Procedure file

Basic information

INI - Own-initiative procedure	2009/2174(INI)	Procedure completed
Promoting good governance in tax matters Subject 2.70 Taxation 3.45.04 Company taxation		

Key players

European Parliament	Committee responsible	Rapporteur	Appointed
	ECON Economic and Monetary Affairs		21/07/2009
		S&D DOMENICI Leonardo	

Key events

28/04/2009	Non-legislative basic document published	COM(2009)0201	Summary
11/11/2009	Committee referral announced in Parliament		
27/01/2010	Vote in committee		Summary
02/02/2010	Committee report tabled for plenary	A7-0007/2010	
08/02/2010	Debate in Parliament		
10/02/2010	Results of vote in Parliament		
10/02/2010	Decision by Parliament	T7-0020/2010	Summary
10/02/2010	End of procedure in Parliament		

Technical information

Procedure reference	2009/2174(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Initiative
Legal basis	Rules of Procedure EP 54
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/00989

Documentation gateway

Non-legislative basic document		COM(2009)0201	28/04/2009	EC	Summary
Committee draft report		PE430.374	21/10/2009	EP	
Amendments tabled in committee		PE430.689	17/11/2009	EP	
Committee report tabled for plenary, single reading		A7-0007/2010	02/02/2010	EP	
Text adopted by Parliament, single reading		T7-0020/2010	10/02/2010	EP	Summary
Commission response to text adopted in plenary		SP(2010)2011	02/06/2010	EC	

Promoting good governance in tax matters

PURPOSE: to encourage good governance in tax matters.

BACKGROUND: with the financial crisis, the need for national governments to safeguard their tax revenues is more acute than ever. The need to promote international tax cooperation and common standards has now become a regular item on the agenda of discussions, both within the EU and in international fora. Most recently, the G20 Leaders agreed at their summit in London (April 2, 2009), "to take action against non-cooperative jurisdictions, including tax havens". According to an OECD estimate at the end of 2008, the world's tax havens have attracted between $5 trillion and $7 trillionin assets, although the degree of secrecy surrounding these accounts makes it difficult to determine exactly just how much is located in these individual jurisdictions. With national budgets and, therefore, social and other policies under severe strain this is an extremely serious problem.

In the run-up to the G20 meeting, many jurisdictions reacted by indicating their willingness to apply international standards of transparency and information exchange from now on.

Accordingly, the EU and its partners have a strong common interest at this time in promoting tax cooperation and common standards on as wide a geographical basis as possible. The time is now right for Member States and third countries to work together and to encourage and support the move that has now started towards a broader acceptance of international standards of tax co-operation.

This Communication aims to identify the particular EU contribution to good governance in the area of direct taxation. It considers:

- how good governance could be improved within the EU,
- the particular tools that the European Community and EU Member States may have at their disposal to promote good governance internationally, and
- the scope for more co-ordinated action by EU Member States, so as to support, streamline and complement international action taken in other fora such as the OECD and the UN.

CONTENT: this Communication presents for consideration a series of steps to promote good governance in the tax area, entailing action both within and outside the EU and both at EU and at individual Member State levels.

1) Improve good governance within the EU: the Commission calls on the Council to adopt as soon as possible the following Commission proposals:

- a proposal to replace the current Mutual Assistance Directive. The proposal would introduce two important new elements that the Commission considers indispensable to reinforce EU action at international level against tax fraud and evasion: (i) it would introduce a most favoured nation clause whereby Member States would be obliged to provide to another Member State the level of cooperation that they have accepted in relation to a third country; (ii) the proposal would prohibit Member States from invoking bank secrecy for non residents as a reason for refusing to supply information concerning a taxpayer to his or her Member State of residence;
- another proposal to replace the existing Directive on recovery of tax claims. It aims to increase the efficiency of assistance so as to enhance tax administrations' capacity to recover unpaid taxes, and thus contribute to the fight against tax fraud;
- a proposal to amend the Savings Directive: there is a need to extend the scope of the Directive to intermediate tax-exempted structures (trust, foundations?) and to income equivalent to interest obtained through investments in some innovative financial products;
- to eliminate harmful business tax measures under the Code of Conduct for Business Taxation.

2) Promote good governance in the relations with third countries: the Commission proposes to improve the particular tools that the European Community and EU Member States may have at their disposal to promote good governance internationally. A few of the concrete measures are as follows:

- improve the negotiating of provisions on good governance in the tax area with third countries within general agreements;
- in this context, invite the Council to give the appropriate political priority to the mandate given to the Commission to include good governance principles in relevant EU agreements with third countries;
- conclude specific agreements in the tax area containing, if appropriate, provisions on transparency and exchange of information for tax purposes at EU level;
- promote more cooperation with third countries in the framework of the Savings Tax Directive;
- as regards the Code of Conduct for Business Taxation, a coherent policy of coordinated action toward third countries engaging in harmful business tax practices should be put in place, such as by adopting a common approach to the application of anti-abuse measures;
- improve efforts at EU level to promote good governance in the tax area in third countries eligible for development aid should be enhanced by the following actions: (i) monitoring, under the Mid-Term Reviews (MTR) of aid programmes, the state of play of good governance, so as to be able to take appropriate measures when relevant; (ii) reallocation of funds towards countries that are implementing satisfactorily their commitments; and, conversely, considering a cancellation of funds earmarked for those countries that

did not implement their commitments; (iii) provision of the necessary technical assistance to help countries to meet their commitments on good governance in the tax area;

- consider the feasibility of introducing an additional criterion in the eligibility evaluation for the allocation of funds under the current external instruments of the Community that would be linked to the application by third countries of the principles of good governance in the tax area;
- discuss with Member States possible counter-measures towards non cooperative jurisdictions in the tax area (the OECD Secretariat has suggested a list of measures. These will need to be examined together with the Member States);
- examine the extent of coherence between the principles of good governance in the tax area and Member States' own tax policies, including bilateral tax treaties with third countries;
- improve coordination of EU Member States' positions in discussions at the OECD, G20 and UN on international good governance in the tax area is necessary to ensure greater leverage in dealings with non-cooperative countries.

The Commission intends to pursue constructive dialogue with all stakeholders concerned in connection with the principles and practical implementation of the measures identified in this Communication, and it will review and report on the situation in 2010.

The Commission believes that the momentum that has been generated by the G20 Leaders in pushing forward international tax cooperation needs to be maintained and declares that it is ready to assist the Member States in taking forward the appropriate instructions in the context of the policy on good governance in the tax area. It invites the Council to adopt these policy orientations and take action to ensure their swift implementation.

Promoting good governance in tax matters

The Committee on Economic and Monetary Affairs adopted the report drawn up by Leonardo DOMENICI (S&D, IT) on promoting good governance in tax matters.

The report strongly condemns the role played by tax havens in encouraging and profiteering from tax avoidance, tax evasion and capital flight. The European Union is called upon to step up its action and to take immediate concrete measures ? such as sanctions ? against tax havens, tax evasion and illicit capital flight.

Members recall the importance of putting an end to the use of artificial legal persons as a way to avoid taxation. They stress also that instead of bank secrecy, automatic information exchange should take place in all circumstances, including in all the Member States and dependent territories.

At EU level,the report recalls that Parliament delivered its position to the Council on amendments to Directive 2003/48/EC, asking, in particular: (i) that it end the temporary derogation that allows Austria, Belgium and Luxembourg to avoid exchanging information by applying a withholding tax; (ii) that the scope of Directive 2003/48/EC be extended substantially in particular to cover legal entities (especially private companies and trusts) and various forms of investment income. Members also call for the provisions of Directive 2003/48/EC to be extended to Singapore, Hong Kong, Macao and other jurisdictions such as Dubai, New Zealand, Ghana and certain states of the United States, which are not bound by the Directive 2003/48/EC and are therefore a favoured location for tax evaders.

The report welcomes as a first step, in relation to EU savings taxation, the withdrawal by Austria, Belgium, Luxembourg and Switzerland of their reservations to Article 26 of the OECD Model Tax Convention, and the endorsement of the OECD standards by Andorra, Monaco, Liechtenstein and San Marino; welcomes Belgium?s decision to switch from a system of withholding tax to one of automatic exchange of information from 1 January 2010.

Members consider that the marketing in the EU of alternative funds domiciled in a third country must be conditional on that third country complying with good tax governance standards. They emphasise that more efficient implementation of existing EU and national tax legislation would facilitate better recovery of taxes. It urges the Council to adopt the new directive on administrative cooperation in the field of taxation and to fight fraud in the area of VAT, taking due account of Parliament?s position.

At international level, the committee urges all parties concerned to accelerate the conclusion of the anti-fraud agreement with Liechtenstein. It urges the Council to agree on a mandate for the Commission to negotiate similar agreements with Andorra, Monaco, San Marino and Switzerland. It calls, in this respect, on the Member States to review their bilateral tax agreements with third countries.

Members call for increased cooperation, such as the automatic exchange of information between countries, with a view to facilitating the recovery of capital moved abroad via illegal activity to the detriment of the internal market.

The OECD and its Member States are invited to involve the Commission fully in the Global Forum peer review exercise, in particular as regards the identification of non-cooperative jurisdictions, the development of a process for evaluating compliance and the implementation of dissuasive counter-measures to promote adherence to the standards in question.

Furthermore, Members consider that the OECD framework for combating tax havens is unsatisfactory. They regret, in this context, that the exchange of information takes place only on request rather than being a compulsory and binding requirement, and, furthermore, that the OECD allows governments to escape its blacklist merely by promising to comply with the information exchange principles, without ensuring that those principles are actually put into practice.

Members consider that there is a need for consistency and for a genuine EU policy of good tax governance. They believe that the European Union?s credibility depends, inter alia, on its willingness to clamp down on tax havens on its own territory first as an example of good governance.

The Commission is invited to estimate the number of cross-border tax claims by the Member States to be recovered within the territory of the European Union and to introduce quantifiable indicators for measuring progress in cross-border recovery over time. The report recommends setting up an appropriate incentive system for the recovery of cross-border tax claims in order to increase the current low recovery rate of 5%.

Members consider that the EU should actively promote the improvement of the OECD standards, with the aim of making the automatic, multilateral exchange of information the global standard. It urges the EU to:

- adopt measures that prevent abuse of the ?residence principle? through artificial domicile and ownership schemes allowing holding

companies with no activity or shell companies to shield beneficial owners from paying taxes in their country of domicile;

- adopt a common approach to the application of anti-abuse measures, which should be effective, fair and aligned with the concept of wholly artificial arrangements as established by the Court of Justice;
- implement a consistent approach to good tax governance in the context of the European Neighbourhood Policy, the enlargement policy and the development cooperation policy.

The report stresses the need to revise current international accounting standards with the aim of increasing transparency. It emphasises the need for the Member States to coordinate their policies in order to enhance the implementation of anti-avoidance rules. It recalls that the introduction of a common corporate consolidated tax base would help to tackle ? within the EU ? double taxation and transfer price issues within consolidated groups.

The EU should also:

- examine a range of options for sanctions and incentives to promote good tax governance, such as a special levy on movements to or from non-cooperative jurisdictions, non-recognition within the EU of the legal status of companies set up in non-cooperative jurisdictions and a prohibition on EU financial institutions establishing or maintaining subsidiaries and branches in non-cooperative jurisdictions;
- ensure consistency in the implementation at EU and international level of standards in the areas of prudential supervision, taxation and money laundering and counterterrorism.

Members ask the Commission to report to Parliament annually on the implementation of the EU tax governance policy, starting in October 2010.

Promoting good governance in tax matters

The European Parliament adopted by 554 votes to 46, with 71 abstentions, a resolution on promoting good governance in tax matters.

Members consider good tax governance ? understood to mean transparency, exchange of information at all levels, effective cross-border cooperation and fair tax competition ? to be a key element in rebuilding the global economy after the 2008 financial collapse.

Against this background, Parliament strongly condemns the role played by tax havens in encouraging and profiteering from tax avoidance, tax evasion and capital flight. The European Union is called upon to step up its action and to take immediate concrete measures ? such as sanctions ? against tax havens, tax evasion and illicit capital flight.

Members recall the importance of putting an end to the use of artificial legal persons as a way to avoid taxation. They stress also that instead of bank secrecy, automatic information exchange should take place in all circumstances, including in all the Member States and dependent territories. They welcome in this respect the Commission's proposal on administrative cooperation in the field of taxation because, inter alia, it extends cooperation between the Member States to cover taxes of any kind, abolishes bank secrecy and establishes the automatic exchange of information as a general rule.

1) At EU level, the resolution recalls that Parliament delivered its position to the Council on amendments to Directive 2003/48/EC, asking, in particular: (i) that it end the temporary derogation that allows Austria, Belgium and Luxembourg to avoid exchanging information by applying a withholding tax; (ii) that the scope of Directive 2003/48/EC be extended substantially in particular to cover legal entities (especially private companies and trusts) and various forms of investment income.

Members also call for the provisions of Directive 2003/48/EC to be extended to Singapore, Hong Kong, Macao and other jurisdictions such as Dubai, New Zealand, Ghana and certain states of the United States, which are not bound by the Directive 2003/48/EC and are therefore a favoured location for tax evaders.

Parliament welcomes as a first step, in relation to EU savings taxation, the withdrawal by Austria, Belgium, Luxembourg and Switzerland of their reservations to Article 26 of the OECD Model Tax Convention, and the endorsement of the OECD standards by Andorra, Monaco, Liechtenstein and San Marino. It welcomes Belgium?s decision to switch from a system of withholding tax to one of automatic exchange of information from 1 January 2010.

Members consider that the marketing in the EU of alternative funds domiciled in a third country must be conditional on that third country complying with good tax governance standards. They emphasise that more efficient implementation of existing EU and national tax legislation would facilitate better recovery of taxes. It urges the Council to adopt the new directive on administrative cooperation in the field of taxation and to fight fraud in the area of VAT, taking due account of Parliament?s position.

2) At international level, the Parliament urges all parties concerned to accelerate the conclusion of the anti-fraud agreement with Liechtenstein. It urges the Council to agree on a mandate for the Commission to negotiate similar agreements with Andorra, Monaco, San Marino and Switzerland. It calls, in this respect, on the Member States to review their bilateral tax agreements with third countries.

Members call for increased cooperation, such as the automatic exchange of information between countries, with a view to facilitating the recovery of capital moved abroad via illegal activity to the detriment of the internal market.

The OECD and its Member States are invited to involve the Commission fully in the Global Forum peer review exercise, in particular as regards the identification of non-cooperative jurisdictions, the development of a process for evaluating compliance and the implementation of dissuasive counter-measures to promote adherence to the standards in question.

Furthermore, Parliament considers that the OECD framework for combating tax havens is unsatisfactory. It regrets, in this context, that the exchange of information takes place only on request rather than being a compulsory and binding requirement, and, furthermore, that the OECD allows governments to escape its blacklist merely by promising to comply with the information exchange principles, without ensuring that those principles are actually put into practice.

Parliament considers that there is a need for consistency and for a genuine EU policy of good tax governance. It believes that the European Union?s credibility depends, inter alia, on its willingness to clamp down on tax havens on its own territory first as an example of good

governance.

The Commission is invited to estimate the number of cross-border tax claims by the Member States to be recovered within the territory of the European Union and to introduce quantifiable indicators for measuring progress in cross-border recovery over time. The resolution recommends setting up an appropriate incentive system for the recovery of cross-border tax claims in order to increase the current low recovery rate of 5%.

Parliament considers that the EU should actively promote the improvement of the OECD standards, with the aim of making the automatic, multilateral exchange of information the global standard. It urges the EU to:

- adopt measures that prevent abuse of the ?residence principle? through artificial domicile and ownership schemes allowing holding companies with no activity or shell companies to shield beneficial owners from paying taxes in their country of domicile;
- adopt a common approach to the application of anti-abuse measures, which should be effective, fair and aligned with the concept of wholly artificial arrangements as established by the Court of Justice;
- implement a consistent approach to good tax governance in the context of the European Neighbourhood Policy, the enlargement policy and the development cooperation policy.

The resolution stresses the need to revise current international accounting standards with the aim of increasing transparency and emphasises the need for the Member States to coordinate their policies in order to enhance the implementation of anti-avoidance rules. It recalls that the introduction of a common corporate consolidated tax base would help to tackle ? within the EU ? double taxation and transfer price issues within consolidated groups.

The EU should also:

- examine a range of options for sanctions and incentives, such as for instance: (i) the setting up of a special levy on movements to or from non-cooperative jurisdictions; (ii) non-recognition within the EU of the legal status of companies set up in non-cooperative jurisdictions and a prohibition on EU financial institutions establishing or maintaining subsidiaries and branches in non-cooperative jurisdictions;
- ensure consistency in the implementation at EU and international level of standards in the areas of prudential supervision, taxation and money laundering and counterterrorism.

The Commission is invited to report to Parliament annually on the implementation of the EU tax governance policy, starting in October 2010.