Basic information

2020/2258(INI) INI - Own-initiative procedure	Procedure completed
Reforming the EU policy on harmful tax practices (including the reform of the Code of Conduct Group) **Subject** 2.70 Taxation	

Key players

European Parliament	**Committee responsible**	**Rapporteur**	**Appointed**
	ECON Economic and Monetary Affairs	LALUCQ Aurore (S&D)	28/10/2020
		Shadow rapporteur DORFMANN Herbert (EPP) BOYER Gilles (Renew) URTASUN Ernest (Greens/EFA) JURZYCA Eugen (ECR) BECK Gunnar (ID)	
European Commission	**Commission DG**	**Commissioner**	
	Taxation and Customs Union	GENTILONI Paolo	

Key events

Date	Event	Reference	Summary
17/12/2020	Committee referral announced in Parliament		
13/07/2021	Vote in committee		
21/07/2021	Committee report tabled for plenary	A9-0245/2021	Summary
06/10/2021	Debate in Parliament		
07/10/2021	Decision by Parliament	T9-0416/2021	Summary

Technical information

Procedure reference	2020/2258(INI)

Procedure type	INI - Own-initiative procedure
Procedure subtype	Initiative
Legal basis	Rules of Procedure EP 55
Stage reached in procedure	Procedure completed
Committee dossier	ECON/9/04850

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE662.095	27/04/2021	
Amendments tabled in committee		PE693.613	02/06/2021	
Committee report tabled for plenary, single reading		A9-0245/2021	21/07/2021	Summary
Text adopted by Parliament, single reading		T9-0416/2021	07/10/2021	Summary

European Commission

Document type	Reference	Date	Summary
Commission response to text adopted in plenary	SP(2021)735	02/02/2022	

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

2020/2258(INI) - 21/07/2021 - Committee report tabled for plenary, single reading

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.

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.