



Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect (TAXE 2)

31/05/2016

AMENDMENTS: 47

Jeppe Kofod, Michael Theurer

Report of the special committee on tax rulings and other measures similar in nature or effect (TAXE 2)

Motion for a resolution PE580.528 - 2016/2038(INI)

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Amendment 1

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Miguel Viegas, Marisa Matias

Motion for a resolution

Recital F

Motion for a resolution

F. whereas some specific tax jurisdictions actively contribute to designing aggressive tax policies on behalf of MNEs who thereby avoid taxation; whereas the corporate tax rate in some jurisdictions is close or equal to zero per cent; whereas the complexity of different tax systems create a lack of transparency which is globally harmful;

Amendment

F. whereas some specific tax jurisdictions actively contribute to designing aggressive tax policies on behalf of MNEs who thereby avoid taxation; whereas the ***statutory and/or effective*** corporate tax rate in some jurisdictions is close or equal to zero per cent; whereas the complexity of different tax systems create a lack of transparency which is globally harmful;

Or. en

Amendment 2

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Miguel Viegas, Marisa Matias

Motion for a resolution

Recital T a (new)

Motion for a resolution

Amendment

T a. whereas patent boxes and similar preferential tools are just one element fuelling downward pressure on corporate tax rates; whereas the Treaties and EU legislation, such as the Parent-Subsidiary and Interest and Royalties Directives, create a problematic asymmetry by prioritising the free movement of capital and business establishment without the necessary policy instruments to ensure coordination, cooperation and transparency in corporate taxation; whereas this is exemplified by ECJ judgements which have prevented Member States from applying robust defence measures (e.g. CFC rules or exit

taxation) against aggressive tax planning on the grounds of the fundamental freedoms of the internal market^{1a}; whereas this type of integration enshrines a structural bias to the benefit of investors and corporations operating across borders;

^{1a} For instance, judgment of the Court (Grand Chamber) of 12 September 2006. Cadbury Schweppes plc and Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue. and case C-9/02 Hughes de Lasteyrie du Saillant v. Ministère de l'Économie, des Finances et de l'Industrie, OJ C 94, 17.04.2004

Or. en

Amendment 3

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Miguel Viegas, Marisa Matias

Motion for a resolution

Recital T b (new)

Motion for a resolution

Amendment

T b. whereas a particularly pressing problem arises through the outright lack of any harmonised approach among Member States on the issue of outbound payments; whereas in this current, uncoordinated framework, the combination of a removal of source taxation under the Interest and Royalties and Parent-Subsidiary Directives with a lack of withholding taxes on dividend, licence and royalty fee and interest outbound payments in some Member States creates loopholes whereby profits can effectively flow from any Member State out of the Union without being subject to tax at least once;

Or. en

Amendment 4

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Miguel Viegas, Marisa Matias

Motion for a resolution

Recital V

Motion for a resolution

V. whereas it was only five months after the beginning of the term of its Special Committee that some Room documents and minutes of the Code of Conduct Group were made available to MEPs in camera on EP premises; whereas, while additional documents have been made available, some documents and minutes still remain undisclosed or missing; whereas the Commission stated at an informal meeting that it has made all the documents at its disposal available to the Special Committee and any further relevant meeting documents, should they ever have been in the Commission's possession, must therefore have been lost;

Amendment

V. whereas it was only five months after the beginning of the term of its Special Committee that some Room documents and minutes of the Code of Conduct Group were made available to MEPs in camera on EP premises; whereas, while additional documents have been made available, some documents and minutes still remain undisclosed or missing; whereas the Commission stated at an informal meeting that it has made all the documents *originating from the Commission and* at its disposal available to the Special Committee and any further relevant meeting documents *originating from the Commission*, should they ever have been in the Commission's possession, must therefore have been lost;

Or. en

Amendment 5

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Miguel Viegas, Marisa Matias

Motion for a resolution

Recital V a (new)

Motion for a resolution

Amendment

V a. whereas, in addition to untraceable Commission documents, a large number of CoCG room documents, originating from the CoCG Chair, Member States or other stakeholders and in the Commission's possession, have not been made available to MEPs yet;

Or. en

Amendment 6

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Miguel Viegas, Marisa Matias

Motion for a resolution

Recital X

Motion for a resolution

X. whereas the OECD, the UN and other international organisations are interested parties in the fight against corporate tax base erosion; whereas there is a need to ensure global harmonisation of practices and implementation of common standards such as those proposed by the OECD vis-à-vis the BEPS package; whereas the meeting of G20 finance ministers and central bank governors held in Washington on 14 and 15 April 2016 concluded in favour of initiating implementation of the BEPS measures, and has called for full financial transparency, especially as regards beneficial ownership;

Amendment

X. whereas the OECD, the UN and other international organisations are interested parties in the fight against corporate tax base erosion; whereas there is a need to ensure global harmonisation of practices and implementation of common standards such as those proposed by the OECD vis-à-vis the BEPS package; whereas ***such global standards should be negotiated and monitored by an intergovernmental forum at UN level with less selective membership than the OECD or G20 so as to allow all countries, including developing countries, to take part on an equal footing***; whereas the meeting of G20 finance ministers and central bank governors held in Washington on 14 and 15 April 2016 concluded in favour of initiating implementation of the BEPS measures, and has called for full financial transparency, especially as regards beneficial ownership;

Or. en

Amendment 7

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Marisa Matias

Motion for a resolution

Recital AB

Motion for a resolution

AB. whereas a number of measures proposed by the Commission are a direct follow-up of Parliament's resolutions of 16 December 2015 and 25 November 2015; whereas important initiatives included therein have thus now been put forward by

Amendment

AB. whereas a number of measures proposed by the Commission are a direct follow-up of Parliament's resolutions of 16 December 2015 and 25 November 2015; whereas important initiatives included therein have thus now been put forward by

the Commission, at least partially;

the Commission, at least partially; *whereas other critical measures called for in said resolutions are still lacking, such as, amongst others, a reform of the fiscal state aid framework, effective legal provisions for the protection of whistleblowers and measures to curb assistance to and promotion of aggressive tax planning by advisors and the financial sector;*

Or. en

Amendment 8

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Miguel Viegas, Marisa Matias

Motion for a resolution

Recital AE

Motion for a resolution

AE. whereas the work of the Special Committee was hindered to some extent by the fact that out of 7 MNCs invited, only 4 agreed on first invitation to appear before its members (see Annex 2);

Amendment

AE. whereas the work of the Special Committee was hindered to some extent by the fact that out of 7 MNCs invited, only 4 agreed on first invitation to appear before its members (see Annex 2); *whereas insufficient exchanges were held with political representatives of Member States with a view to discussing and assessing Member States' tax policies as well as political positions in Council fora dealing with tax matters, both of which having the potential to impede necessary coordination, corporation and transparency in corporate tax matters in the EU;*

Or. en

Amendment 9

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Miguel Viegas, Marisa Matias

Motion for a resolution

Recital AE a (new)

AE a. whereas, due to the continued refusal of the Commission and the Council to consent to the proposal for a regulation of the European Parliament on the detailed provisions governing the exercise of the European Parliament's right of inquiry, the European Parliament's special and inquiry committees still enjoy insufficient competencies, such as the right to summon witnesses and enforce document access, when compared to Member State parliaments and the US Congress;

Or. en

Amendment 10

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Miguel Viegas, Marisa Matias

Motion for a resolution

Paragraph 2

Motion for a resolution

2. Welcomes the Anti-tax Avoidance Package (ATAP) published by the Commission on 28 January 2016, as well as all legislative proposals and communications already undertaken afterwards; calls on the Council to reach a unanimous position on the ATAP and keep the Anti-Tax Avoidance Directive as one single directive; welcomes the initiative to create a common Union list of uncooperative jurisdictions in the External Strategy for Effective Taxation;

Amendment

2. Welcomes the Anti-tax Avoidance Package (ATAP) published by the Commission on 28 January 2016, as well as all legislative proposals and communications already undertaken afterwards; calls on the Council to reach a unanimous position on the ATAP and keep the Anti-Tax Avoidance Directive as one single directive; welcomes the initiative to create a common Union list of uncooperative jurisdictions in the External Strategy for Effective Taxation; ***reiterates its position that more and binding action is needed to effectively and systematically combat BEPS; invites the Commission to consider extending the interest limitation rule to licence fee and royalty costs and making these costs' tax deductibility contingent on the level of effective taxation of the corresponding revenue in***

the country of destination; calls on Member States to particularly agree on strong, comprehensive and enforceable CFC rules and to discard rules which are limited to somehow defined non-genuine arrangements the burden of proof for which is put on tax authorities;

Or. en

Amendment 11

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Marisa Matias

Motion for a resolution

Paragraph 3

Motion for a resolution

3. Urges the Commission to come forward with a proposal for a common corporate consolidated tax base (CCCTB) which would provide a comprehensive solution to harmful tax practices within the Union; believes that the consolidation of the CCCTB is essential and is becoming increasingly urgent; calls on the Member States to promptly reach an agreement on this and to swiftly implement it;

Amendment

3. Urges the Commission to come forward with a proposal for a common corporate consolidated tax base (CCCTB) which would provide a comprehensive solution to harmful tax practices within the Union; believes that the consolidation of the CCCTB is essential and is becoming increasingly urgent; calls on the Member States to promptly reach an agreement on this and to swiftly implement it; *recalls that without effective minimum corporate tax rate floors, a CCCTB is likely to amplify downward pressure on rates as the only remaining legal tool for Member States to offer more generous conditions to taxpayers and that this could also lead to more business relocation with ensuing negative labour market effects; further underlines that additional efforts may be needed to curb BEPS risks between EU Member States and third countries arising from the transfer pricing framework, particularly the pricing of intangibles, and that global alternatives to the current arm's length principle should be actively investigated and tested for the potential to ensure a fairer and more effective global tax system;*

Or. en

Amendment 12

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Miguel Viegas, Marisa Matias

Motion for a resolution

Paragraph 5

Motion for a resolution

5. Welcomes the agreement in Council on 8 December 2015 on automatic exchange of information on tax rulings; stresses that the *Commission* should *have full access to the new Union database of tax rulings*; insists on the need for a comprehensive and efficient database of all rulings having potential cross-border effect;

Amendment

5. Welcomes the agreement in Council on 8 December 2015 on automatic exchange of information on tax rulings; stresses that the *new Union database of tax rulings should retroactively contain all valid rulings in line with Parliament's earlier position, and that those rulings should be made public after affected corporations had the chance to request redactions of parts that constitute well-defined and actual commercial secrets*; insists on the need for a comprehensive and efficient database of all rulings having potential cross-border effect;

Or. en

Amendment 13

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Miguel Viegas, Marisa Matias

Motion for a resolution

Paragraph 6 a (new)

Motion for a resolution

Amendment

6 a. Is concerned by media reports that Member States have concluded rulings orally in order to escape their obligations under the automatic information exchange framework; emphasises that any such binding or de facto binding commitment on tax matters by a public authority shall be subject to automatic information exchange and documented in writing;

Or. en

Amendment 14

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Miguel Viegas, Marisa Matias

Motion for a resolution

Paragraph 10

Motion for a resolution

10. Strongly emphasises that the work of whistleblowers is crucial for revealing scandals of tax evasion and avoidance, and that, therefore, protection for whistleblowers needs to be legally guaranteed and strengthened EU-wide; notes that the European Court of Human Rights and the Council of Europe have undertaken work on this issue; considers that courts and Member States should ensure the protection of legitimate business secrets while in no way hindering, hampering or stifling the capacity of whistleblowers and journalists to document and reveal illegal, wrongful and harmful practices ***where this is clearly and overwhelmingly*** in the public interest; regrets that the Commission has no plans for prompt action on the matter;

Amendment

10. Strongly emphasises that the work of whistleblowers is crucial for revealing scandals of tax evasion and avoidance, and that, therefore, protection for whistleblowers needs to be legally guaranteed and strengthened EU-wide; notes that the European Court of Human Rights and the Council of Europe have undertaken work on this issue; considers that courts and Member States should ensure the protection of legitimate business secrets while in no way hindering, hampering or stifling the capacity of whistleblowers and journalists to document and reveal illegal, wrongful and harmful practices in the public interest; regrets that the Commission has no plans for prompt action on the matter ***and this despite explicit support for the Parliament's calls on this matter by Commission President Jean-Claude Juncker in the 17 September TAXE hearing;***

Or. en

Amendment 15

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Miguel Viegas, Marisa Matias

Motion for a resolution

Paragraph 13

Motion for a resolution

13. Calls on the Commission to come up as soon as possible with a common Union list of uncooperative jurisdictions (i.e. a 'blacklist of tax havens'), based on sound and objective criteria, including full implementation of OECD

Amendment

13. Calls on the Commission to come up as soon as possible with a common Union list of uncooperative jurisdictions (i.e. a 'blacklist of tax havens'), based on sound and objective criteria, including full implementation of OECD

recommendations, BEPS actions and Automatic Exchange of Information standards, and welcomes the Commission's intention to reach an agreement on such a list within the next six months; calls on the Member States to endorse that agreement by the end of 2016;

recommendations, ***tax transparency measures***, BEPS actions and ***multilateral*** Automatic Exchange of Information standards ***as well as the elements used to define 'low tax or secrecy jurisdictions' in Parliament's report on Commission proposal 2016/0011 (CNS)***, and welcomes the Commission's intention to reach an agreement on such a list within the next six months; calls on the Member States to endorse that agreement by the end of 2016 ***and on the government of the United States of America to fully implement the results of multilateral processes instead of currently used non-reciprocal standards; urges the Commission and Member States to support a global process for listing problematic jurisdiction at UN level; underlines, however, that developing countries which have not actively taken part in the BEPS process and which constitute no significant global BEPS risks by means of their tax systems should not be blacklisted on the basis of not implementing certain BEPS actions, but should equally commit to tax transparency and multilateral cooperation in tax matters;***

Or. en

Amendment 16

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Miguel Viegas, Marisa Matias

Motion for a resolution

Paragraph 14

Motion for a resolution

14. Calls for a concrete Union regulatory framework for sanctions against the blacklisted non-cooperative jurisdictions, including, but not limited to, the possibility of reviewing and, in the last resort, suspending free trade agreements and prohibiting access to Union funds; calls for the sanctions also to apply to

Amendment

14. Calls for a concrete Union regulatory framework for sanctions against the blacklisted non-cooperative jurisdictions, including, but not limited to, the possibility of reviewing and, in the last resort, suspending free trade agreements, ***imposing trade or other tariffs, in conformity with WTO-rules, at a level***

companies, banks, and accountancy and law firms, and to tax advisers proven to be involved with those jurisdictions;

equal to the damage done by foregone tax revenue and prohibiting access to Union funds; calls for the sanctions also to apply to companies, banks, and accountancy and law firms, and to tax advisers proven to be involved with those jurisdictions;

Or. en

Amendment 17

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Marisa Matias

Motion for a resolution

Paragraph 15

Motion for a resolution

15. Calls on the Member States to renegotiate their bilateral tax treaties with third countries in order to introduce anti-abuse clauses *and thus prevent* ‘treaty shopping’; stresses furthermore that this process would be expedited considerably if the Commission were mandated by Member States to negotiate such tax treaties on behalf of the Union;

Amendment

15. Calls on the Member States to renegotiate their bilateral tax treaties with third countries in order to introduce anti-abuse clauses *against* ‘treaty shopping’ *as well as the possibility of withholding taxes in cases of insufficient minimum effective taxation, a distribution of taxation rights between source and resident countries reflective of economic substance and a corresponding definition of permanent establishment*; stresses furthermore that this process would be expedited considerably if the Commission were mandated by Member States to negotiate such tax treaties on behalf of the Union;

Or. en

Amendment 18

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Miguel Viegas, Marisa Matias

Motion for a resolution

Paragraph 16

Motion for a resolution

16. Recommends introducing an EU-wide withholding tax, in order to ensure that profits generated within the Union are taxed at least once before leaving it; notes

Amendment

16. Recommends introducing an EU-wide withholding tax *by Member States*, in order to ensure that profits generated within the Union are taxed at least once

that such a proposal should include a refund system to prevent double taxation;

before leaving it; notes that such a proposal should include a refund system to prevent double taxation; ***underlines that such a general withholding tax system based on the credit method has the advantage of preventing double non-taxation and BEPS without creating instances of double taxation and without relying on a selective blacklisting approach which entails significant diplomatic challenges when thoroughly applied as confirmed by several official interlocutors during committee delegations and hearings;***

Or. en

Amendment 19

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Miguel Viegas, Marisa Matias

Motion for a resolution

Paragraph 19

Motion for a resolution

19. Calls on the Commission to put forward proposals for binding Union legislation on patent boxes that goes beyond the OECD Modified Nexus Approach, so as to prohibit the misuse of patent boxes and to ensure that if and when used they are linked to genuine economic activity;

Amendment

19. Calls on the Commission to put forward proposals for binding Union legislation on patent boxes that goes beyond the OECD Modified Nexus Approach, so as to prohibit the misuse of patent boxes and to ensure that if and when used they are linked to genuine economic activity; ***calls on Member States, given the overwhelming economic and collective action rationale against patent boxes and similar preferential regimes, to phase such regimes progressively out and replace them with less distortive measures of R&D promotion;***

Or. en

Amendment 20

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Marisa Matias

Motion for a resolution

Paragraph 20

Motion for a resolution

20. Calls on the Member States to integrate a Minimum Effective Taxation (MET) clause in the Interests and Royalties Directive and to ensure that no exemptions are granted;

Amendment

20. Calls on the Member States to integrate a Minimum Effective Taxation (MET) clause in the Interests and Royalties Directive and to ensure that no exemptions are granted; ***objects to proposals made in the Council of tying the MET clause to existing patent and knowledge boxes as those may not ensure what could be reasonably deemed MET;***

Or. en

Amendment 21

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Marisa Matias

Motion for a resolution

Paragraph 20 a (new)

Motion for a resolution

Amendment

20 a. Calls in this context for a wider review of EU legislation and the application and interpretation of the fundamental freedoms of the internal market with a view to systematically preventing instances of double non-taxation and harmful tax competition which arise as unintended consequences of the facilitation of intra-Union capital movement;

Or. en

Amendment 22

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Miguel Viegas, Marisa Matias

Motion for a resolution

Paragraph 33

Motion for a resolution

Amendment

33. Notes the continuing lack of transparency of the working methods of the Code of Conduct Group, which is

33. Notes the continuing lack of transparency ***and effectiveness*** of the working methods of the Code of Conduct

preventing any concrete potential improvement in terms of tackling harmful tax practices;

Group, which is preventing any concrete potential improvement in terms of tackling harmful tax practices;

Or. en

Amendment 23

Fabio De Masi, Sven Giegold

Motion for a resolution

Paragraph 33 a (new)

Motion for a resolution

Amendment

33 a. Stresses that from the documents made available to TAX2, it becomes clear that the self-notification of potentially harmful measures by Member States, the criteria for identifying harmful measures as well as the unanimity principle for reaching decisions on harmfulness are outdated and ineffective;

Or. en

Amendment 24

Fabio De Masi, Sven Giegold

Motion for a resolution

Paragraph 33 b (new)

Motion for a resolution

Amendment

33 b. Highlights that with regard to the success of the Code Group the Commission noted in Room Document No 1 Annex 1 of the Code of Conduct Group Meeting of April 2006 that especially in some dependent and associated territories the proposed rollback included the introduction of a 0% rate or the complete abolition of corporate income tax and thus not every part of the work of the Code Group has resulted in a consistent or satisfactory outcome; calls, therefore, on the Member States to rectify this

distortive situation;

Or. en

Amendment 25
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 33 c (new)

Motion for a resolution

Amendment

33 c. Underlines that the Commission noted in Room Document No 1 Annex 1 of the Code of Conduct Group Meeting of April 2006 that due to political compromises the Code Group has considered some rollback proposals adequate which could easily be considered as insufficient according to the principles of the Code; calls, therefore, on the Members States to re-assess systematically the compliance of rollback proposals with the Code criteria and to remedy shortcomings where needed;

Or. en

Amendment 26
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 33 d (new)

Motion for a resolution

Amendment

33 d. Notes that in the report from the Code Group to the Council of 7 June 2005 it was explicitly stated that in one case the Member State concerned had failed to implement the rollback as agreed; highlights that the Commission noted in Room Document No 1 Annex 1 of the Code of Conduct Group Meeting of April 2006 that despite this clear non-compliance the Council failed to take any action and the Member State concerned

was not politically challenged or urged to comply with the Code principles and agreements; calls, therefore, on the Member States to introduce sanctions for non-compliance with decisions of the Code Group;

Or. en

Amendment 27
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 33 e (new)

Motion for a resolution

Amendment

33 e. Stresses that, in principle, the Code of Conduct should cover all economic sectors; highlights that the Commission noted in Room Document No 1 Annex 1 of the Code of Conduct Group Meeting of April 2006 that the Code Group agreed in 1999 to leave out regimes favouring the shipping sector as well as the assessment of collective investment vehicles; calls, therefore, on the Member States to examine harmful tax measures in all economic sectors;

Or. en

Amendment 28
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 33 f (new)

Motion for a resolution

Amendment

33 f. Regrets that several Member States refused to disclose their views on the future of the Code Group in Room Document No 1 Annex 1 of the Code of Conduct Group Meeting of April 2006 as regards transparency, mandate, scope and criteria of future work; notes that

Hungary and Lithuania expressed reservations against amendments to the Code criteria; notes that Ireland and Poland opposed any extension of the scope of the Code on other areas of taxation;

Or. en

Amendment 29
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 33 g (new)

Motion for a resolution

Amendment

33 g. Highlights that in Room Document No 2 of the Code of Conduct Group Meeting of 11 April 2011 the Commission made several proposals for new areas of work such as expanding the work on mismatches, taxation of expatriates, taxation of wealthy individuals, review of REIT's and collective investment vehicles; notes that according to the minutes of the Code of Conduct Group Meeting of 11 April 2011, the Netherlands and Luxembourg opposed expanding the work on mismatches, France expressed reserves against work on expats, wealthy individuals and investment funds, the United Kingdom supported a focus on business tax rather than an extension;

Or. en

Amendment 30
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 33 h (new)

Motion for a resolution

Amendment

33 h. *Stresses that according to Room Document No 5 of the Code of Conduct Group Meeting of 7 April 2015, the Commission noted that recent work of the Code Group including that on patent boxes has highlighted limitations in the scope of the Code and weaknesses in the mandate of the Code Group and underlined that tackling complex challenges to fair taxation and safeguarding tax transparency requires more decisive action by the Code Group, and more rigorous monitoring to ensure that Member States respect their commitments;*

Or. en

Amendment 31

Fabio De Masi, Sven Giegold

Motion for a resolution

Paragraph 33 i (new)

Motion for a resolution

Amendment

33 i. *Underlines in this respect that several potentially harmful tax regimes have been under discussion for extremely long periods of time in the Code Group without material results as to their rollback and that several such files still remain undecided to date, for instance as regards significant elements of Gibraltar's tax code which has been under discussion since at least 11 April 2011 and is still not concluded; notes further that when comparing the Commission list of all tax regimes formally assessed by the Code Group with the respective meeting documents at the point of decision and thereafter, it is firstly in many cases unclear how a decision has been reached, e.g. why regimes for which there were*

grounds to suppose that they would be harmful were declared non-harmful in the end, and also, secondly, concerning those cases where attested harmfulness was the outcome of the assessment, whether the ensuing rollback procedures have been concluded satisfactorily by Member States; one among many examples in this category is the Isle of Man's retail tax scheme which was not judged harmful according to the 8 November 2013 meeting minutes despite serious doubts of its non-harmfulness expressed by several Member States;

Or. en

Amendment 32
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 33 j (new)

Motion for a resolution

Amendment

33 j. *Highlights that according to Room Document No 5 of the Code of Conduct Group Meeting of 7 April 2015 the Commission made clear proposals to increase the effectiveness of the Code Group, in particular by (a) replacing the "broad consensus" for decision making through a formal majority voting system, (b) amending the Code criteria to include measures which provide for a level of taxation below a particular effective rate, (c) amending the Code's mandate to commit Member States to effectively implement and monitor agreed rollback and standstill, (d) extending the geographical scope of the Code by systematically reviewing third country regimes beyond Member States' dependent and associated territories as well as Switzerland and Liechtenstein;*

Or. en

Amendment 33
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 34

Motion for a resolution

34. ***Urges the*** Member States to reform, as soon as possible, the criteria and governance ***aspects*** of the Code of Conduct Group, in order to increase its transparency and accountability and ensure the strong involvement of Parliament;

Amendment

34. ***Deplores that, despite widely acknowledged failures and shortcomings of the Code Group, Member States were not able to agree on urgently needed reforms of the Code Group at the ECOFIN in March 2016 and postponed any decision on reforms to 2017; urges, therefore,*** Member States to reform, as soon as possible, the criteria and governance of the Code of Conduct Group ***including its decision-making procedure,*** in order to increase its ***effectiveness,*** transparency and accountability and ensure the strong involvement of Parliament;

Or. en

Amendment 34
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 35 a (new)

Motion for a resolution

35 a. ***Notes further that from the documents retrieved a pattern of systematic obstruction by some Member States in achieving material progress on fighting tax avoidance becomes clear; highlights that those documents show that political obstruction by Member States prevented in particular progress on harmful tax practices in the areas of patent boxes, inbound and outbound profit transfers, hybrid mismatches including profit participating loan agreements, the role of investment funds, administrative practices in particular tax***

Amendment

rulings, and minimum effective taxation clauses;

Or. en

Amendment 35
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 35 b (new)

Motion for a resolution

Amendment

35 b. Stresses, with respect to the above-mentioned categories and the documents retrieved by TAX2 in particular the following instances and observations; underlines however that the following list remains non-exhaustive due in particular to the unwillingness of Member States and the Commission to grant full transparency on the workings of the Code Group by making a large number of documents, including the most recent and most politically relevant, only available in a restricted reading room and hence precluding their content from any public debate and assessment such as in this report;

Or. en

Amendment 36
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 35 c (new)

Motion for a resolution

Amendment

35 c. As regards patent boxes, notes that the Netherlands, Luxembourg and, to a lesser extent, Belgium have opposed an encompassing assessment of all EU patent box regimes despite grounds to suppose the harmfulness of existing regimes against the Code criteria, as evidenced by

the meeting minutes from 29 May, 22 October and 20 November 2013; regrets that Spain, the Netherlands, Luxembourg and the United Kingdom have further delayed the process of reforming patent box regimes by repeatedly introducing additional demands in the decision-making progress as evidenced, inter alia, by the meeting minutes from 3 June 2014; regrets, further, that despite commitments to fully adapt national legal provisions by 30 June 2016, very limited progress has been made by Member States in implementing into national law the modified nexus approach agreed by Ministers already in December 2014 and that some countries, such as Italy, have even introduced new patent box measures, incompatible with the modified nexus approach, after agreement on the latter was found, in order to benefit from the overly generous grandfathering provisions until 2021;

Or. en

Amendment 37
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 35 d (new)

Motion for a resolution

Amendment

35 d. As regards inbound profit transfers, welcomes the inclusion of provisions against inbound profit transfer abuse in the anti-tax avoidance directive (ATAD), as well as the guidance agreed upon by the Code of Conduct on the matter in November 2010; notes however that since the adoption of the guidance no tangible changes to Member States' frameworks have been produced, thus underlining the limitations of the Code Group's soft law approach, and regrets that for instance in room document 3 of

the September 2013 Code meeting not a single Member State expressed support for a politically binding agreement on the matter while, during the elaboration phase of the agreed guidance, in particular the United Kingdom opposed any coordinated approach, as evidenced by the 25 May 2010 meeting minutes and re-iterated in room document 3 of 17 October 2012;

Or. en

Amendment 38
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 35 e (new)

Motion for a resolution

Amendment

35 e. As regards outbound profit transfers, re-iterates the particular pertinence of coordinated measures against untaxed profit outflows into zero or low tax third countries in a common market which grants privileges such as exemptions from withholding taxes for financial flows circulating inside the market; strongly deplores that Member States have not taken any serious initiative to remedy this problem as evidenced by the outright failure to agree on any follow-up to the work of the anti-abuse sub group at the 25 May 2010 Code meeting and by the complete lack of provisions regarding outbound payments in the anti-tax avoidance directive (ATAD); is concerned that this is due to pressure by specific Member States as exemplified by the statements of Belgium and the Netherlands at the 15 May 2009 meeting according to which they object to any initiative aimed at coordinating defence measures against untaxed outbound profit transfers;

Or. en

Amendment 39
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 35 f (new)

Motion for a resolution

Amendment

35 f. As regards hybrid mismatches, welcomes the inclusion of provisions against hybrid mismatch abuse in the anti-tax avoidance directive (ATAD), as well as the outcomes in terms of guidance agreed upon by the Code of Conduct Sub-Group in September 2014 as well as April and July 2015, but notes at the same time that repeated and systematic initiatives by certain Member States prevented a much earlier agreement on these harmful practices, which have been under active debate in the Code Group since at least 2008, thereby significantly increasing the on-going fiscal damage created by the recurrent use of those schemes for aggressive tax planning purposes; regrets that in particular the Netherlands, Luxembourg and Belgium, as well as Malta and Estonia to a lesser extent, have for long delayed swift collective action by asserting that hybrids should not dealt with under the Code at all, as evidenced by meeting minutes of 15 May and 29 June 2009 as well as 25 May 2010, and minutes of the anti-abuse sub group of 25 March and 22 April 2010;

Or. en

Amendment 40
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 35 g (new)

Motion for a resolution

Amendment

35 g. *As regards investment funds, is concerned that work streams in the Code of Conduct Group on the role of various types of funds in harmful tax practices have come to a halt since September 2011, where Member States agreed to discontinue the discussion about these schemes' alleged and potential harmfulness, as evidenced by the 13 September meeting minutes; regrets the initiatives taken by the United Kingdom, Luxembourg and the Netherlands during the Code meetings of 11 April and 26 May 2011 which effectively pushed the group to not pursue this field of action further;*

Or. en

Amendment 41

Fabio De Masi, Sven Giegold

Motion for a resolution

Paragraph 35 h (new)

Motion for a resolution

Amendment

35 h. *As regards administrative practices, notes the failure of Member States to exchange information on rulings as reported in the publicly available Annex of Room Document No. 2 of the Code of Conduct Group Meeting of 4 March 2010 according to which no Member State had spontaneously and systematically exchanged information about its rulings in the past; notes that another monitoring exercise of the Code of Conduct Group reported in the publicly available Room Document No 4 of the Code of Conduct Group Meeting of 10 September 2012 showed that in practice no information on rulings had been exchanged on a spontaneous basis; highlights that, therefore, Member States*

did not comply with the obligations set out in Council Directives 77/799/EEC and 2011/16/EU since they did not spontaneously exchange tax information, even in cases where there were clear grounds, despite the margin of discretion left by those directives, for expecting that there may be tax losses in other Member States, or that tax savings may result from artificial transfers of profits within groups; stresses that the Commission did not fulfil its role of guardian of the Treaties, as established in Article 17(1) TEU, by not acting in this matter and taking all necessary steps to ensure that they comply with their obligations, in particular those set out in Council Directives 77/799/EEC and 2011/16/EU, despite evidence to the contrary;

Or. en

Amendment 42
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 35 i (new)

Motion for a resolution

Amendment

35 i. As regards minimum effective taxation clauses, regrets the failure of Member States to agree, since the release of the respective Commission proposal in 2011, on a revision of the Interest and Royalties Directive ensuring that privileges granted in the single market with the aim of preventing double taxation do not in reality lead to zero or almost zero taxation; is concerned that following several Member States' interventions the December 2015 ECOFIN conclusions do not go beyond inviting the High Level Working Party on Tax Questions (HLWP) to look into the matter further, instead of committing to

prompt and effective action;

Or. en

Amendment 43

Fabio De Masi, Sven Giegold

Motion for a resolution

Paragraph 35 j (new)

Motion for a resolution

Amendment

35 j. Concludes that, based on this non-exhaustive list of instances evidenced by the documents made available to TAX2, Member States violated their obligation for sincere cooperation enshrined in Article 4(3) of the Treaty on European Union and that the Commission was aware of the non-compliance of certain Member States with the principle of sincere cooperation; stresses that the violation of Union law by Member States as well as non-action of the Commission against the violation of Union law by Member States need a follow-up;

Or. en

Amendment 44

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Miguel Viegas, Marisa Matias

Motion for a resolution

Paragraph 35 k (new)

Motion for a resolution

Amendment

35 k. Stresses that political office holders which bear responsibility for breaches of community law as detailed in the TAXE 1 report or for the obstruction of progress against harmful tax practices as evidenced by the Code of Conduct Group documents should take full responsibility for their conduct including considering resignation from their office where appropriate in order to restore trust

Amendment 45

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Miguel Viegas, Marisa Matias

Motion for a resolution

Paragraph 40

Motion for a resolution

40. Calls on the Union, the G20, the OECD and the UN to cooperate further to promote global guidelines that will also be beneficial to developing countries;

Amendment

40. Calls on the Union, the G20, the OECD and the UN to cooperate further to promote global guidelines that will also be beneficial to developing countries;
reiterates its conclusions from report 2015/2058(INI) that the UN Committee of Experts on International Cooperation in Tax Matters shall be transformed into a genuine intergovernmental body equipped with additional resources, and centralising efforts aimed at reforming the global tax system, ensuring that developing countries can participate equally in the global reform of existing international tax rules;

Amendment 46

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Miguel Viegas, Marisa Matias

Motion for a resolution

Paragraph 44

Motion for a resolution

44. Calls for the establishment of a Union register of beneficial ownership, which would form the basis of a global initiative in this regard; stresses the vital role of institutions such as the OECD and the UN in this connection;

Amendment

44. Calls for the establishment of a **public** Union register of beneficial ownership, **accessible in an open data format**, which would form the basis of a global initiative in this regard; stresses the vital role of institutions such as the OECD and the UN in this connection;

Amendment 47

Fabio De Masi, Rina Ronja Kari, Paloma López Bermejo, Miguel Viegas, Marisa Matias

Motion for a resolution

Paragraph 46

Motion for a resolution

46. Stresses the need for a comprehensive *EU/US* approach on the implementation of OECD standards and on beneficial ownership; stresses furthermore that good governance clauses and the full BEPS action plan should be included *in the Transatlantic Trade Investment Partnership (TTIP)* in order to ensure a level playing field, create more value for society as a whole and combat tax fraud and avoidance;

Amendment

46. Stresses the need for a comprehensive *international* approach on the implementation of OECD standards and on beneficial ownership; stresses furthermore that good governance clauses and the full BEPS action plan should be included *all relevant economic international agreements* in order to ensure a level playing field, create more value for society as a whole and combat tax fraud and avoidance;

Or. en