EU INSTITUTIONS DOCUMENTS (EXCERPTS)

EUROPEAN COUNCIL / COUNCIL OF MINISTERS

- **Conclusions of the European Council (18 December 2014), EUCO 237/14**

- There is an urgent need to advance efforts in the fight against tax avoidance and aggressive tax planning, both at the global and EU levels.

- **Conclusions of the European Council (26/27 June 2014), EUCO 79/14**

- Therefore, while respecting the competences of member states, who are responsible for their welfare systems, the priorities we set for the Union in this field for the next five years are to: guarantee fairness: by combatting tax evasion and tax fraud so that all contribute their fair share.

- **Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy, dated 8 December 2003 (15579/0), as amended by doc. 9068/13 dated 30 April 2014 in relation to the notion of ownership and control (subheading "Compliance", p. I to V after para 55).**

- *NOTE: Although the competent authorities have the obligation to make sure that sanctioned persons are not involved in economic transactions, including transfers of public funds to private entities controlled by these persons, and share this information, authorities have no or very limited means to obtain information about whether legal entities are effectively controlled or owned by the sanctioned individuals. If such an individual, for example, owns or controls an entity receiving public money from EU taxpayers, he just selects a country which does not register or communicate information about corporate ownership to EU or Member States authorities to avoid effects of these sanctions and continue to control or own entities receiving public money from EU taxpayers.*

EUROPEAN COMMISSION

- **Communication of the European Commission on tax transparency to fight tax evasion and avoidance (COM (2015) 136 final), 18 March 2015**

- Fighting tax evasion is essential to securing greater fairness and economic efficiency in the Internal Market, in line with the Commission's top political priorities. Tackling corporate tax avoidance is closely linked to this agenda. Unlike tax evasion, which is illegal, tax avoidance normally falls within the limits of the law. However, many forms of tax avoidance go against the spirit of the law, stretching the interpretation of what is "legal" as far as possible to minimise a company's overall tax contribution. Using aggressive tax planning techniques, some companies exploit legal loopholes in tax systems and mismatches between national rules to avoid paying their fair share of taxes. Moreover, tax regimes in many countries allow companies to artificially shift profits to their jurisdictions, with the effect of encouraging this aggressive tax planning. These activities undermine fair burden sharing amongst tax-payers, fair competition between businesses and fair play between Member States in collecting the tax on profits that they are rightfully due.

- The Commission will assess whether additional public disclosure of certain corporate tax information should be introduced, in a way which goes beyond administrative cooperation and provides public access to a limited set of tax information of multinational companies. […] Impact assessment work will therefore be launched to gather and analyse the evidence base necessary on possible options. The question of transparency requirements on aggressive tax planning arrangements which are part of the OECD BEPS work also needs to be considered, taking into account, for example, the costs and benefits of transposing such rules into EU law**.**

- **European Commission lays the foundation for a fairer and more transparent approach to taxation in EU, 18 February 2015**

- President Jean-Claude Juncker has made the fight against tax evasion and avoidance a top political priority of this Commission, and today's discussion centred on the most pressing measures that need to be taken in this field. It was agreed that a key objective is to ensure that companies are taxed where their economic activities generating the profits are performed and cannot avoid paying their fair share through aggressive tax planning. In this respect, there was strong consensus in the College that a particular focus must be on improving tax transparency in the area of corporate taxation.

- Vice-President Valdis Dombrovskis, responsible for the Euro and Social Dialogue: "A prosperous Europe needs fair, transparent and predictable tax systems for businesses to invest and for consumers to regain confidence. As part of our work for a deeper and fairer internal market, we want to establish greater tax transparency and ensure fairer tax competition, within the EU and globally. It is not acceptable that tax authorities have to rely on leaks before they enforce tax rules," said

- Pierre Moscovici, Commissioner for Economic and Financial Affairs, Taxation and Customs, said: "Abusive tax practices and harmful tax regimes breed in the shadows; transparency and co-operation are their natural foes. It is time for a new era of openness between tax administrations, a new age of solidarity between governments to ensure fair taxation for all. The Commission is fully committed to securing the highest level of tax transparency in Europe."

- **New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change, Political Guidelines for the next European Commission – Opening Statement, Jean-Claude Juncker (president of the European Commission), 15 July 2014**

- I will combat tax evasion and tax fraud.

- We have to fight against money laundering and we will do it.

- While recognising the competence of Member States for their taxation systems, we should step up our efforts to combat tax evasion and tax fraud, so that all contribute their fair share.

- The proposed reinforced Union rules against money laundering should be adopted swiftly, and with an ambitious content, notably when it comes to the identification of beneficial owners and improving customer due diligence.

- **Commission Working Plan 2015**

- The Commission indicated in its Working Plan for 2015 the intention to increase the exchange of information between tax authorities of Member States - planned Directive on exchange of tax rulings (COM(2014) 910 final, Annex 1 – New Initiatives, line 13)

  NOTE: However laudable such efforts are, a more intensive cooperation between Member States will have little additional value if the tax authorities will not be able to get to the necessary information. For example, if none of the tax authorities of Member States will be able to get to the information about the non-EU part of corporate ownership structure of a multinational corporation where this corporation would shift profits or corporate funds, the authorities will have nothing useful to exchange. Moreover, such information on ownership structure which is key for discovering corporate tax avoidance practices will not be exchangeable under the planned Directive on the exchange of tax rulings. Directive on exchange of tax rulings will allow tax authorities to share only information about administrative decisions approving that certain preferential tax treatment are in accordance with the legislation of the Member State in question, will not be able to prevent or restrict the practices of aggressive tax planning from being carried out as it will neither allow to get to or exchange the information on ownership chains and effective tax rates which subsidiaries in these chains pay in which countries.

- Action Plan on efforts to combat tax evasion and tax fraud, including a Communication on a renewed approach for corporate taxation in the Single Market in the light of global developments (COM(2014) 910 final, Annex 1 – New Initiatives, line 14)

  NOTE: *However, these actions only take over tasks which were already proposed by the OECD in the Base Erosion, Profit Shifting project of 2014 and the Commission would lend support to the accomplishment of these OECD tasks anyways even if no LuxLeaks or SwissLeaks happened. A serious response of the Commission to the newly revealed practices in the LuxLeaks or SwissLeaks case cannot consist in continuing business as usual. The Commission has to come up with additional measures which reflect the new facts and which are able to effectively deal with the phenomena of corporate tax avoidance as required by Member States, such as France, Italy or Germany in their joint letter of 2 December 2014.*

- **The Accounting Directive 2013/34/EU (Article 48, last but one sub-paragraph as amended by Directive 2014/95/EU)**

- The report shall also consider, taking into account developments in the OECD and the results of related European initiatives, the possibility of introducing an obligation requiring large undertakings to produce on an annual basis a country-by-country report for each Member State and third country in which they operate, containing information on, as a minimum, profits made, taxes paid on profits and public subsidies received. (the report shall be delivered by the European Commission by 21 July 2018).

- **Financial Regulation (EU) No 966/2012**

- NOTE: *Although Article 106 (1) (e) of Financial Regulation (EU) No 966/2012 stipulates that economic operators or persons having powers of representation, decision-making or control over them are excluded from EU financing when they have been the subject of a final judgement for fraud, including tax fraud, it can be effectively applied only with difficulties since public officials have little or no chance of discovering the ultimate beneficial owners which control these companies since they have only knowledge about the legal person (and the natural person representing this legal person) which whom they directly contract as there is no register from where they could find information about the ultimate beneficial owners. The same applies as regards implementation of financial instruments under a similar provision in Article 140 (4) of this Regulation.*

- **Impact Assessment Report accompanying the proposal of the fourth Anti-Money Laundering Directive, European Commission, 5.2.2013, (SWD(2013) 21 final).**

- The most widely quoted research dates back to the 1990s, when the International Monetary Fund (IMF), published a broad ranging estimate which quantified money laundering to be in the region of 2-5% of global GDP. In an EU context, if this range were extrapolated to the present day, with total EU GDP amounting to € 12.27 trillion, it could be assumed that the amount of money laundered funds was somewhere between € 245-613 billion (assuming an even distribution of money laundering globally).

- More recent research has been published by the United Nations Office on Drugs and Crime (UNODC (October 2011) estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes: Research report). The findings, which are broadly in line with the earlier IMF estimates, suggest that all criminal proceeds are likely to have amounted to some 3.6% of GDP or around US$ 2.1 trillion in 2009, with an estimated amount available for money laundering equivalent to some 2.7 % of global GDP, amounting to some US$ 1.6 trillion. With similar assumptions as above, the amount of money laundered annually in the EU could be estimated at around € 330 billion.