

# The Commission's Political Strategy to Promote Direct Tax Policy Convergence in the EU: Actors, Narratives and Policy Groups<sup>1</sup>

Giovana Camila Portolese<sup>2</sup>

**Abstract:** This contribution explores the political strategy applied by the European Commission (Commission) to prevail over the obstacles for achieving legislative harmonization in the field of corporate direct taxation in the European Union (EU). It argues that the Commission's political strategy is evolving throughout the years adapting to the changes in the international and supranational scenarios and expanding through three basic elements: (1) the actor's involved in the direct tax policy discussions and their preferences and meanings for a corporate tax reform; (2) the construction of policy narratives aligned with actor's preferences and meanings; and (3) the institutionalization of policy groups: the Code of Conduct Group, the Joint Transfer Pricing Forum and the Platform for Tax Good Governance. These elements of change are discussed in order to evaluate whether and to what extent the strategy has so far generated the transfer of tax policies from the EU Members to the EU level. Having regard to the final policy goal of the Commission, which is to achieve a comprehensive direct corporate tax reform epitomized in the proposal of a Common Consolidated Corporate Tax Base, this working paper finalizes by identifying what should be the political strategy of the Commission in the next years to enable more transfer of direct corporate tax policies to the EU level.

**Keywords:** Actors, Narratives and Policy Groups - Code of Conduct Group - Platform on Tax Good Governance - Fair and Efficient Tax System to the EU - Tax Convergence

## Introduction

Since the completion of both the internal market and the European Monetary Union the differences between Member States tax regimes have become more evident and increased the influence of taxation on decisions regarding the allocation of capital<sup>3</sup>. Differences on national tax regimes, on one hand, impose tax obstacles to cross-border economic activity and shareholding<sup>4</sup>. On the other hand, they have the potential to induced harmful tax competition and aggressive tax planning. Direct corporate tax matters deriving from different national tax

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<sup>2</sup> Postdoctoral research fellow, at the Tax Law Department, Institute for Tax Law and Economics. The author can be contacted through the email: [giovana.portolese@gmail.com](mailto:giovana.portolese@gmail.com).

<sup>3</sup> Commission. 1997. Towards tax co-ordination in the European Union. A package to tackle harmful tax competition. COM (97) 495 final:4.

<sup>4</sup> Commission. 2001. Towards an Internal Market without Tax Obstacles. COM (2001) 582 final:5.

policy choices became even more evident with the fast-pace of the economic integration at the global level, fueled by the rapid technological change and deregulation policies<sup>5</sup>.

In the European Union (EU), these phenomena added another layer of economic and legal pressures to Member States, business communities, EU institutions and citizens, requiring not only the coordination of direct corporate taxation regimes at the supranational level (internal dimension), but also a concerted EU response to global tax governance matters (external dimension)<sup>6</sup>. In these lines, convergence of Member States' tax policies towards the EU level is seen as a more coherent solution to address double taxation, aggressive tax planning and harmful tax competition within the EU and in the external relations of the EU Member States with non-EU countries.

The overall purpose of this contribution therefore is to analyze the evolution of the political strategy adopted by the European Commission (Commission) to promote the convergence of direct corporate tax policies at the European Union (EU) level. Commission's strategy has been evolving in order to prevail over the obstacles for legislative harmonization deriving from Member States' choice of retaining taxing powers at the national level. Such choice is translated into the rules enshrined in Article 115 of the Treaty of Functioning of the European Union (TFEU). Article 115 TFEU not only circumscribes the scope of legislative measures to the elimination of distortions in the single market, but also proscribes an unanimity-voting quorum in the Council of the EU (the Council). Both features restrict the adoption of legislation in the field. What was then the Commission's political strategy to overcome the obstacles to legislative harmonization of direct taxation and pursue the goal of promoting direct corporate tax convergence at the EU level?

On the verge of the implementation of the single market, after the experience of not having a single proposal concerning the harmonization of direct taxes accepted by the Council from 1967 to 1990<sup>7</sup>, the Commission opted for prioritizing the coordination of tax policies with minimal legislative intervention<sup>8</sup>. However, even a piecemeal approach to legislative harmonization did not work as a means for promoting policy convergence. The defeat of the Directive proposal on interest and royalty payments, withdrawn in 1994, added another piece of political learning to the Commission: insisting on the proposal of legislative measures, based on the narrative of 'the functioning of the internal market'<sup>9</sup> was not a viable political strategy anymore.

The narrative of harmonization for the functioning of the market proved to be excessively vague to provide a common meaning for the corporate tax reform. By observing the different policy preferences between the two constellations of actors<sup>10</sup> playing at the EU

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<sup>5</sup> Commission. 2009. Promoting Good Governance in Tax Matters. COM (2009) 201 final:4.

<sup>6</sup> For a comprehensive view of the challenges of the EU institutions on global tax governance, see Ubaldo González de Frutos, "The EU and OECD Contend to Lead Global Tax Governance" (The External Tax Strategy of the EU in a Post-BEPS Environment, International Bureau of Fiscal Documentation, 2019), 95–124.

<sup>7</sup> Wolfgang Schön, "Tax Competition in Europe-the Legal Perspective," *EC Tax Review* 9, no. 2 (2000): 95.

<sup>8</sup> Commission. 1990. Communication to Parliament and the Council: Guidelines on company taxation. SEC (90) 601 final: 10.

<sup>9</sup> Article 115 TFEU final part.

<sup>10</sup> According to Scharpf, constellation of actors 'describes the players involved, their strategy options, the outcomes associated with strategy combinations and the preferences of the players over

level in the 1990s, the Member States and the business community, the Commission perceived that every time one constellation was keen on collaborating to a tax initiative, the support of the other was gone<sup>11</sup>. While for the business community reform meant elimination of tax obstacles for cross-border activities and shareholding, for Member States it meant protection of their tax base without transferring taxing powers to the Union<sup>12</sup>.

The perception that divergences of interests were hindering the emergence of a consensus about a common meaning for a corporate tax reform brought the Commission to refine its tax policy and shift the focus from the outcome of the policies (e.g. approval of a Directive) to balancing power relations between actors<sup>13</sup>. To this end, the Commission subdivided the issues surrounding the corporate tax reform into different topics and worked on the construction of narratives other than the implementation of the internal market. These narratives were refined through the discussions among the constellations of actors involved in the policy-making process within different policy spaces enabled by the Commission.

Radaelli and Kraemer called these spaces tax-governance arenas<sup>14</sup>. According to the scholars, in the period from 1997 to 2008, the Commission constructed two policy narratives: (1) ‘the protection of Member States’ tax base’<sup>15</sup>, and (2) ‘an internal market without tax obstacles’<sup>16</sup>. This contribution expands from the work of the authors and identifies the emergence of a third narrative (3) ‘the good governance in tax matters’<sup>17</sup>. These three policy narratives were connected to a respective policy group: the Code of Conduct Group (CoCG), the Joint Transfer Pricing Forum (JTPF), and the Platform for Good Tax Governance, Aggressive Tax Planning and Double Taxation (the Platform, Platform for Good Tax Governance or PGTG).

The key argument in this working paper is that the development of the policy work within these groups is creating a common meaning to the corporate tax reform. The growing consensus around a meaning to the tax reform is encapsulated in the narrative of ‘a fair and efficient corporate system in the EU’<sup>18</sup> which supported the Commission’s initiatives to relaunch of a Common (Consolidated) Corporate Tax Base (CCCTB) proposal<sup>19</sup> and to suggest the transition for a Qualified Majority Voting (QMV) rule<sup>20</sup> in the taxation field. Moreover, the intensive participation of the business community and civil society along with

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these outcomes’ in Fritz W Scharpf, “Games Real Actors Play: Actor-Centered Institutionalism in Policy Research,” 1997, 44.

<sup>11</sup> Claudio M Radaelli and Ulrike S Kraemer, “Governance Areas in EU Direct Tax Policy,” *JCMS: Journal of Common Market Studies* 46, no. 2 (2008): 324.

<sup>12</sup> Claudio M Radaelli, “The Code of Conduct against Harmful Tax Competition: Open Method of Coordination in Disguise?,” *Public Administration* 81, no. 3 (2003): 517.

<sup>13</sup> Radaelli and Kraemer, *supra* n.10: 324.

<sup>14</sup> *Ibid.*

<sup>15</sup> Commission. 1997. *supra* n.2.

<sup>16</sup> Commission. 2001. *supra* n. 3.

<sup>17</sup> Commission. 2009. *supra* n. 4.

<sup>18</sup> Commission. 2015. A Fair and Efficient Tax System in the European Union: 5 Key Areas for Action. COM (2015) 302 final.

<sup>19</sup> Commission. 2016. Proposal for a Council Directive on a Common Consolidated Corporate Tax Base. COM (2016) 683 final; and Commission. 2016. Proposal for a Council Directive on a Common Corporate Tax Base. COM (2016) 685 final.

<sup>20</sup> Commission. 2019. Towards a more Efficient and Democratic Decision Making in EU Tax Policy. COM (2019) 8 final.

Member States inside the groups enhanced the political legitimacy<sup>21</sup> of the Commission's tax initiatives appeared in the last five years<sup>22</sup>. Furthermore, the use of the policy learning and technical knowledge produced within the groups served to speed up the process for the adoption of legislative measures<sup>23</sup>.

Notwithstanding these positive results, the long path between the first changes introduced in the political strategy of the Commission in the 1990s and the still partial convergence achieved with the tax initiatives launched between 2015-2019 (since CCCTB and QMV are still under discussion) lead to the research questions of this contribution: (1) how the EU policy scenario has evolved throughout the years making it possible to the Commission to advance the last five years tax initiative, (2) whether and to what extent the Commission's tax initiatives have so far produced convergence, and (3) what should be the political strategy of the European Commission to increase the convergence in direct corporate taxation in the EU.

In order to answer these questions the reminders of this contribution are organized as follows: Section 2 discusses the changes in the Commission's political strategy and the policy instruments applied to make tax policy convergence prevail over the obstacles to achieve legislative harmonization. Section 3 analyses whether and to what extent the Commission's political strategy has promoted convergence. Section 4 explores what can still be done by the Commission to improve convergence and expedite this process. Section 5 presents closing remarks.

## 2. Unraveling the Commission's Political Strategy in Direct Corporate Taxation

In the last five years, the Commission has intensified its actions to promote policy convergence at the EU level. By re-launching the proposal on a CCCTB in 2016<sup>24</sup>, the institution renewed its plans for a corporate tax reform at the macro-systemic level<sup>25</sup>. Moreover, fiscal State aid control, a tool available since the adoption of the Code of Conduct,

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<sup>21</sup> Legitimacy here refers to 'throughput' legitimacy which according to Schmidt focuses on 'the quality of the interactions among actors engaged in the EU decision-making process', in Vivien A Schmidt, "Democracy and Legitimacy in the European Union Revisited: Input, Output and 'Throughput,'" *Political Studies* 61, no. 1 (2013): 5.

<sup>22</sup> For an overview of these tax initiatives, see Valère Moutarlier, "Guest Editorial: Looking Back, Looking Forward: EU Tax Policy Trends," *Intertax* 47, no. 10 (2019): 811–12.

<sup>23</sup> See Valère Moutarlier, "Reforming the Code of Conduct for Business Taxation in the New Tax Competition Environment," in *State Aid Law and Business Taxation* (Springer, 2016), 81; Martijn F Nouwen, "The European Code of Conduct Group Becomes Increasingly Important in the Fight Against Tax Avoidance: More Openness and Transparency Is Necessary," *Intertax* 45, no. 2 (2017): 141; Domingo Jesús Jiménez-Valladolid de L'Hotellerie-Fallois, "The Revision of the Code of Conduct for Business Taxation" (Combating Tax Avoidance in the EU: Harmonization and Cooperation in Direct Taxation, Kluwer Law International, 2019): 458, 463.

<sup>24</sup> The CCCTB is a policy objective that was temporarily abandoned in the 1990s and resumed without success with the 2011 proposal.

<sup>25</sup> The macro-systemic level is the level where all the major tax issues can be discussed and addressed in a comprehensive manner, see Radaelli and Kraemer, *supra* n.10. The Commission's 2016 C(C)CTB Directive proposals represent this macro-systemic level because they deal, comprehensively, with problems regarding, harmful tax competition, aggressive tax planning, double taxation in cross-border activities, and digital economy, at the highest level of a corporate tax reform: the adoption of a common corporate tax base. See Commission. 2016.COM (2016) 683 final, *supra* n.18: 3-4.

was intensified to cover administrative practices such as tax rulings involving transfer pricing issues. Additionally, the proposal of Anti-Tax Avoidance Directives (ATAD) had a fast-paced adoption in the Council, while previously proposals of directives used to take years, if not decades, until Member States even accepted to bring them into discussion. All these developments, among others, lead to the first research question of what has changed in the European Union policy scenario which made the Commission to advance the recent tax initiatives.

This question will be answered by exploring the reasons for the emergence of the Commission's political strategy, its main policy mechanisms and the central elements through which it has evolved: actors, narratives and policy groups. The strategy was developed in three steps which encompass the evolvement of narratives, the involvement of actors and the creation of the policy groups.

## **2.1 The Commission's political strategy: different policy convergence mechanisms**

The unwillingness of Member States to discuss in the Council the legislative proposals of the Commission based upon Article 115 TFEU has always represented a challenge to the EU institutions to approximate Member States' direct corporate taxation regimes. The Commission has been trying to bypass the limitations imposed by Article 115 TFEU through a political strategy which combines legislative (tax) harmonization with two other policy convergence causal mechanisms: transnational problem-solving and policy imposition<sup>26</sup>.

By combining these causal mechanisms of policy convergence, the Commission envisaged to achieve the transfer of direct tax policies from the Member States to the EU by other means than legislative harmonization. The strategy used by the institution to reach this goal was to enable the creation of policy spaces where actors could meet to discuss and negotiate on the issues regarding direct corporate tax. In this contribution therefore policy convergence is defined as the transfer of policies from the Member States towards the European Union institutions<sup>27</sup>.

Along these lines, the Commission shifted its political strategy from proposing legislative harmonization alone to the articulation of legislative harmonization proposals with imposition of policies and transnational problem-solving mechanisms. On the side of transnational problem-solving mechanisms, the Commission invested in soft governance instruments, which in political science literature, are called 'new' forms of governance. New

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<sup>26</sup> The distinction of causal mechanisms of convergences in this contribution is based on Holzinger & Knill. The scholars identified five convergence mechanisms that might induce the transfer of policies between political units (e.g. European Union and Member States): imposition, international harmonization, regulatory competition, independent problem-solving and transnational communications. Transnational problem-solving is a sub-category of the latter and is implemented through the coordination of negotiations and discussions on problems subject to harmonization. See Katharina Holzinger and Christoph Knill, "Causes and Conditions of Cross-National Policy Convergence," *Journal of European Public Policy* 12, no. 5 (October 1, 2005): 779–84, <https://doi.org/10.1080/13501760500161357>.

<sup>27</sup> The concept of tax policy convergence in this working paper is elaborated from the scholarship of Benson & Jordan and Holzinger & Knill. See David Benson and Andrew Jordan, "What Have We Learned from Policy Transfer Research? Dolowitz and Marsh Revisited," *Political Studies Review* 9, no. 3 (2011): 366–78. And Holzinger & Knill, *supra* n. 25.

forms of governance are associated to non-hierarchical modes of political steering, encompassing forms of directing policy-making through ‘soft’ means’ such as negotiation, cooperation and coordination<sup>28</sup>.

These new forms of governance were implemented through the institutionalization of policy groups within which the Commission coordinates the discussions and negotiations among constellations of actors. Throughout the years, the mechanism of transnational problem-solving has been adapting to the changes in the international and supranational scenarios and expanding through three basic elements: (1) the actor’s involved in the direct tax policy discussions and their preferences and meanings for a corporate tax reform; (2) the construction of policy narratives aligned with actor’s preferences and meanings; and (3) the institutionalization of policy groups: the Code of Conduct Group, the Joint Transfer Pricing Forum and the Platform for Tax Good Governance<sup>29</sup>.

In this contribution, the developments of the political strategy of the Commission are organized around three major phases taking into consideration the policy narratives, actors involved in the policy-making process and policy groups. These phases and elements are distributed in the table below.

<b>Phases Year of Emergence</b>	<b>Narrative</b>	<b>Actors</b>	<b>Policy Group</b>
1997	Harmful tax competition and protection of MS’ tax base	Member States Commission	Code of Conduct Group
2001	An internal market without tax obstacles	Business Community Epistemic Community Commission Member States	Joint Transfer Pricing Forum
2009	Tax good governance and fair and efficient tax systems	Civil Society Business Community Epistemic Community Member States Commission	Platform for Tax Good Governance

Table 1 - Commission’s Political Strategy: Narratives, Actors and Policy Groups  
Elaboration by the Author

<sup>28</sup> In the context of the European Union, ‘new’ forms of governance are opposed to the idea of hierarchy, manifested in the ‘traditional’ form of governance which is epitomized in the legislative and rule-making processes conducted by the EU supranational institutions or the European Council through joint-decision-making with Member. See Ingeborg Tömmel, *The European Union: What It Is and How It Works* (Macmillan International Higher Education, 2014), 212.

<sup>29</sup> In the literature, Roderick Veldhuizen and Tamas Adorjan, “EU Introduces Plans Regarding a Fair and Efficient Corporate Tax System,” *European Taxation* 55, no. 11 (2015): 525. Considered the CoCG and the Platform as EU tools that facilitate the coordination and information exchange between Member States.

## 2.2 Harmful Tax Competition and the Code of Conduct Group

Building upon the strategy of balancing power relations among constellations of actors, the Commission first approached the corporate tax reform on the side of the Member States, represented by their Finance Ministers and tax-authorities. The institution identified that the economic and legal (material) pressures impacting this constellation of actors were three-fold: (1) the tax competition among Member States that was generating losers and winners; (2) the negative harmonization of direct taxation by means of the CJEU rulings that was leading to the asymmetrical implementation of tax policies in the Member States<sup>30</sup>; (3) the involvement of the work on unfair tax competition at the international level, initiated by the Organization for Economic Co-operation and Development (OECD), calling on the Commission to provide a coordinated supranational response to the problem<sup>31</sup>.

Accordingly, the Commission constructed a meaning for a direct corporate tax reform around the narrative of *protecting Member States' tax base by tackling harmful tax competition and aggressive tax planning*. However, the interests among these actors were not uniform. While some Member States were interested in eliminating tax competition, others were not<sup>32</sup>.

In order to coordinate Member State's different interests and bring them to cooperate instead of competing, the Commission drafted different policy instruments. Consequently, the 1997 'Package to Tackle Harmful Tax Competition'<sup>33</sup> was composed of two Directives proposals – one regarding cross-border payments of interest and royalty, and one regarding cross-border savings taxation – and a voluntary Code of Conduct for Business Taxation (the Code of the Code of Conduct). It also connected State aid rules to tax measures, embedding and entrenching a Commission's Treaties competence (State aid, Articles 107-8 TFEU) in the text of the Code<sup>34</sup>. The package also previewed the institutionalization of an intergovernmental group within the Council, the Code of Conduct Group with the initial scope of assessing Member States tax measures against the criteria of harmful tax practices defined in the Code of Conduct.

With this political strategy the Commission envisaged to make the negotiations and discussions surrounding the package instruments – Directives, Code of Conduct and its CoCG, and the fiscal State aid rules – to function as counterbalancing mechanisms to push forward tax policies focusing on harmful tax competition and aggressive tax planning<sup>35</sup>.

Once the Commission achieved some progress in the discussions and negotiations on harmful tax practices, accommodating the interests of Member States, the institution turned to address the interests of the business community around the narrative of an internal market without tax obstacles<sup>36</sup>.

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<sup>30</sup> Commission.1997. *supra* n.2:4

<sup>31</sup> Commission 1996:5 and de Frutos, "The EU and OECD Contend to Lead Global Tax Governance."

<sup>32</sup> For details on Member State's different interests, *see* Radaelli, "The Code of Conduct against Harmful Tax Competition: Open Method of Coordination in Disguise?," 518.

<sup>33</sup> Commission.1997. *supra* n.2.

<sup>34</sup> Radaelli and Kraemer, *supra* n.10: 325; Radaelli, *supra* n.11: 519.

<sup>35</sup> Radaelli and Kraemer, *supra* n.10: 327.

<sup>36</sup> *Ibid.*: 325.

### 2.2.2 An Internal Market without Obstacles and the Joint Transfer Pricing Forum

In the early 2000s, the material pressures surrounding the debates of a corporate tax reform concerned the (1) elimination of tax obstacles, (2) promotion of economic growth, and (3) enhancement of the competitiveness of EU as a whole. These pressures affected not only the business community, but also the Commission and the Member States. Double taxation issues in cross-border activities and shareholding were exerting particular pressure over the business community which called the Commission to address the problem.

Having regard to a study which identified the main tax provisions hindering cross-border economic activity<sup>37</sup>, the Commission invested in the construction of the narrative of *an internal market without tax obstacles*. With the Communication ‘Strategy Towards an Internal Market without Tax Obstacles’, the institution set up a transnational problem-solving mechanism with the goal of establishing a long-term direct corporate tax reform roadmap<sup>38</sup>. The Commission insisted in the technical exercise of the initiative by remarking it was ‘not aiming at uniform tax rates and [was] not inconsistent with fair tax competition’ among Member States<sup>39</sup>. The objective of the remark was to ‘tone down the political implications of tax base co-ordination’<sup>40</sup>, in order to engage the Member States in the exercise.

The involvement of business and epistemic communities<sup>41</sup> along with Member States in this tax initiative represented an expansion of the Commission’s political strategy in terms of participation of actors. These two communities of actors played a central role in the initiative, by providing the contents to the discussions of a corporate tax reform: issues on transfer pricing, tax treaties, dividend taxation, exit taxation, amongst others<sup>42</sup>.

The problem-solving exercise favored the informal constitution of the Joint Transfer Pricing Forum in 2002 and the setting up of a working group on Common Consolidated Tax Base in 2004<sup>43</sup>. Composed of business and epistemic communities organizations and Member States representatives, the JTPF operates on a consensus basis. The initial aim of the group was to propose non-legislative solutions to issues related to transfer pricing practices within the EU. The JTPF is still active and assumed an instrumental role for the formulation of the Commission’s tax initiatives in the post-BEPS period<sup>44</sup>, for example, tailoring tools for improving the efficiency of transfer price administration in EU<sup>45</sup>.

The CCCTB Working Group, conversely, had a limited duration (2004-2008) in which Member States experts and other stakeholders assisted the Commission in preparing the 2011 CCCTB proposal<sup>46</sup>. Scholars pointed out the declining of political interest on corporate tax

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<sup>37</sup> Commission. 2001. Company Taxation in the Internal Market. SEC (2001) 1681: 2.

<sup>38</sup> Commission. 2001. *supra* n. 3.

<sup>39</sup> *Ibid.*: 2.

<sup>40</sup> Radaelli and Kraemer, *supra* n.10: 329.

<sup>41</sup> Epistemic community is defined as ‘a network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area’. Peter M Haas, “Introduction: Epistemic Communities and International Policy Coordination,” *International Organization* 46, no. 1 (1992): 3.

<sup>42</sup> Radaelli and Kraemer, *supra* n.10, 328.

<sup>43</sup> *Ibid.*, 329.

<sup>44</sup> For more information about the JTFP, *see*:

[https://ec.europa.eu/taxation\\_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum\\_en](https://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en) [accessed in February 2020].

<sup>45</sup> This point will be explored further in subsection 3.1.

<sup>46</sup> For more information on the CCCTB WG, *see*:

reform in the EU around 2008 as one of the main causes to the long path between the introduction of a corporate tax reform debate in 2001 and the CCCTB initiative in 2011<sup>47</sup>.

The political momentum for a direct corporate tax reform in the EU and worldwide, however, arrived in the post-economic and financial crises scenario. According to one scholar, in the context of the EU, the ‘crisis made painfully clear’ the missed opportunity of a direct tax corporate reform<sup>48</sup> to address the problems of harmful tax competition, double taxation and aggressive tax avoidance. The negative impact of the economic and financial crises in Member States’ budgets opened up the opportunity for a third expansion in the Commission’s political strategy. In this phase, the new meaning for a corporate tax reform was constructed around the narratives of good tax governance and fair and efficient tax systems.

### **2.2.3. Tax Good Governance, Fair and Efficient Tax Systems and the Platform for Tax Good Governance**

In the years after 2008, the externalities of the financial and economic crises exposed the vulnerability of countries’ revenues to tax fraud, tax evasion and tax avoidance practices. On the side of Member States, this awareness shed light on how tax policy choices of individual governments were facilitating the exploitation of regulatory mismatches by some taxpayers and provoking the erosion of Member States’ tax bases. Reflexively, the debates around international tax cooperation and adoption of common standards on transparency and exchange of information<sup>49</sup> grew considerably.

Recessive budgetary policies and the burst of tax scandals raised the attention of the public opinion to the way national governments were intending to balance their budgets deficits and distribute the burden of taxation. Since then, the concerns of EU citizens about tax issues matters called on the Commission to consider the use of policy instruments suitable to enable the participation of the civil society in the EU direct corporate taxation policy process. Yet, the debate on tax fraud, tax evasion and tax avoidance practices represented a concern to the business community since the cooperation between tax authorities and the changes in the rules on transparency and exchange of information had the potential to impact their activities.

The Commission synthesized the pressures constraining these three categories of actors into the narratives of *good governance in tax matters* and *fair and efficient tax systems*. For Member States, good governance and fair and efficient systems translated into fair tax competition among countries within and outside the EU. For the business community, the narratives meant the elimination of double taxation and the reduction of compliance costs for

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[https://ec.europa.eu/taxation\\_customs/business/company-tax/common-consolidated-corporate-tax-base-ccctb/preparation-2011-ccctb-proposal\\_en](https://ec.europa.eu/taxation_customs/business/company-tax/common-consolidated-corporate-tax-base-ccctb/preparation-2011-ccctb-proposal_en) [accessed in February 2020].

<sup>47</sup> Radaelli and Kraemer, *supra* n.10, 330.

<sup>48</sup> Cees Peters, “Tax Policy Convergence and EU Fiscal State Aid Control: In Search of Rationality,” *EC Tax Review* 28, no. 1 (2019): 7.

<sup>49</sup> Particularly in regard to the work being conducted by the OECD with the political endorsement of the G20 and G8. According to the Commission Communication, the Action Plan launched in December 2012 represented a general contribution to the wide debate on taxation, making a direct reference to the G20 Leaders Declaration of 19 June 2012, Los Cabos. ‘We reiterate the need to prevent base erosion and profit shifting and we will follow with attention the on-going work of the OECD in this area’ in Commission. 2012. An Action Plan to Strengthen the Fight Against Tax Fraud and Tax Evasion. COM (2012) 722 final:15.

engaging in cross-border activities. For citizens, they represented the fair distribution of the tax burden among the society and the financing of the provision of public goods<sup>50</sup>.

The Commission introduced the concept of good governance in tax matters in 2009 and assumed it translated the meaning of fair and efficient tax systems and the efforts for combating cross-border tax fraud, evasion and money laundering, corruption and the financing for terrorism<sup>51</sup>. In 2012, the institution broadened the narrative of tax good governance by adding the fight against aggressive tax planning<sup>52</sup>. The concept of fair tax systems and fair taxation was then connected to the idea that national tax regimes should ‘ensure that the burden of taxation is shared fairly’. Consequently, choices made by individual governments’ should not facilitate the use, by some taxpayers, of ‘complex, sometimes artificial, arrangements which have the effect of relocating their tax base to other jurisdictions within or outside the Union’<sup>53</sup>.

The last definition makes evident that harmful tax competition and aggressive planning are opposing faces of the same problem<sup>54</sup>. As commented in tax literature, the connections established since 2012 between harmful tax competition and aggressive tax planning allowed the Commission to deal with the misuse of transfer pricing rules via secret tax rulings<sup>55</sup>.

In this sense, the construction of the ‘good governance in tax matters’ and ‘fair and efficient tax systems’ narratives articulated and expanded the two precedent narratives: the protection of Member States’ tax base and an internal market without obstacles. In the context of good governance in tax matters, the protection of Member State’s tax base relates both to harmful tax competition within the Union and to harmful tax practices adopted in third countries. Fair and efficient tax systems, in turn, encompass the elimination of double taxation of cross-border activities along with the fight against tax fraud, evasion and aggressive tax planning.

Searching expertise advice for the on-going work on aggressive tax planning and good governance in tax matters, in 2013, the Commission set up an expert group, the so-called Platform for Tax Good Governance. The Platform brought the civil society into the EU direct corporate tax policy-making processes, along with business and epistemic communities and Member States’ tax authorities representatives. The Commission’s goal was to enable all stakeholders to have their voice heard in the policy process<sup>56</sup>.

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<sup>50</sup> An association participating in the Platform stated: ‘fairness in a tax system is more about seeing what public expects from the government, and how that actually can be financed in the long term’. See Platform. 2018. Summary Record of the meeting on the 19 December 2018. TAXUD/D1/(2019) taxud.d.1(2019):12

<sup>51</sup> Commission. 2009. *supra* n. 4:2.

<sup>52</sup> Commission. 2012. *supra* n. 48:2.

<sup>53</sup> *Ibid.*:6.

<sup>54</sup> The complementary sides of harmful tax competition and tax avoidance are expressed in Commission. 201. *supra* n.17:3; and in a non-MS member statement during the Platform’s meeting which discussed the plan: ‘everyone agrees there is improper behavior from both companies and Governments leading to BEPS.’. See Platform. 2015. Summary Record of the meeting on the 24 September 2015 TAXUD/D1/AC/equ (2015):5.

<sup>55</sup> Ana Paula Dourado, “Taxes and Competitiveness: How Much Competitive Is European Tax Competition?,” *Intertax* 46, no. 12 (2018): 942.

<sup>56</sup> Commission. 2013. Commission Decision on setting up a Commission Expert Group to the known as the Platform for Tax Good Governance, Aggressive Tax Planning and Double Taxation. C(2013) 2236 final: 3.

### **2.3. Preliminary Conclusions**

The separation of a corporate tax reform according to narratives, actors and policy groups was a functional differentiation (a tool) applied by the Commission to push forward the progressive transfer of direct tax policies from the Member States to the Union level. The final policy goal of the institution has always been to achieve a more comprehensive direct tax reform, epitomized in the Common Consolidate Corporate Tax Base. As legislative (tax) harmonization was a far-reaching goal, the Commission developed a step-by-step political strategy focusing on balancing power relations between actors. The strategy allowed the institution to incorporate progressively Member States, business and epistemic communities and civil society into the EU direct corporate tax policy-making process.

The preferences of these constellations of actors for a corporate tax reform were translated and synthesized into the narratives of ‘Member States’ tax base protection by tackling tax competition and aggressive tax planning’; ‘elimination of obstacles leading to double taxation in cross-border activities’; and promotion of ‘good tax governance in tax matters and fair and efficient tax systems’. Discussions and negotiations around these narratives were coordinated by the Commission within the Code of Conduct Group, the Joint Transfer Pricing Forum, and the Platform for Tax Good Governance. Most of the positive results so far achieved by the Commission’s tax initiatives are due to the preparatory work conducted within these policy groups.

## **3. The Long Path for the Convergence of EU Direct Corporation Tax Policies**

In order to reflect on how much the convergence the Commission’s political strategy has promoted, this section starts by shedding light on the work within the three policy groups (CoCG, JTPF and Platform) and its incorporation in the Commission’s tax initiatives before problematizing to what extent it promoted convergence in the EU direct corporate tax area.

### **3.1 The evolution in the mandate, scope and work procedures in the policy groups**

The three groups (CoCG, JTPF and Platform) were each one conceived with an original mandate and a duration that have both been enlarged throughout the years. First to appear, the Code of Conduct Group’s had as original scope to assess Member States tax measures against the criteria of harmful tax competition defined in the text of the Code of Conduct<sup>57</sup>. Second in line, the Joint Transfer Pricing Forum was constituted with the aim to advise the Commission in regard of double taxation related to transfer pricing (TP), proposing non-legislative measures to address the problem of TP practices in the EU. Last emerged, the Platform for Tax Good Governance was set up as an advisory body to the Commission for the preparation

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<sup>57</sup> ECOFIN. 1997. Conclusions of the ECOFIN Council meeting on 1 December 1997 concerning taxation policy, OJ 98C 2/01.

of a report on the application of the two Recommendations launched in 2012 regarding issues of tax good governance in tax matters, aggressive tax planning and double taxation<sup>58</sup>.

Departing from the 2008 Work Package<sup>59</sup>, the CoCG had its tasks amplified to cover the analysis of anti-abuse measures, transparency through exchange of information in the area of transfer pricing, administrative practices, and the promotion of the adoption of the principles of the Code in third countries<sup>60</sup>. This expansion marked the subdivision of the work within the group in two categories: one-country issues, relating to the work on the individual assessment and monitoring of Member States' tax measures; and two-country issues, covering problems concerning the relationship among Member States<sup>61</sup>.

In the legal tax literature<sup>62</sup>, instruments arising to solve two-country issues are considered as horizontal measures policies or 'pseudo-legislation'<sup>63</sup>, comprehending non-legally binding instruments such as guidelines, recommendations, reports. The goal pursued in the enactment of the pseudo-legislation is to coordinate tax policy by pushing forward a homogeneous approach to the perceived problems at the EU level.

It was the original legal design of the Code of Conduct to favor the enlargement of the work program of the CoCG from assessing individual tax regimes to developing horizontal policies (pseudo-legislation)<sup>64</sup>. As one scholar commented, the Code of Conduct had already embedded in its text the connection with the fight against fraud and tax avoidance by means of coordinated actions for exchange of information and adoption of anti-abuse provisions (letters K and L), a broad territorial scope for dealing with harmful tax competition in regard of third-countries (letter M), and a direct connection with State aid control (letter J)<sup>65</sup>.

In 2015, in the post-BEPS period, the Commission recognized the prominence of both the CoCG and the Platform among the different groups discussing EU taxation<sup>66</sup>. According to the institution, the activities of these two groups were fundamental to the diffusion of the political strategy of consulting stakeholders and ensuring cooperation, coordination and information exchange between Member States. Accordingly, the Commission proposed the extension of the mandate of the Code and the change of the group work methods, as well as

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<sup>58</sup> Commission. 2012. Commission Recommendation Regarding Measures Intended to Encourage Third Countries to Apply Minimum Standards of Good Tax Governance in Tax Matters. C (2012) 8805 final; Commission 2012. Commission Recommendation on Aggressive Tax Planning. C(2012) 8806 final.

<sup>59</sup> Council of the European Union 2008. Report. (ST 16410/08).

<sup>60</sup> Jiménez-Valladolild de L'Hotellerie-Fallois, *supra* n. 22:457.

<sup>61</sup> Nouwen, *supra* n. 22:137.

<sup>62</sup> Vinod Kalloe, "EU Code of Conduct-From Reviewing Individual Tax Regimes to Developing Horizontal Policy: Cracking the Code in the BEPS Era," *European Taxation* 56, no. 5 (2016): 183–91.; Nouwen, *supra* n. 22:141; Jiménez-Valladolild de L'Hotellerie-Fallois, *supra* n. 22:457.

<sup>63</sup> In EU law literature, the use of pseudo-legislation equated to soft law instruments is criticized by Senden: 'In legal writing, several other terms have been used to describe the phenomenon at issue, in particular informal instruments, pseudo- or quasi-legislation and administrative rules. None of these is satisfactory either, in my view. The term administrative rules is too narrow, as it in fact concerns only one of the categories of soft law instruments that can be distinguished. The term pseudo- or quasi-legislation may be criticized for the same reason as the term soft law, but it suffers in addition from a lack of use in the Community law context, at least in the English literature', in Linda Senden, *Soft Law in European Community Law*, vol. 1 (Hart publishing, 2004), 110.

<sup>64</sup> For a comprehensive view of the evolvement of tasks in the CoCG see Kalloe, *supra* n. 61.

<sup>65</sup> Jiménez-Valladolild de L'Hotellerie-Fallois, *supra* n. 22:454.

<sup>66</sup> Commission. 2015. *supra* n.17.

announced the intention to prolong the mandate of the Platform, expand its scope and enhance its work methods<sup>67</sup>.

In relation to the CoCG, the Commission's initiative reflected in the Council that, in December 2015, invited the group to provide general guidance for a coherent and coordinated implementation of the G20-OECD/BEPS project in the EU. The Council also confirmed the importance of the application of the Code of Conduct principles on as broad geographical area as possible<sup>68</sup>.

On the side of the Platform, the Commission added to the previous tasks of the group, the contribution to the application and implementation of the 2015 initiatives on tax transparency and fair taxation<sup>69</sup>. The institution also conferred a consultee role to the Platform on any issue covering tax good governance, aggressive tax planning and double taxation, and the developments of the 2015 Action Plan<sup>70</sup>.

With regard to the JTPF, the 2015 Commission Communication<sup>71</sup> urged for the improvements in the transfer pricing framework in the EU regarding intra-group profits<sup>72</sup>. This call reflected on the expansion of the forum work program towards horizontal policies (pseudo-legislation) which passed to cover three new areas: the development of (1) tailored tools for the application of transfer pricing rules and (2) tools for improving the efficiency of TP administration in the EU, and (3) the assistance of the Commission to position itself globally on TP issues<sup>73</sup>.

In general, the expansion of the mandate and scope of the three groups as well as the enhancement of their internal procedures created the grounds for their close cooperation with the Commission, assisting the institution in the formulation of the tax initiatives delivered in the post-BEPS period.

### **3.2 The work in the policy groups in the post-BEPS period**

In order to analyze the impact of the work in the policy groups in the Commission's tax initiative launched in the post-BEPS period, in this contribution the following initiatives were selected: (1) the common EU list on non-cooperative jurisdictions, (2) the anti-tax avoidance rules in the ATADs, (3) the transparency and exchange of information rules on the Administrative Cooperation Directives, (4) the State aid investigations on tax rulings, and (4) the re-launch of the CCCTB Directive proposal. It is assumed that the Commission promoted the discussion of the issues regarding these initiatives mostly in the Platform and in the

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<sup>67</sup> Commission. 2015. *supra* n.17:13-14.

<sup>68</sup> Council of the European Union 2015. 3435<sup>th</sup> Meeting Economic and Financial Affairs (ST 15068/15): 11.

<sup>69</sup> Commission. 2015. Commission Decision Establishing the Commission Expert Group 'Platform for Tax Good Governance, Aggressive Tax Planning and Double Taxation' and replacing Decision C(2013)2236. C(2015) 4095 final, Article 2(c).

<sup>70</sup> *Ibid.* : Article 3.

<sup>71</sup> Commission. 2015. *supra* n.17.

<sup>72</sup> *Ibid.*:10.

<sup>73</sup> Joint Transfer Pricing Forum. 2015. JTPF Program of Work 2015-2019: 'Tools for the Rules'. Meeting of 25 June 2015. DOC: JTPF/005/FINAL/2015/EN.

CoCG, with a punctual contribution of Joint Transfer Pricing Forum on problems relating to transfer pricing policies.

The Commission was the main actor in the policy processes concerned to the tax initiatives described above. The institution acted building bridges within the CoCG and the Platform, since direct interaction among the groups was not formally previewed in legislation. Indeed, the formal separation of the work of the groups was reinforced by a remark of the Commission's Taxation and Customs Directorate-General (DG TAXUD) which made it clear that obtaining information on the work of the CoCG was not within the mandate of the Platform<sup>74</sup>. In other words, it was for the Commission to pool the knowledge produced within the groups and share the information between the groups when the institution considered it suitable.

### 3.2.1 The EU common list of non-cooperative jurisdictions

The listing of third-countries' harmful tax practices was first debated in the context of the Platform as part of its tasks of assisting the Commission to implement the so-called 'tax haven' Recommendation from 2012<sup>75</sup>. The members of the Platform initiated the work by advancing questions on how to capitalize on the experience with the Code of Conduct for accessing third country jurisdictions<sup>76</sup>, and how to guarantee consistence and coherence to the listing process in the EU<sup>77</sup>. The conclusions were that the adoption of the Code of Conduct criteria was suitable for the purpose.

The successive step of the Platform centered in the evaluation of how the consistency and transparency of the national lists could be improved and linked to the lines of the 2012 Recommendation<sup>78</sup>. The main achievement of this work was the agreement on a Pan-EU list composed of a compilation of the Member States national black lists, which was published by the Commission<sup>79</sup>. After the publication of the list, some Member States manifested in the Platform that the EU-wide list should be considered a starting point for a common EU approach<sup>80</sup>. Subsequently, the Commission proposed the substitution of the Pan-EU list to a common EU list in the 2016 Communication on an External Strategy for Effective Taxation<sup>81</sup>.

The preparation of an EU common list of non-cooperative jurisdictions created some frictions in regard to the definition of the roles of the Platform and the CoCG in the process. The frictions became more prominent in March 2016, when the ECOFIN Council created a dedicated CoCG subgroup to work on third countries. In the June 2016 Platform meeting, some non-Member States members manifested their disappointment about the future role of the group in the listing matter<sup>82</sup>. The Commission made it clear that the role of the Platform

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<sup>74</sup> Platform. 2018. Summary Record of the Meeting on 23 March 2018. TAXUD/D1/LK/lr (2018) taxud.d.1(2018).

<sup>75</sup> Commission. 2012. C (2012) 8805 final. *Supra* n.57.

<sup>76</sup> Platform. 2014. Summary Record of the Meeting on 6 February 2014. TAXUD/D1/AC/lc(2014).

<sup>77</sup> Platform. 2014. Summary Record of the Meeting on 10 June 2014. TAXUD/D1/AC/lc(2014).

<sup>78</sup> *Ibid.*

<sup>79</sup> Commission. 2015. *Supra* n.17:13.

<sup>80</sup> Platform. 2015. Summary Record of the Meeting on 10 July 2015. TAXUD/D1/AC/equ (2015) 3722043:6

<sup>81</sup> Commission. 2016. An External Strategy for Effective Taxation. COM (2016) 024 final.

<sup>82</sup> Platform 2016. Summary Record of the Meeting on 14 June 2016. TAXUD/D1/AC/equ (2016).

would be to provide useful inputs while the common list was not adopted<sup>83</sup>, but the EU common list would be dealt within the CoCG. Since then, the CoCG gained centrality in the process of EU listing of the non-cooperative jurisdiction and enlarged its activities to cover the external dimension of the EU direct tax policy.

To sum up, the policy process aimed at achieving a common EU list received direct input from the work of the two groups. The Platform contributed in the initial phase of the work, defining the criteria of assessment, gathering the information on Member State's list and discussing the development and changes in the Pan-EU list. In the next phase, when the Commission proposed the building up of a common EU list, the previous experience of the CoCG in operating the criteria of the Code of Conduct counted more and this group gained prominence in the execution of the task.

### **3.2.2. Anti-avoidance and transparency rules and the CCCTB**

The various tax policy elements embedded in the Commission's Anti-Tax Avoidance, Administrative Cooperation and CCCTB Directives proposals were extensively discussed and negotiated within the CoCG and the Platform. The policy-making process in the groups helped the Commission to refine its policy formulation reflection also in the choice of the most suitable legislative policy instruments (Directive proposals: legislative harmonization) to approach the problems.

The General Anti Abuse Rule (GAAR) was among the discussions of the Platform since 2014<sup>84</sup>. The absence of consensus among the Platform members led the Commission to gather more information on Member States GAARs before advancing an anti-avoidance proposal. Furthermore, the adoption of an EU GAAR had been long discussed in the Council in the context of the 2011 Commission CCCTB proposal.

Specifically to the G20-OECD/BEPS project, the coherent implementation of anti-avoidance measures in the EU was debated in the Platform since September 2015<sup>85</sup>. In November of the same year, the Commission presented the Anti-Tax Avoidance Package (ATAP) to the group, as an effective solution to address BEPS in the EU while a CCCTB was not adopted<sup>86</sup>.

Still in regard of the policy process of ATAP package turning into the ATAD proposals, the Platform members were called by the Commission to provide suggestions to improve the findings of a CCCTB study on seven structures commonly used for aggressive tax planning and indicators<sup>87</sup>, which included BEPS and non-BEPS issues.

Anti-tax avoidance in BEPS and in non-BEPS issues had also been discussed in the framework of the CoCG. The CoCG explored questions on hybrid mismatches, exit taxation,

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<sup>83</sup> Council 2016. Future of the Code of Conduct (ST 667416): 5.

<sup>84</sup> Platform. 2014. *Supra* n.76.

<sup>85</sup> Platform. 2015. *Supra* n. 53:5.

<sup>86</sup> Platform. 2015. Summary Record of the Meeting on 30 November 2015. Sub-group with organizations representatives. TAXUD/D1/AC/equ (2016):2.

<sup>87</sup> Platform. 2016. Summary Record of the Meeting on 15 March 2016 TAXUD/D1/AC/equ (2016):5.

provisions on limitation on benefit, and the switch-over clause<sup>88</sup>. The three first issues were addressed in the ATAD Directives; reversely, the switch-over clause ‘has not made it in the final draft of the Directives [but] came back on the legislative agenda in the recent [2016] Commission proposal for a European Corporate Tax Base (CCCTB)’<sup>89</sup>. In March 2016, the Dutch Presidency expressed in the Platform that Member States had achieved consensus for the quick move on the adoption of measures proposed in the ATAP, in order to guarantee the coherent implementation of the BEPS packages in the EU and provide legal certainty to businesses and tax administrations.

In this contribution, it is assumed that one of the bases for the fast achievement of consensus in the Council might have been that the issues in ATAP – three coming from BEPS and three coming from the CCCTB 2011 proposal – had been previously discussed in the Council, CoCG, Platform and in the G20-OECD/BEPS project negotiations<sup>90</sup>. Without the previous evaluation and balancing of the many aspects of the adoption of anti-avoidance measures at the EU level (in the policy groups), a prompt and coordinated EU action to the BEPS package would have probably taken more time to be designed.

In the same lines, the role played by the CoCG was also central in the assessment and monitoring the rollback of patent-boxes regimes<sup>91</sup>. Moreover, the CoCG preparatory work on a ‘Model Instruction’ on the exchange of information relating to cross-border rulings facilitated not only the Commission’s choice for a legislative measure to solve the issue, but also to obtain a rapid agreement in the Council<sup>92</sup>. The Commission announced, in the context of the Platform in December 2014, its plans for legislative harmonization of the issue<sup>93</sup>. The ambitious Directive proposal appeared in March 2015 and was adopted in the Council in October of the same year<sup>94</sup>. Scholars also shed light on the supportive role of the CoCG to the JTPF and to the Commission in providing guidance in implementing transfer pricing documentation in the EU<sup>95</sup> which reverted into other amendment of the Directive on Administrative Cooperation<sup>96</sup>.

Putting it differently, the dynamics of discussions and negotiations in the Council, CoCG, Platform and G20-OECD/BEPS project allowed the Member States to learn more about each other constrains and possibilities to adopt the most suitable legal instruments in order to respond to cross-border aggressive tax planning and harmful tax competition in a coherent, fast and coordinated manner. These interactions provided policy knowledge to the Commission to formulate tax initiatives aligned with the BEPS minimum standards agreed by

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<sup>88</sup> Platform. 2014. Summary Record of the Meeting on 19 December 2014. TAXUD/D1/AC/lc(2014):2. See Jiménez-Valladolild de L’Hotellerie-Fallois, *supra* n. 22:463.

<sup>89</sup> Nouwen, *supra* n. 22:143.

<sup>90</sup> Platform. 2016. *Supra* n.86:8.

<sup>91</sup> Jiménez-Valladolild de L’Hotellerie-Fallois, *supra* n. 22:463 ; Kalloe, *supra* n.61:191.

<sup>92</sup> With regard of the correlation between the earlier work on a ‘Model Instruction’ in the CoCG and the fast adoption of the Directive see Moutarlier, *supra* n. 22: 80-81. For general comments on the importance of the CoCG work for the transposition of BEPS actions in the EU law, see Kalloe, *supra* n.61:191.

<sup>93</sup> Platform. 2014. *Supra* n.87: 2.

<sup>94</sup> Council. 2015. Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

<sup>95</sup> Jiménez-Valladolild de L’Hotellerie-Fallois, *supra* n. 22:463; Kalloe, *supra* n. 61:191.

<sup>96</sup> Council. 2016. Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

Member State's at the OECD level and, at the same time, compliant with the EU law requirements. This is the reason why in this contribution the rapid approval of the ATAD Directives and the Directives on Administrative Cooperation<sup>97</sup>, and the suggestion of a phased approach to the CCCTB in the 2016 proposal<sup>98</sup> are attributed to the preparatory work in the groups.

### 3.2.3 Common policy on tax rulings: Fiscal State aid investigations

The Commission's tax rulings investigations generated much discussions both in the literature and in the political sphere<sup>99</sup>, particularly in regard to the alleged lack of legitimacy of the action as well as its impact on legal certainty. Nevertheless, a closer analysis of the policy process within the groups reveals some elements that might explain why the institution strengthened the measures on fiscal State aid control and focused on tax rulings investigations. The unanimity rule and the lack of transparency of the CoCG policy-making process were hindering the achievement of consensus in the group about how to tackle illegal fiscal State aid. Some scholars argued that the combination of these elements facilitated to some Member States to play the veto rule and produce intentional 'holes of non-authority' in the taxation of cross-border activities<sup>100</sup>. These circumstances may also explain the Commission's option for the use of its Treaties powers (imposition of policies) as the most suitable policy mechanism to achieve convergence in the field of fiscal State aid control.

The problem of loopholes created by some national tax regimes and practices operationalized through fiscal State aid were already spotted in the 1997 Harmful Tax Competition Package<sup>101</sup>. Since this initiative it was clear that some Member States were exerting political pressure on the Commission to adopt actions against potentially illegal State aid measures, including those embedded in tax rulings. The problem was long debated in the CoCG, but only when the 'Lux Leaks' affair made public some of the agreements reached within the group and the European Parliament Committee TAXE raised the question of the deficit of transparency in the work of Code Group<sup>102</sup>, the Commission used its Treaties' powers to initiate the investigations on tax rulings.

In the context of the Platform, in a meeting in 2014, the Commission announced that it would have balanced fair tax competition and necessary convergence to close the loopholes in the EU<sup>103</sup>. Subsequently, in a meeting in 2015, the institution announced that 'as guardian of

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<sup>97</sup> Nouwen, *supra* n. 22: 141; Jiménez-Valladolild de L'Hotellerie-Fallois, *supra* n. 22: 458.

<sup>98</sup> See Commission. 2015. *supra* n.17.

<sup>99</sup> For some of the literature debate on tax rulings, see: Franklin Cachia, "Analysing the European Commission's Final Decisions on Apple, Starbucks, Amazon and Fiat Finance & Trade," *EC Tax Review* 26, no. 1 (2017): 23–35; Edouart Fort, "European Union-EU State Aid and Tax: An Evolutionary Approach," *European Taxation* 57, no. 9 (2017): 370–83; Bram Vos, "State Aid, Taxation & Transfer Pricing: Illegal Fiscal State Aid Granted to Starbucks?," *EC Tax Review* 27, no. 2 (2018): 113–20. For political criticism, see White Paper statement "The European Commission Recent State Aid Investigations of Transfer Pricing Rulings", on the 24<sup>th</sup> August 2016, released by the US Department of the Treasury: <https://www.treasury.gov/resource-center/tax-policy/treaties/Documents/White-Paper-State-Aid.pdf> [Accessed 18 October 2019].

<sup>100</sup> Nouwen, *supra* n. 22:147; Peters, *supra* n.47:17.

<sup>101</sup> Commission.1997. *supra* n.2.

<sup>102</sup> Moutarlier, *supra* n.22: 69.

<sup>103</sup> Platform. 2014. *Supra* n.87: 2.

the Treaties' would have gone further than BEPS proposals in regard of tax rulings and used 'other legal bases than Article 115' if Member States would not have engaged in voluntary cooperation (in the framework of the CoCG)<sup>104</sup>. The tax literature corroborates the idea that the Commission might have left policy space to Member State to implement measures themselves to close the loopholes in their legislations before using its Treaties powers on tax rulings issues<sup>105</sup>.

Yet, a non-governmental organization member of the Platform published a report on the Mc Donald's tax planning structure and the loss of public resources in several EU countries. This report built on discussions held in this group<sup>106</sup>. In one of the Platform meetings record it is stated that 'this publication then contributed to the State aid investigation by the European Commission'<sup>107</sup>. This statement provides evidence of the input of the Platform work in the Commission's tax initiative.

### **3.3 Convergence as a result of the work in the groups**

After the description of the work in the groups, its developments and its importance in the formulation of EU direct corporate tax policies, it is now time to answer the second research question of how much convergence the Commission's political strategy focusing on narratives, actors and policy groups has achieved.

Convergence in this contribution is equated to the transfer of tax policies from Member States to the EU institutions level. Following this line, convergence will be measured according to two criteria. First, the focus will be placed on the results of Commission's tax initiatives, represented by (1) the adoption of the ATAD and Administrative Cooperation Directives, (2) the investigation of tax rulings, and (3) the adoption of a EU common list of non-cooperative jurisdictions. Second, convergence will be evaluated with regard to the emergence of a common meaning for a comprehensive corporate tax reform epitomized in the proposal of a Common Consolidated Corporate Tax Base.

#### **3.3.1 Convergence with focus on the results**

The adoption of the Directives mentioned above operated a policy transfer from the Member States to the EU level (legislative harmonization). In other words, since the adoption of the ATAD and DAC Directives, Member States' tax policies on cross-border aggressive tax avoidance as well as on transparency and automatic exchange of information rules will have to conform to the Directives. The practical effect of the upward movement of these tax policies into the sphere of the EU law is that the Court of Justice of the European Union (CJEU) became the final authority to ensure their proper implementation<sup>108</sup>.

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<sup>104</sup> Platform 2015. *Supra* n.85:3-4.

<sup>105</sup> Moutarlier, *supra* n. 22: 69.

<sup>106</sup> Platform. 2015. Summary Record of the Meeting on 2 March 2015. TAXUD/D1/AC/lc(2015):5.

<sup>107</sup> Platform. 2018. Summary Record of the Meeting on 18 September 2018. TAXUD/D1/LK/lr(2018) taxud.d.1(2018):9.

<sup>108</sup> Platform 2016. *Supra* n.86:5.

The convergent effect of the ATAD Directive, however, has been extremely criticized in the tax literature vis-a-vis the ‘de minimis’ character of the anti-avoidance rules inserted in its Article 3. The key argument was that a ‘de minimis’ rule leaves open to the Member States the choice to adopt stricter anti-avoidance rules than the ones established in the Directive. Such a choice might generate the asymmetrical implementation of the Directive at the EU level; thus introducing unilateral obstacles to the internal market<sup>109</sup>. This is a feature that per se undermines convergence and also hinders the achievement of the final goal of the Directive which was to ensure the coherent implementation in the EU law of the BEPS project actions<sup>110</sup>.

In this contribution, a more positive view in relation to the convergent effect of the ATAD ‘de minimis’ rule is assumed. This view builds on the political science literature, which predicts that ‘minimal harmonization is more likely to result in shifting regulatory mean upward [resulting in stricter rules], as in the case with total harmonization’<sup>111</sup>. In these sense, empirical research demonstrated that a ‘de minimis’ rule normally make countries converge their policies towards the center. Low-regulating countries have to shift their standards upwards [stricter rules] and sometimes slightly above the minimum level, since high-regulating countries tend not to lower their standards dramatically<sup>112</sup>.

In European Union law, the convergence of anti-abuse rules is sandwiched between the ‘de minimis’ rule in ATAD and the general principle of abuse elaborated in the CJEU case law. Scholars have argued that ATAD rules are stricter than the general principle of abuse<sup>113</sup>, meaning in that Member States will have to strike a balance between the Directive and the general principle when implementing the Directive. If this is the case, Member States’ regimes will not strongly deviate. Consequently, ATAD effect of creating obstacles to the internal market will be minimized. On the other hand, may the national implementation of the ‘de minimis’ rule in ATAD generate distortions in the functioning of the market, the compatibility (legal validity) of the national measures, or of the Directive itself, with the EU law will be tested against primary law by the CJEU. This is an evidence that anti-avoidance policies have been transferred to the EU level.

Turning the discussion towards fiscal State aid control, it is also possible to assume that the Commissions’ tax initiative on scrutinizing tax rulings crystalized the transfer of policies towards the supranational sphere. Before the Commission’s actions and the first decisions of the General Court of the European Union (General Court) in the cases Starbucks and Fiat<sup>114</sup>, the competence of the Commission in test tax rulings against State aid rules was uncertain. The General Court decisions, nevertheless, made it clear that the Commission has the competence to assess any tax measures that can configure an aid in the meaning of Articles

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<sup>109</sup> Ana Paula Dourado, “The EU Anti Tax Avoidance Package: Moving Ahead of BEPS?,” *Intertax* 44, no. 6 (2016): 442.

<sup>110</sup> Ivan Lazarov and Sriram Govind, “Carpet-Bombing Tax Avoidance in Europe: Examining the Validity of the ATAD Under EU Law,” *Intertax* 47, no. 10 (2019): 860.

<sup>111</sup> Holzinger and Knill, *supra* n.25:789.

<sup>112</sup> *Ibid.*:788-789.

<sup>113</sup> Lazarov and Govind, *supra* n.109:856.

<sup>114</sup> NL: ECJ, Pending Case T-760/15, *Netherlands v. Commission*, OJ C 59/50 (2016) (action brought on 23 Dec. 2015 by the Netherlands seeking to annul the Starbucks decision); LU: ECJ, 24 Sep. 2019, Joined Cases T-755/15 and T-759/15, *Luxembourg v Commission* (C 59/48); *Fiat Chrysler Finance Europe v Commission* (C 59/749).

107 and 108 TFEU and of the case law, irrespective of the form or the legislative means used to grant the aid.

In the field of the EU common list of non-cooperative jurisdiction, the transfer of policy from the Member States to the EU is an incomplete process. Despite the achievement of the adoption of a EU common list, the fact that some Member States are still using national list with different criteria of black-listing third-countries implies that the convergence process has not achieved its optimal point yet.

### 3.3.2 Convergence with focus on narratives

The greatest challenge to the Commission's political strategy is the still unfinished policy process to a comprehensive tax reform epitomized in the adoption of the CCCTB. Therefore, at the moment, if the performance of the Commission's strategy to promote convergence is to be analysed in terms of results (the adoption of a Directive), the conclusion is that no convergence has been so far achieved. But, if the focus of analysis shifts to the policy process and the construction of a meaning for the corporate tax reform, the evaluation becomes considerably different.

Much of the progress made in the area of a CCCTB derives from the policy process within the policy groups and in the Council as it was described above (*see* subsection 3.2.2). Part of this progress is connected to the emergence of the narrative of *a fair and efficient corporate tax system in the EU*. The Commission first applied this single policy narrative, which incorporates all the previous one (*see* subsection 2.2.3), to ground its tax initiatives in the 2015 'Action Plan on Corporate Taxation'<sup>115</sup>. And then refined it further in the 2016 'Corporate Tax Reform Package'<sup>116</sup>.

The concept of *fairness* was related to the idea of ensuring that companies operating within the Union both pay their taxes where profits are made and are treated neutrally for tax purposes<sup>117</sup>. Fairness then presupposes a balance between double non-taxation and double taxation. In turn, the meaning of *efficient tax system* is somewhat derived from the concept of fairness as it builds on the target of minimal tax obstacles cross-border business operations and the removal of unnecessary administrative burdens and costs. Both ideas of *fairness* and *efficiency* converged into the narrative of a '*single corporate tax system for a single market*', embedded in the re-launching of the CCCTB proposal<sup>118</sup>.

In the public debate, however, the meaning of fairness is not well delimited yet, as can be drawn from the declaration of the DG TAXUD in one of the meetings of the Platform: 'the EU has invested a lot during this Commission mandate into the issues of fair taxation, we still often see in the public debate discussions around the question, what exactly is fair

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<sup>115</sup> Commission. 2015. *supra* n.17.

<sup>116</sup> Commission 2016. COM (2016) 682 final, *supra* n.18.

<sup>117</sup> 'Fairness has become a central requirement for corporate tax policy, in Europe and internationally. Companies that benefit from the Single Market must pay tax where they make their profits and all companies should be treated neutrally for tax purposes', in Commission 2016. COM (2016) 682 final, *supra* n.18:6.

<sup>118</sup> Commission. 2016. COM (2016) 682 final, *supra* n.18:5.

corporate taxation<sup>119</sup>. It is precisely the need of further refinement of both the narrative and the meaning of a comprehensive corporate tax reform that is underlying the negotiations of a CCCTB.

Notwithstanding the above, the political strategy of the Commission allowed the convergence of the three separated narratives – (1) the protection of Member State’s tax base, (2) an internal market without obstacles, (3) tax good governance and fair and efficient tax systems – into the single narrative *a fair and efficient tax system to the EU*. This convergent movement brought the different EU stakeholders to discuss a comprehensive tax reform around the adoption of a CCCTB, which represents a great achievement if compared to the EU direct corporate tax scenario in the 1990s.

### 3.4 Preliminary Conclusions

This section described the dynamics of the policy processes coordinated by the Commission within the CoCG, the JTPF and the Platform. The analysis of these policy processes indicated how the discussions and negotiations in the groups served as preparatory work the Commission to better calibrate the tax initiatives advanced in the last five years. Moreover, they enabled Member States’ evaluation of their tax policies. In this sense some conclusions may be drawn.

With regards of the importance of the work in the three policy groups, there are some strong evidence that the knowledge-building process facilitated the fast and coherent transposition of G20-OECD/BEPS actions into EU law. The preparatory work in the groups avoided the surprise element in the Council, meaning that Member States representatives were well aware of the dimensions of the tax issues under negotiation, since they had the chance to engage in the pre-formulation of the policies. This represents the evolution of the Commission’s political strategy directed to adopt a coherent approach to direct corporate taxation in the EU.

If the mechanisms of policy learning within the groups were not present, most probably the adoption of G20-OECD/BEPS actions at the EU level (legislative and not legislative) would have taken more time. One may argue that this achievement is due mainly by Member States’ participation in the design of the BEPS actions at the OECD level. Nevertheless, most of the measures proposed in that forum required adjustments to be applied in the EU context. The preparatory work in the groups served to this end. An example of these adjustments refers to the alignment of national patent boxes regimes with the OECD nexus approach, which was a policy process conducted within the CoCG.

In terms of policy convergence, it is possible to conclude that the political strategy of the Commission – of subdividing the corporate tax reform into narratives connected to actors and policy groups – has so far promoted only partial convergence of tax policies towards the EU level. This convergence is more pronounced in the common approach towards aggressive tax planning (ATADs), administrative cooperation to enhance transparency and automatic exchange of information (DACs), and fiscal State aid control (tax rulings investigations). Conversely, less convergence (transfer of policies) has been reached in the external action

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<sup>119</sup> Platform. 2018. *Supra* n.49:7.

against harmful tax practices of third countries (EU common listing of non-cooperative jurisdictions) and in the area of a comprehensive tax reform (CCCTB). In this latter point, however, it is observable a convergence in terms of the construction of a single narrative, which will have to be refined in the years to come in order to enable the adoption of the CCCTB.

#### 4. The Way Forward to Boost Convergence

As discussed above, the political strategy of the Commission has so far produced some positive results in terms of transfer of tax policies to the EU level. Consequently, in the following years it is expected that the Commission will continue to invest in the refinement of the narrative of '*a fair and efficient tax system to the EU*' by evolving its political strategy of coordinating the discussions and negotiations within the Code of Conduct Group, the Joint Transfer Pricing Forum and the Platform.

Notwithstanding the substantial contribution of the preparatory work of these groups to the EU direct corporate taxation framework, there are still some elements related to their decision-making processes that could be improved to increase the convergence of tax policies and its speed. By focusing on some of the issues that are still hindering the convergence process, the aim of this section is to answer the third research question of what should be the political strategy of the Commission to increase the convergence in direct corporate taxation in the EU.

##### 4.1 Transparency concerns

In 2015 and 2016, the Council adopted an overture policy to make the decision-making process within the CoCG more transparent to the public<sup>120</sup>. Notwithstanding the overture, it is the view of scholarship in the area that the measures to promote the transparency of the policy process in the CoCG remain inadequate<sup>121</sup>. For instance, Member States are still able to classify sensitive documents, which combined with confidentiality of the deliberations and the consensus rule, enable single Member States to play the veto right.

These dynamics prevent the progress in the adoption of pseudo-legislation as well as frustrate its execution or its monitoring phase<sup>122</sup>. Moreover, the opacity in the CoCG decision-making processes might also facilitate that individual Member States actively exploit the 'holes of non-authority' that they have deliberately created by blocking tax harmonization<sup>123</sup>.

The transparency of the decision-making process within the CoCG is also problematic in regard of the exchange of direct knowledge between this group and the Platform. As reported in a Platform meeting, the gathering of information about of the policy process in the

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<sup>120</sup> Council of the European Union. 2015. 3435<sup>th</sup> Council meeting Economic and Financial Affairs (ST 15068/15) and Council of the European Union. 2016. 3454<sup>th</sup> Meeting Economic and Financial Affairs (ST 6788/16).

<sup>121</sup> Nouwen, *supra* n. 22:149.

<sup>122</sup> For a step by step analysis on how transparency, political legitimacy and provision of information about the CoCG could be improved, *see* Nouwen, *supra* n. 22:147.

<sup>123</sup> *See* Peters, *supra* n.47:17.

CoCG was out of the reach of the Platform members<sup>124</sup>. Additionally, the work in the Platform was subdivided into two groups, one composed of government representatives and other of non-government representatives. The split-up of the Platform into two groups was implemented in the first renewal of the Platform mandate in 2015<sup>125</sup> and kept in the second one in late 2019<sup>126</sup>.

The Commission justified the division arguing that the measure would have increased the efficiency of the Platform, as functional differentiation speed up the policy process. Although the argument of the Commission seems reasonable, the separation could aggravate the diminishment of the interactions of the civil society and business and epistemic communities with Member State's tax authorities. Consequently, obstacles for the communication flows between the two subgroups may affect the transparency of discussions and negotiations and decrease the legitimacy of the EU policy-making process.

In the next years, one of the challenges of the Commission will be the monitoring of the implementation of the ATAD and Administrative Cooperation Directives in the Member States legislation. Apparently, part of the monitoring process will have to be coordinated by the institution in the context of the CoCG and the Platform. In this sense, the Commission should strengthen its work of bridging the informational gap between the two groups and actively coordinate a political solution for problems arising from an eventual asymmetrical implementation of the already adopted Directives. The enhancement of transnational problem-solving mechanism may be decisive to ensure the coherence in the application of the Directives thus reducing the need of intervention of the CJEU and fastening the provision of tax certainty to business, citizens and tax administrations.

Additionally, progress on the negotiations of the CCCTB proposals will probably depend much on the addressment of horizontal measures on transfer pricing issues which practical solutions are discussed under the Joint Transfer Pricing Forum mandate. The Commission should not only continue to draw advice from the group to the formulation of EU tax policies in transfer pricing area, but also favor the interaction of the policy process in this group with the Platform and the CoCG as well as with the Council and the European Parliament (Parliament).

Still with regard to transparency issues, the lack of clearer communication by the Commission of the preparatory work in the groups might explain part of the harsh criticisms directed to the recent tax initiatives proposed by the institution. The Commission should therefore take measures to increase the promotion of information regarding the policy process behind the institution's tax initiatives. The diffusion of this information may be essential to the understanding of the discussions around the political (democratic) legitimacy and legal validity of the adopted Directives (ATADs and DACs), the tax rulings investigations, the decision for a EU common list of non-cooperative jurisdictions. But, mainly, better knowledge on the policy-making process could create the grounds for a more coherent technical debate on the CCCTB and digital taxation Directive proposals and on the suggested progressive move towards a Qualified Majority Voting in EU tax law.

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<sup>124</sup> Platform. 2016. *Supra* n.86:2.

<sup>125</sup> Commission. 2015. *Supra* n.68: Article 5 (2).

<sup>126</sup> Commission. 2019. Commission Decision on the Renewal of the Commission Expert Group 'Platform for Tax Good Governance, Aggressive Tax Planning and Double Taxation' (2019/C 428/08): Article 8.

## 4.2 The diminished role of the European Parliament

Another key element that might be hindering progress in the convergence of direct corporate taxation is the low involvement of the national and the European parliaments in the EU law-making process. Parliaments' actions exert political pressure into governments<sup>127</sup>. In the EU, the special procedure for adoption of legislation ensures only a consultative role to the European Parliament (Parliament) in the decision-making process. The lack of participation of the parliaments in the policy process is even more remarkable in all the phases of the making of pseudo-legislation in the CoCG: drafting, implementation and monitoring phases<sup>128</sup>.

Recently, two strategies have been already put forward by the Commission to alleviate these problems at the EU level: (1) the gradual move from unanimity voting rule to the ordinary legislative procedure where the Parliament acts as a co-legislator<sup>129</sup>; and (2) the regulation of the relationship of the Platform with the European Parliament as regards information sharing and participation of Parliament experts in this groups meetings<sup>130</sup>.

In relation to the CoCG, it would be also necessary to ensure some participation of parliaments in the policy-making process of the group. The main challenge is that the CoCG is an intergovernmental group where Member State's representatives retain great level of political power. Pressures to increase transparency might produce the counter effect of diminishing the engagement of some Member States in the work within the group. It is then to the Commission and Council to strike the delicate balance between: how much opacity is needed to advance the negotiations and achieve consensus in the CoCG and how much transparency is needed to speed up the policy convergence processes within this group<sup>131</sup>.

A good example on how the Commission should act can be drawn from its past political articulation to give more access to the Parliament in the policy process of the CoCG. This resulted in the agreement among all Member States to grant the European Parliament TAXE Committee access to the CoCG documents<sup>132</sup>. The access to the documents led the TAXE Committee to criticize the performance of the CoCG on the tax rulings issues putting the group under the scrutiny of public opinion<sup>133</sup> which might have contributed to the Commission's actions against illegal State aid practices thus enhancing the convergence process.

## 4.3 Preliminary conclusions

In the next years, it is expected from the Commission to continue to push forward its political strategy of refining narratives through discussions and negotiations with the main actors in the EU direct corporate tax fields within the Code of Conduct Group, the Joint Transfer Pricing

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<sup>127</sup> Nouwen, *supra* n. 22:148.

<sup>128</sup> *Ibid.*: 148.

<sup>129</sup> Commission. 2019. *Supra* n.19.

<sup>130</sup> Commission. 2019. *Supra* n.19: Article 10.

<sup>131</sup> For a step-by-step analysis on how transparency, political legitimacy and provision of information about the CoCG could be improved, *see* Nouwen, *supra* n. 22:146-149.

<sup>132</sup> Reported by the Chair of the Platform in Platform 2015. *supra* n.85:1.

<sup>133</sup> Moutarlier, *supra* n. 22:82.

Forum and the Platform. The follow up of the main tax initiatives launched in the last five years will require the institution to promote more transparency of the policy-making processes within these groups as well as to enhance its institutional role of promoting the interactions and communication among them.

The policy process for monitoring the transposition of the ATADs and DACs Directives along with the negotiations in the Council surrounding the CCCTB and the QMV proposals will revolve around the definition of the meaning of the narrative of ‘a fair and efficient tax system to the EU’. If it is expected from these processes to enhance the promotion of convergence of tax policies at the EU level, it is also expected that all the stakeholders involved in the EU tax policy have their voices heard. So far, the policy spaces for these interactions are already in place. It is now to the Commission to take a step further in its political strategy by designing mechanisms that could boost the interactions between these policy groups and among them and the national and EU parliaments, as well as the transparency of the decision-making processes arising from these interactions.

## **5. Closing Remarks**

This contribution focused on the development of the Commission’s political strategy to promote the convergence of direct corporate taxation at the EU level. The strategy of the Commission consisted in (1) the identification of the different policy preferences of the constellations of actors at the EU level; (2) the construction of policy narratives that could provide a meaning for a corporate tax reform; and (3) the creation of policy spaces where the constellation of actors could meet, discuss and negotiate the formulation of policies. The aim of the analysis was to enhance the understanding about what should still be done by the European Commission to increase the convergence in direct corporate taxation in the EU.

To this end, the emergence and the evolvement of policy narratives and policy groups along with the involvement of actors in the decision-making process were explored. In terms of narratives, the Commission shifted the focus of the reform from the narrative of ‘functioning of the internal market’ investing in different narratives which, along the years, converged into the single narrative of ‘a fair and efficient tax system to the EU’. The meaning for a comprehensive corporate tax reform emerged from the discussions and negotiations of direct tax policy issues within the Code of Conduct Group, the Joint Transfer Pricing Forum and the Platform for Tax Good Governance. The dynamics of work around the narratives and within the groups were explained in order to evaluate how much convergence the Commission’s political strategy has so far achieved and how these achievements will influence the policy developments over the years ahead.

In base of the results of these evaluations it was possible to draw some conclusions. First, the political and technical knowledge produced within the groups has served as preparatory work for the Commission in the formulation of the tax initiatives advanced in the last five years. Consequently, the political strategy of the institution, which centered in enabling the discussion and negotiation of direct tax policies among different stakeholders, enhanced both the political legitimacy and the legal validity of the tax initiatives.

Furthermore, the preparatory work in the groups was essential for the fast-track and transposition of the G20-OECD/BEPS actions in the EU law. Moreover, the work contributed

for implementation of tax policies beyond BEPS, for example the proposals of a CCCTB and a qualified majority-voting rule. Some of the policies already implemented have effectively operated the transferring of tax policy controls from the Member States to the EU. However, the more tax policies are transferred, the more the EU institutions will be responsible of monitoring the asymmetries that will probably emerge in the implementation of that policies by the Member States.

This acknowledgment leads to a third conclusion. The challenges before the Commission in the years to come will require the institution to enhance its political strategy of balancing power relations between the constellations of actors playing at the EU level. Additionally, the institutions will have to ensure the incorporation of parliaments (EU and national parliaments) into the decision-making processes. To achieve this purpose, the articulation of the work within the groups CoCG, the JTPF and the Platform, the interaction among them, and with them and the parliaments will be essential to promote more policy convergence and speed up its process.

The final conclusion refers to the negotiation and adoption of a CCCTB and relates to the narrative behind the Commission's proposal: a fair and efficient tax system to the EU. Although much progress has been already reached in terms of the building up of a common meaning for a comprehensive corporate tax reform, this meaning revolves around the concept of fairness, which content is still to be refined. The hope is that this refinement will emerge in the near future from the intersections between the EU and the OECD initiatives to address the issues regarding digital taxation. And when this time come, the preparatory work conducted into the policy groups might, once again, speed up the process of policy tax convergence in the EU.