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

2020/2258(INI) - 07/10/2021 - Text adopted by Parliament, single reading

The European Parliament adopted by 506 votes to 81, with 99 abstentions, a resolution on reforming the EU policy on harmful tax practices (including the reform of the Code of Conduct Group).

Combating tax evasion

Anti-tax avoidance policies have led to a decline in preferential tax regimes worldwide, in particular in the EU. However, **new forms of harmful tax practices have emerged**, notably through the transformation of preferential regimes into aggressive general regimes. Some studies show that the effective tax level of large multinationals is lower than that of domestic SMEs.

The **Council's Code of Conduct Group on Business Taxation** has been effective in discouraging preferential tax regimes. However, it has not succeeded in eradicating unfair tax arrangements granted by some Member States to large companies, such as harmful advance pricing agreements (tax rulings), and the resulting unfair competitive advantages.

Current EU measures to combat harmful tax practices

Members stressed that the proliferation of tax scandals over the last decade (Lux Leaks, Panama Papers, Paradise Papers, etc.) involving multinationals has revealed the scale and seriousness of harmful tax practices and the urgency of finding definitive solutions to address them.

Tax evasion and tax avoidance result in an **unacceptable loss of important revenues** for Member States, which are currently needed to cope with the devastating consequences of the pandemic. According to OECD estimates, base erosion and profit shifting (BEPS) costs 4-10% of global corporate tax revenues, or EUR 84-202 billion per year.

Parliament welcomed 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.

While tax competition between countries is not in itself problematic, Members consider that common principles should be applied to the extent to **which countries can use their tax systems to attract business and profits**. However, the nature and forms of tax competition have changed considerably over the last two decades and the Code of Conduct has not evolved to meet the new challenges.

Recommendations for future EU work on harmful tax practices

Parliament welcomed 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.

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.

Parliament called for the adoption of a **definition of 'minimum level of economic substance'** compatible with the OECD global standard, preferably based on a formulaic approach, which would evolve progressively as reported income increases. It proposed that such a criterion could be used to assess whether a tax regime is potentially harmful.

The Commission is asked to develop **guidelines** on how to design fair and transparent tax incentives that are less likely to distort the single market, ensure fair competition and promote job creation.

Members welcomed the Commission's recognition that consideration should be given to introducing a **global minimum tax standard** in the Code of Conduct in the future, regardless of whether a global consensus is reached, to ensure that all companies pay a fair tax when making profits in the single market.

Reform of the Code of Conduct on business taxation

Members believe that the current criteria of the Code of Conduct defining harmful tax practices are **partly outdated** as they focus on preferential regimes. The effectiveness of the Code of Conduct should therefore be improved in the light of recent tax scandals and the current challenges of globalisation, digitalisation and the growing importance of intangible assets.

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 resolution, 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 Code of Conduct.