presence and real economic activity in a territory;
6. Notes that since 1997 the Code of Conduct for Business Taxation has been the Union’s primary instrument to prevent harmful tax competition; recalls that a Forum on Harmful Tax Practices (FHTP) was created within the OECD in 1998 with the task of monitoring and reviewing tax practices, and with a focus on the characteristics of preferential tax regimes; highlights that the FHTP evaluations have a determinant impact on the qualification of harmful regimes in the EU listing process; calls for the CoC to remain independent from the FHTP when assessing HTP;

### ***Recommendations for future EU work on HTP***

7. Highlights the proposed Pillar II reform of the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework), which aims to address remaining BEPS challenges and to set out rules giving jurisdictions a right to tax back where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to low levels of effective taxation, to combat HTP and impose an effective tax rate<sup>39</sup>; looks forward, in this regard, to a globally agreed consensus that is in line with the Union’s interests in having simple and fair tax principles and standards;
8. Notes the new momentum in the OECD/G20 Inclusive Framework negotiations created by the US administration’s recent proposals, as well as the recent G7 agreement, which could facilitate a deal on Pillar II by mid-2021, gathering together more than 130 countries; shares the commitment of G7 as of 13 June 2021 ‘to a global minimum tax of

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<sup>38</sup> COM(2020)0313.

<sup>39</sup> OECD/G20 Base Erosion and Profit Shifting Project, *Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint: Inclusive Framework on BEPS*, OECD Publishing, Paris, 2020, p. 12. Available at: <https://www.oecd.org/tax/beps/tax-challenges-arising-from-digitalisation-report-on-pillar-two-blueprint.pdf>

at least 15 % on a country by country basis' as a basis for further negotiations;

9. Calls on the Commission to come forward with an impact assessment of the future outcome of the international tax negotiations; recalls the Commission's commitment to propose a similar solution to the Pillar II solution on minimum effective taxation, whether an agreement is reached or not at OECD Inclusive Framework level;
10. Calls for the adoption of a definition of 'minimum level of economic substance', compatible with the global standard of the OECD and subsequent work related to BEPS Action 5, preferably based on a formulaic approach, and which would evolve progressively as reported income increases; proposes that such a criterion could be used to assess whether a tax regime is potentially harmful; recalls that the Commission considers possible new substance requirements and indicators of real economic activity for the purpose of taxation rules in its communication on Business Taxation for the 21st century; highlights the economic substance requirement already included in the EU list's 'Fair Taxation' criterion; considers, however, that this criterion leaves room for interpretation and remains too vague, since it still allows for notorious tax havens to be delisted after de minimis reforms;
11. Calls on the Commission to produce guidelines on how to design fair and transparent tax incentives with fewer risks of distorting the Single Market, and that ensure fair competition and favour job creation, notably by looking at the type (profit-based or costs-based), the temporal nature (temporary or permanent), the geographical limitation (economic zones) and the intensity (full or partial exemptions) of such incentives; takes note of a study commissioned by the European Economic and Social Committee on the reduction of corporate tax rates and its impact on revenues and growth<sup>40</sup>;
12. Welcomes the fact that the Commission recognises that a future minimum global taxation standard should be considered in the CoC regardless of whether a consensus is found at global level or not, to ensure that all businesses pay their fair amount of tax when they generate profits in the single market<sup>41</sup>; observes that the Commission recently announced in its communication on 'Business taxation for the 21st century' legislative proposals that will be necessary to implement Pillar II at Union level, including a revision of ATAD to adapt the Controlled Foreign Company rules to the agreed Income Inclusion Rule in Pillar II, the recast of the Interest and Royalties Directive, the reform of the CoC and the introduction of Pillar II in the criteria used for assessing third countries in the EU listing of non-cooperative jurisdictions; calls on the Commission, in this regard, to guarantee that the implementing rules on a minimum effective tax rate will be designed without excessive compliance costs; understands that, overall, the national effective tax rate of any large undertaking should not fall below the minimum tax rate, following the logic of the current Pillar II proposal;
13. Recalls that the proposal to amend the Interest and Royalties Directive has remained blocked in the Council since 2012, notably due to a disagreement on a minimum withholding tax; calls on the Council and the Presidency to relaunch negotiations in this

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<sup>40</sup> Baert, P., Lange, F., Watson, J., *The Role of Taxes on Investment to Increase Jobs in the EU – An Assessment of Recent Policy Developments in the Field of Corporate Taxes*, May 2019.

<sup>41</sup> COM(2020)0313.

regard;

14. Highlights the need to tax multinational corporations on the basis of a fair and effective formula for the allocation of taxing rights between Member States; regrets in this regard that the Council did not agree on the CCTB and CCCTB proposals; urges the Commission to adjust the timeline of the future BEFIT legislative proposal to the international tax agenda; is concerned by the lack of a clear strategy to ensure that the new framework for business taxation in the Union will achieve support from the Member States;
15. Underlines that according to the International Monetary Fund<sup>42</sup>, even though corporate tax rates have been on a downward trend, CIT revenue collection in percentage of GDP has remained remarkably constant over time, taking account of the business cycle;
16. Insists that the future implementation of new EU tools against HTP should prioritise the recourse to binding instruments and explore all possibilities offered by the TFEU allowing decision-making to be more efficient; recalls that the procedure laid down in Article 116 TFEU can be applied when harmful tax practices are distorting the condition of competition in the internal market and that this Treaty provision does not alter the distribution of competences between the Union and the Member States;
17. Calls on the Commission to evaluate the effectiveness of patent boxes and other intellectual property (IP) regimes under the new nexus approach defined by Action 5 of the BEPS Action Plan on HTP, including the impact on revenue losses; calls on the Commission to come forward with proposals in the event that the evaluation establishes an absence of impact of IP regimes on real economic activities; notes that the US administration is proposing to repeal its Foreign-Derived Intangible Income (FDII);
18. Highlights that Member States' taxation policies are monitored through the European Semester; believes the European Semester could be further developed as a tool to support curbing aggressive tax planning within the EU via the dedicated country-specific recommendations;

### ***Reform of the Code of Conduct on Business Taxation***

19. Welcomes the fact that the CoC Group has assessed 480 regimes since its creation, deeming around 130<sup>43</sup> harmful<sup>44</sup>; recognises that the peer review of national tax regimes conducted within the framework of the CoC has had an impact on reducing harmful tax competition and has led to a consequential decrease in preferential tax regimes within the Union; anticipates a potential similar impact at global level via the EU listing process; warns, however, of the development of harmful non-preferential regimes; considers, therefore, that the current criteria defining HTP in the CoC are partially outdated given its focus on preferential regimes; emphasises the need to improve the CoC's effectiveness in light of recent tax scandals and current challenges such as globalisation, digitalisation and the growing importance of intangible assets;

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<sup>42</sup> <https://www.elibrary.imf.org/view/journals/087/2021/012/article-A001-en.xml>

<sup>43</sup> Exchange of views of the Subcommittee on Tax Matters (FISC) with Lyudmila Petkova, Chair of the Code of Conduct Group, held on 19 April 2021.

<sup>44</sup> <https://data.consilium.europa.eu/doc/document/ST-9639-2018-REV-4/en/pdf>

20. Calls on the CoC to make full use of the current scope of its mandate; invites the Council, however, to continue reforming the scope of the mandate promptly and where appropriate, and notably to look into all aggressive tax planning indicators by Member State, including the general characteristics of a tax system, to determine whether its legislation comprises harmful tax measures; calls on the Council to follow up on the July 2020 Commission communication on Tax Good Governance in the EU and beyond, which advocates a reform of the CoC to ensure fair taxation within the Union; notes that this is already partially done by the CoC Group, notably for Notional Interest Deduction regimes and the Foreign Resource Income Exemption Regimes and in the framework of the EU listing process;
21. Highlights that the CoC is a soft law instrument whose purpose is to preserve an EU tax framework allowing for a level playing field on taxation, on the basis of peer review and peer pressure; regrets, however, the non-binding nature of the CoC; takes note of the fact that Member States could delay the repealing of and even maintain a harmful regime without facing any repercussions; insists that the documentation regarding the decision-making of the CoC should be publicly available;
22. Calls for a revision of the criteria, the governance and the scope of the CoC through a binding instrument built on the current intergovernmental arrangements and with a more efficient decision-making procedure; believes that the revision of the CoC should be conducted using a democratic, transparent and accountable process and involve an expert group consisting of experts from the field of civil society, the Commission and Parliament; calls for the revised instrument to be applied more transparently and effectively, and for it to provide for an adequate participation of Parliament in the process of designing and adopting new policies and criteria to combat HTP;
23. Considers the reform of the criteria of the CoC to be a matter of urgency and that it should incorporate, as a first step, an effective tax rate criterion in line with the future internationally agreed minimum effective tax rate in the framework of Pillar II of the Inclusive Framework, and robust and progressive economic substance requirements, while allowing for fair competition, which is an ideal possible outcome of an ambitious effort, mainly driven by the Union and the US as its most important partner;
24. Considers that a broad range of potential risk factors could potentially facilitate profit shifting, such as the number of Special Purpose Entities, the relocation of intangibles and high levels of passive income (royalties, interests, dividends, etc.);
25. Supports the Commission's intention as outlined in its Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy to widen the scope of the CoC to cover further types of regimes and general aspects of the national corporate tax systems; recommends the inclusion of preferential personal income tax regimes, to cover special citizenship schemes or measures to attract highly mobile wealthy individuals and digital nomads, which could lead to significant single market distortions;
26. Invites the Commission and the Member States to consider a 'Framework on Aggressive Tax Arrangements and Low Rates' (FATAL) along the following lines, and which would replace the current CoC:

A. Without prejudice to the respective spheres of competence of the Member States and

the Union, this framework concerns those measures which affect, or may affect, in a significant way the location of business activity in the Union and the relocation of personal income and capital (individual taxation regimes).

Business activity in this respect also includes all activities carried out within a group of companies.

The tax measures covered by the framework include both laws or regulations and administrative practices.

- B. Within the scope specified in paragraph A, tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question, or below any minimum effective level of tax agreed in the Inclusive Framework on BEPS or in international forums where the EU is represented, are to be regarded as potentially harmful and therefore covered by this code (gateway criterion).

Such a level of taxation may operate by virtue of the nominal tax rate, and/or the tax base or any other relevant factor determining the effective tax rate.

When assessing whether such measures are harmful, account should be taken of, inter alia:

1. whether advantages are accorded only to non-residents or in respect of transactions carried out with non-residents; or
2. whether advantages are ring-fenced from the domestic market, so they do not affect the national tax base; or
3. whether advantages are granted even without any real economic activity and substantial economic presence within the Member State offering such tax advantages, as defined by the European Commission and based on a proportionate substance requirement evolving progressively as reported income increases within the Member State concerned. Particular attention will be given to intellectual property regimes in this regard;
4. whether the rules for profit determination in respect of activities within a multinational group of companies depart from internationally accepted principles, notably the rules agreed upon within the OECD; or
5. whether the tax measures lack transparency, including where legal provisions are relaxed at administrative level in a non-transparent way.

- C. Within the scope specified in paragraph A, preferential personal income and capital tax regimes resulting in a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question are to be regarded as potentially harmful and therefore covered by this code. Similarly, general personal income and wealth tax regimes that would lead to single market distortion may be covered by the scope and assessed.



## Standstill and rollback

### Standstill

- D. Member States commit themselves not to introduce new tax measures which are harmful within the meaning of this framework. Member States will therefore respect the principles underlying the framework when determining future policy and will have due regard for the review process referred to in paragraphs E to I in assessing whether any new tax measure is harmful.

### Rollback

- E. Member States commit themselves to re-examining their existing laws and established practices, having regard to the principles underlying the framework and to the review process outlined in paragraphs E to I. Member States will amend such laws and practices as necessary with a view to eliminating any harmful measures as soon as possible taking into account the Council's and Commission's discussions following the review process.

### Review process

#### Provision of relevant information

- F. In accordance with the principles of transparency and openness Member States will inform each other and the Commission of existing and proposed tax measures which may fall within the scope of the framework. In particular, Member States are called upon to provide at the request of another Member State information on any tax measure which appears to fall within the scope of the framework. Where envisaged tax measures need parliamentary approval, such information need not be given until after their announcement to Parliament. The regimes that will be evaluated in the scope of the framework should be notified for information to the European Parliament.

#### Assessment of harmful measures

- G. Any Member State may request the opportunity to discuss and comment on a tax measure of another Member State that may fall within the scope of the framework. This will permit an assessment to be made of whether the tax measures in question are harmful, in the light of the effects that they may have within the Union. That assessment will take into account all the factors identified in paragraphs B and C.
- H. The Council also emphasises the need to evaluate carefully in that assessment the effects that the tax measures have on other Member States, inter alia in the light of how the activities concerned are effectively taxed throughout the Union.

Insofar as the tax measures are used to support the economic development of particular regions, an assessment will be made of whether the measures are in proportion to, and targeted at, the aims sought. In assessing this, particular attention will be paid to special features and constraints in the case of the outermost regions and small islands, without undermining the integrity and coherence of the Union

legal order, including the internal market and common policies. Such assessment would consider the progressive minimum substantial economic presence requirements as defined in paragraph B.

#### Procedure

- I. A group will be set up jointly by the Council and the Commission to assess the tax measures that may fall within the scope of this framework and to oversee the provision of information on those measures. The Council invites each Member State and the Commission to appoint a high-level representative and a deputy to this group, which will be chaired by a representative of a Member State. The group, which will meet regularly, will select and review the tax measures for assessment in accordance with the provisions laid down in paragraphs E to G. The group will report regularly on the measures assessed. These reports will be forwarded to the Council for deliberation and, if the Council so decides, published. The documents should be communicated to Parliament upon request and disclosed once the evaluation process is over.

#### Enforcement

- J. Member States are entitled to implement countermeasures that would reduce tax avoidance incentives should a Member State fail to roll back a regime that had been assessed as harmful in the context of this framework within 2 years, and in particular:
- a) non-deductibility of costs;
  - b) withholding tax measures;
  - c) limitation of participation exemption;
  - d) special documentation requirements, especially regarding transfer pricing;

#### Geographical extension

- K. The Council considers it advisable that principles aimed at abolishing harmful tax measures should be adopted on as broad a geographical basis as possible. To this end, Member States commit themselves to promoting their adoption in third countries; they also commit themselves to promoting their adoption in territories to which the Treaty does not apply. In this context, the Council and the Commission should rely on criteria on tax transparency, fair taxation and implementation of anti-BEPS measures to establish an EU list of non-cooperative jurisdictions. The Fair taxation criteria should be based on factors identified in paragraphs B and C of this framework.
- L. Member States with dependent or associated territories, or which have special responsibilities or taxation prerogatives in respect of other territories, commit themselves, within the framework of their constitutional arrangements, to ensuring that these principles are applied in those territories. In this connection, those Member States will take stock of the situation in the form of reports to the group referred to in paragraph H, which will assess them under the review procedure described above.



## Monitoring and revision

M. In order to ensure the even and effective implementation of the framework, the Council invites the Commission to report back to it annually on the implementation thereof and on the application of fiscal State aid. The report should be made publicly available. The Council and the Member States will review the provisions of the framework two years after its adoption;

27. Welcomes the exchange of views with Lyudmila Petkova, chair of the CoC Group, on 19 April 2021; invites the Chair of the CoC Group to appear at least once a year before Parliament at a public hearing and to present the progress report to the Council;
28. Welcomes the publication of the biannual reports of the CoC Group to the Council; believes that a dedicated online tool should be created to avoid relying only on Council conclusions to retrieve essential information about tax policy at EU level; appreciates the efforts made to release CoC Group-related documents and work; calls for the public information to be made available on a user-friendly platform;
29. Calls on the CoC Group to invite Members of the European Parliament to CoC Group discussions as observers; encourages the CoC Group to publicly stream some of their meetings when they do not require confidential deliberations;
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  - o o
30. Instructs its President to forward this resolution to the Council and the Commission and the governments and parliaments of the Member States.

## EXPLANATORY STATEMENT

The phenomenon of aggressive tax competition became a concern for the Union already in the early 1990s as potentially putting at risk the integrity of the Single Market. In order to fight against harmful tax practices the Union adopted in 1997 a Code of Conduct on Business Taxation followed by the setting up of a Code of Conduct Group to assess tax measures that could fall within the scope of the Code of Conduct.

At a time when new challenges are emerging, such as the globalisation and digitalisation of the economy and the increased role of multinational enterprises (MNEs) in the global economy, the Union continues to have a significant role to play in curbing unfair tax competition. It is essential not only that Member States cooperate better between them and increase transparency in tax matters, but also that they build up consensus around common objectives in this area, in particular the regulation of financial markets and the fight against tax optimisation, tax avoidance, tax fraud and tax evasion, both inside and outside the Union.

Fierce tax competition between Member States allows the tax engineering of MNEs to make a substantial fraction of their profits escape taxation. Profits that should be taxed in the Member State where they are made very often end up being taxed in a more lenient fashion (or not taxed at all) in a different Member State where tax policies have been conceived and designed to favour large corporations and MNEs. The nature of HTP has evolved over the last decades and new forms of HTP have emerged, notably via the transformation of preferential regimes into aggressive general regimes and therefore the CoC should be provided with the necessary tools to assess the harmful nature of tax systems in general terms. The objective would not be to prevent Member States from adopting efficient and reasonable tax measures connected to the real economy that could make their economy grow to the benefit of their citizens and companies, but to impede that the tax measures they adopt are harmful and unfairly erode the tax base of other Member States.

Governments lose EUR 1 000 Billion annually through tax fraud and tax evasion and avoidance. Every euro that is owed and not paid to where it belongs is a euro stolen from workers, the unemployed and the sick. It is a blow to solidarity.

The proliferation of tax scandals in the last decade (Lux Leaks, Panama Papers, Paradise Papers, etc.) involving multinational corporations and net worth individuals has revealed the extent and seriousness of these phenomena and the urgency of finding definitive solutions to overcome them. Unrestrained tax competition between Member States is the expression of an unfortunate breakdown in solidarity within the Union and must be brought to an end.

Aggressive tax competition between Member States have also the perverse effect of discriminating against small and medium-size undertakings (SMEs), which lack the capacity of taking advantage of loopholes in national tax systems or are straightforwardly or sinuously excluded from tax policies conceived and put in place to the exclusive benefit of MNEs. Moreover, when taxpayers see MNEs legally avoiding income tax, it undermines voluntary compliance by all taxpayers.

There is a need for common European rules. Tax competition between the Member States is harmful to the European economy. It is essential that all Member States work together to find viable fiscal and economic solutions for both public services and businesses to establish a

common system of taxation that is fair, efficient and conducive to sustainable economic development. The lack of harmonisation of tax rules is a real windfall for MNEs and puts SMEs at a disadvantage. It is unacceptable that Member States aggressively compete with each other within a Union based on the principle of solidarity and for MNEs to be able to do ‘tax shopping’ within the Union. This competition favours intra-European relocations and essentially encourages MNEs to look for places with lower tax costs to the detriment of the Member States where profits are actually made.

Aggressive tax competition is not a phenomenon limited to the European Union. It has been considered a major headache also at international level, with the OECD instituting already in 1998 a Forum on Harmful Tax Practices (FHTP) to fight preferential tax regimes resulting in base erosion and profit shifting. More recently, Action Item 5 of the BEPS Action Plan commits the FHTP to revamping its work on Harmful Tax Practices with a priority on improving transparency and on requiring substantial activity for any preferential regime for it to not be deemed harmful.

Furthermore, The OECD has recently resumed the negotiations under BEPS 2.0 structured around two pillars.

Pillar 1 seeks to adapt the international income tax system to new business models emerged in the digital economy through changes to the profit allocation and nexus rules applicable to business profits. It is expected that Pillar 1 will provide a satisfactory answer, inter alia, to the considerable and profitable economic activity that is immune to taxation because of the lack of a ‘permanent establishment’.

Pillar 2 is focused on a global minimum tax intended to address remaining BEPS issues. It focuses on the right to tax where other jurisdictions do not exercise taxation rights or tax ‘too low’ and, in this way, it is expected that it will significantly contribute to the eradication of aggressive tax competition. Pillar 2 is designed to ensure that MNEs pay a minimum level of tax regardless of where they are headquartered or the jurisdictions they operate in.

Negotiations on these two international instruments were delayed owing to reticence from the U.S. Trump Administration but have recently resumed after the election of President Biden, with his administration actively reengaging with the OECD Inclusive Framework. While efforts are being made to find solutions under Pillar 1 that can satisfy all parties, President Biden has already expressed firm support for Pillar 2 in his policy document ‘The Made in America Tax Plan’

([https://home.treasury.gov/system/files/136/MadeInAmericaTaxPlan\\_Report.pdf](https://home.treasury.gov/system/files/136/MadeInAmericaTaxPlan_Report.pdf)).

The OECD aims to reach an agreement on the Pillar 1 and 2 proposals by mid-2021. Your rapporteur is of the opinion that this should be the ambition also of the European Union and urges the Commission to set up a plan for a swift and proper implementation of both Pillars, including by using the outcome on Pillar II to redefine what harmful practices are and to monitor them with a reformed CoC.

## INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

<b>Date adopted</b>	13.7.2021
<b>Result of final vote</b>	+: 44 -: 6 0: 8
<b>Members present for the final vote</b>	Gunnar Beck, Marek Belka, Isabel Benjumea Benjumea, Lars Patrick Berg, Stefan Berger, Francesca Donato, Engin Eroglu, Markus Ferber, Jonás Fernández, Frances Fitzgerald, José Manuel García-Margallo y Marfil, Luis Garicano, Sven Giegold, Valentino Grant, Claude Gruffat, José Gusmão, Eero Heinäluoma, Michiel Hoogeveen, Danuta Maria Hübner, Stasys Jakeliūnas, France Jamet, Othmar Karas, Billy Kelleher, Ondřej Kovařík, Georgios Kyrtzos, Aurore Lalucq, Philippe Lamberts, Aušra Maldeikienė, Pedro Marques, Jörg Meuthen, Csaba Molnár, Siegfried Mureşan, Caroline Nagtegaal, Luděk Niedermayer, Lefteris Nikolaou-Alavanos, Piernicola Pedicini, Kira Marie Peter-Hansen, Sirpa Pietikäinen, Dragoş Pîslaru, Evelyn Regner, Antonio Maria Rinaldi, Joachim Schuster, Ralf Seekatz, Paul Tang, Irene Tinagli, Ernest Urtaşun, Inese Vaidere, Johan Van Overtveldt, Stéphanie Yon-Courtin, Marco Zanni, Roberts Zile
<b>Substitutes present for the final vote</b>	Manon Aubry, Herbert Dorfmann, Eugen Jurzyca, Eva Kaili, Margarida Marques, Jessica Polfjård, Stéphane Séjourné

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

44	+
ID	Francesca Donato, Valentino Grant, Antonio Maria Rinaldi, Marco Zanni
PPE	Stefan Berger, Herbert Dorfmann, Markus Ferber, José Manuel García-Margallo y Marfil, Danuta Maria Hübner, Othmar Karas, Georgios Kyrtos, Aušra Maldeikienė, Siegfried Mureşan, Luděk Niedermayer, Sirpa Pietikäinen, Jessica Polfjård, Ralf Seekatz, Inese Vaidere
Renew	Engin Eroglu, Luis Garicano, Dragoş Pislaru, Stéphane Séjourné, Stéphanie Yon-Courtin
S&D	Marek Belka, Jonás Fernández, Eero Heinäluoma, Eva Kaili, Aurore Lalucq, Margarida Marques, Pedro Marques, Csaba Molnár, Evelyn Regner, Joachim Schuster, Paul Tang, Irene Tinagli
The Left	Manon Aubry, José Gusmão
Verts/ALE	Sven Giegold, Claude Gruffat, Stasys Jakeliūnas, Philippe Lamberts, Piernicola Pedicini, Kira Marie Peter-Hansen, Ernest Urtaşun

6	-
ECR	Lars Patrick Berg, Michiel Hoogeveen, Eugen Jurzyca, Johan Van Overtveldt, Roberts Zīle
NI	Lefteris Nikolaou-Alavanos

8	0
ID	Gunnar Beck, France Jamet, Jörg Meuthen
PPE	Isabel Benjumea Benjumea, Frances Fitzgerald
Renew	Billy Kelleher, Ondřej Kovařík, Caroline Nagtegaal

Key to symbols:

+ : in favour

- : against

0 : abstention