Reforming the EU policy on harmful tax practices (including the reform of the Code of Conduct Group)

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The Committee on Economic and Monetary Affairs adopted an own-initiative report by Aurore Lalucq (S&D, FR) on reforming the EU policy on harmful tax practices (including the reform of the Code of Conduct Group).

The conservative estimates by the OECD on **Base Erosion and Profit Shifting (BEPS) which costs around 4-10 % of global corporate income tax revenues**, or EUR 84-202 billion annually. Parliament's estimates of corporate tax avoidance range from EUR 160 to 190 billion when both BEPS and other tax regimes are considered.

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. The report underlined that tax fraud and tax evasion result in an unacceptable loss of important revenues for Member States, which are currently needed to cope with the devastating consequences of the pandemic.

Current EU action to tackle harmful tax practices

The report welcomed the important work being done at EU and international level to strengthen the principles of tax transparency, the fight against harmful tax competition and to ensure that measures to combat harmful tax practices are respected. Members welcomed the inter-institutional agreement reached on the directive amending Directive 2013/34/EU as regards the disclosure of information by certain businesses and branches regarding profits tax (country-by-country returns). They hope that the Council will quickly adopt its position at first reading.

Members welcomed the fact that, since 1997, the **Code of Conduct** for business taxation is the EU's main instrument for preventing harmful tax competition. A Forum on Harmful Tax Practices was also established within the OECD in 1998 to monitor and review tax practices, with a particular focus on the characteristics of preferential tax regimes.

The European Commission recognised that the nature and forms of tax competition have changed considerably over the last two decades and that the Code of Conduct has not evolved to meet the new challenges.

Recommendations for future EU work on harmful tax practices

The OECD has recently resumed negotiations on BEPS 2.0, which is structured around two pillars.

Pillar I aims to adapt the international income tax system to the new business models that have emerged in the digital economy by changing the nexus and profit allocation rules applicable to corporate profits.

Pillar II focuses on a global minimum tax to address unresolved BEPS issues. It aims to ensure that multinational companies pay a minimum amount of tax regardless of where they are headquartered or in which country they operate.

Members noted 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 more than 130 countries. They share the G7's commitment to a global minimum tax of at least 15 % on a country-by-country basis as a basis for further negotiations.

The report pointed out that the Commission is committed to proposing a similar solution to Pillar II on minimum effective taxation, whether or not an agreement is reached at the OECD inclusive framework level. In this context, Members welcomed the Commission's recognition that consideration should be given to **introducing a minimum global taxation standard in the Code of Conduct** in the future, regardless of whether a global consensus is reached, to ensure that all businesses pay their fair tax when making profits in the single market. They stressed the need to tax multinational companies based on a fair and effective formula for the allocation of taxing rights between Member States.

Reform of the Code of Conduct on business taxation

The report recognised that the peer review of national tax regimes conducted within the framework of the Code of Conduct has had an impact on reducing harmful tax competition and has led to a consequential decrease in preferential tax regimes within the EU. Nevertheless, it called on the Council to **continue reforming the scope of the current mandate**.

Deploring the non-binding nature of the Code of Conduct, Members called for a revision of the criteria, governance and scope of the Code of Conduct by means of a legally binding instrument based on the current intergovernmental arrangements and including a **more efficient decision-making procedure**. This review should be carried out through a democratic, transparent and accountable process and involve an expert group composed of experts from civil society, the Commission and the Parliament.

According to the report, the reform of the Code of Conduct criteria should include, first and foremost, an **effective tax rate criterion** in line with the internationally agreed minimum effective tax rate under Pillar 2 of the OECD/G20 inclusive framework on BEPS, as well as robust and progressive economic substance requirements while allowing for fair competition.

Members called on the Commission and Member States to consider developing a '**Framework on Aggressive Tax Arrangements and Low Rates**' (FATAL) along the following lines, and which would replace the current CoC.