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Inga Chelyadina



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## About the author

Inga Chelyadina is a recent graduate of the department of European Political and Governance Studies at the College of Europe (Bruges). She also holds a Master's degree from Sciences Po Paris School of Public Affairs specializing in European Law.

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## Contact details

[Inga.chelyadina@sciencespo.fr](mailto:Inga.chelyadina@sciencespo.fr)

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Dijver 11, B-8000 Bruges, Belgium | Tel. +32 (0) 50 477 281 | Fax +32 (0) 50 477 280  
email [michele.chang@coleurope.eu](mailto:michele.chang@coleurope.eu) | website [www.coleurope.eu/pol](http://www.coleurope.eu/pol)

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## **Abstract**

On 25 October 2016, the European Commission (EC) presented two legislative proposals to create a Common Consolidated Corporate Tax Base (CCCTB) for the European Union (EU). The proposals represent a re-launch of the 2011 CCCTB proposal, which was blocked by the Council. The 2011 file proposed a creation of an optional tax base, in which enterprises would have been able to choose whether to apply the national rules or the common ones. In the 2016 proposal, however, the European Commission intended to make the CCCTB compulsory for multinational enterprises. The paper uses the multiple streams theoretical framework to explain the failure of previous attempts and the potential success of the 2016 ambitious re-launch. The main argument states that there has been no coupling of policy streams in 1988 and 2011, however in 2016 the European Commission managed to couple three policy streams (problems, solutions and politics) and use the window of opportunity.





*“Harmonization of taxation is viewed by the Commission as the final step of completing the internal market”.*<sup>1</sup>

(Official of the Permanent Representation of Ireland to the EU).

The idea of harmonizing direct corporate taxation between European states has been on the table since the 1960s.<sup>2</sup> The reason lies in the essence of the EU, its cornerstone – the single market.<sup>3</sup> The freedom of establishment allows companies that are officially registered in one of the EU Member States (MS) to “enjoy the freedom of movement of persons, services and capital, to encourage businesses to operate over borders”.<sup>4</sup> However, it also facilitates profit shifting, tax evasion and tax avoidance, as businesses are often set up in the MS where the best conditions are provided– e.g. where corporate tax rates are the lowest - and declare all the revenues there (as the EU has no competence at setting the tax rates).<sup>5</sup>

The founding fathers defined the link between the success of the single market project and tax policy since the very beginning.<sup>6</sup> Nevertheless, for many decades this goal remained an aspiration, as MS opposed practically any action that could have taken away their sovereign right to set rules of corporate taxation.<sup>7</sup> This is due to the fact that “voters and governments care deeply about taxes and insist on keeping a close check on tax policy-making”.<sup>8</sup> Such sensitivity over the issue is evident in the article 115 TFEU, which relates to the EU decision-making in direct taxation: legislation related to direct taxation ought to be decided by the

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<sup>1</sup> Interview with an official, Permanent Representation of Ireland to the EU, Brussels, 5 March 2018.

<sup>2</sup> C. Radaelli, ‘Corporate Direct Taxation in the European Union: Explaining the Policy Process’, *Journal of Public Policy*, vol. 15, no. 2, 1995, p. 163.

<sup>3</sup> P. Genschel, ‘One trap, Many Exits, but No Free Lunch: How the Joint-Decision Trap Shapes EU Tax Policy’, in G. Falkner (ed.), *The EU’s Decision Traps*, New York, Oxford University Press, 2011, p. 54.

<sup>4</sup> ‘Fact sheets on the European Union: Company law’, *European Parliament*, retrieved 23 April 2018, [http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU\\_2.1.11.html](http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_2.1.11.html)

<sup>5</sup> ‘Taxation’, *European Commission*, 2018, retrieved 23 April 2018, [https://europa.eu/european-union/topics/taxation\\_en](https://europa.eu/european-union/topics/taxation_en)

<sup>6</sup> Genschel, *op. cit.*, p. 55.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*, p. 54.

special legislative procedure in which the Council votes by unanimity after consultation with the EP and the Economic and Social Committee.<sup>9</sup>

This research paper concentrates specifically on the corporate tax area. Since 2007, there has been an important increase in the amount of legislation adopted in the field of corporate tax, as well as of EC proposals that are still pending at the Council.<sup>10</sup> Nevertheless, proposals for Common Corporate Tax Base (CCTB) and Common Consolidated Corporate Tax Base (CCCTB), public country-by-country reporting, tax transparency for intermediaries, and related to fair taxation for the digital economy are still pending before the Council.<sup>11</sup>

The main focus of the paper is the proposal for creation of a common corporate tax base in the EU, which has been discussed since the 1970s.<sup>12</sup> A full draft of the proposal to harmonise the taxable benefits of companies was prepared in 1988, but it has never been tabled “due to the reluctance of most Member states”.<sup>13</sup> On the 23<sup>rd</sup> of May 2001, the EC published the communication on “Tax policy in the EU – Priorities for the years ahead”, in which it had set out the plan to re-launch the process of harmonization of corporate taxation.<sup>14</sup> Even though the action was called for in 2001, the proposal for an optional common corporate tax base was put on the table only in 2011.<sup>15</sup> The file was blocked at the Council.<sup>16</sup> However, according to tax attachés of both the French and the Irish permanent representations to the EU, the

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<sup>9</sup> Article 114 TFEU

<sup>10</sup> ‘Legislative train schedule’, *European Parliament*, 2018, retrieved 23 April 2018, <http://www.europarl.europa.eu/legislative-train/theme-deeper-and-fairer-internal-market-with-a-strengthened-industrial-base-taxation>

<sup>11</sup> *Ibid.*

<sup>12</sup> ‘Taxation’, European Commission, retrieved 23 April 2018, [https://europa.eu/european-union/topics/taxation\\_en](https://europa.eu/european-union/topics/taxation_en)

<sup>13</sup> *Ibid.*

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

<sup>15</sup> European Commission, *Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, COM (2011) 121/4, Brussels, 16 March 2011.

<sup>16</sup> A. Marini, ‘A Second Attempt at the Common Consolidated Corporate Tax Base’, *EU inside*, 2016, retrieved 24 April 2018, <http://www.euinside.eu/en/news/a-second-attempt-with-the-ccctb>

discussions at the Council were quite fruitful.<sup>17</sup> The proposal was withdrawn in 2016 by the Juncker Commission.

In November 2014, the EC's new President Jean-Claude Juncker assumed power and was determined to reform the sphere of corporate taxation. Back in July 2014, Juncker already had promised to “fight tax evasion and tax dumping through putting some morality, some ethics, into the European tax landscape”.<sup>18</sup>

On the 25<sup>th</sup> of October 2016, the EC presented the two proposals that form the focus of this paper: the CCTB and the CCCTB. They represent a re-launch of the 2011 CCCTB proposal that has been modified and divided into two stages. The main goal of the proposals is to go forward with the harmonisation of corporate taxation in the EU through creation of a common consolidated tax base for companies that would only be mandatory for multinational enterprises. The two proposals would not affect tax rates but would drastically influence the way the profits of companies are calculated through the setting up of common rules and a consolidation formula to count a common tax base.<sup>19</sup> The CCTB proposal “provides a single set of corporate tax rules for doing business across the internal market”.<sup>20</sup> It foresees a possibility of a tax deduction for research and development costs, as well as for growth and investment.<sup>21</sup> The CCCTB would bring the tax base to the next level through consolidation: it adds an apportionment formula in order to distribute the tax shares between the Member States.<sup>22</sup>

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<sup>17</sup> Interviews with officials, Permanent Representations of France and Ireland to the EU, Brussels, 5, 21 March 2018.

<sup>18</sup> ‘Leaked Documents Expose Global Companies’ Secret Tax Deals in Luxembourg’, *International Consortium of Investigative Journalists*, 2014, retrieved 25 April 2018, <https://www.icij.org/investigations/luxembourg-leaks/leaked-documents-expose-global-companies-secret-tax-deals-luxembourg/>

<sup>19</sup> ‘Taxation’, European Commission, retrieved 23 April 2018, [https://europa.eu/european-union/topics/taxation\\_en](https://europa.eu/european-union/topics/taxation_en)

<sup>20</sup> European Commission, *Proposal for a Council Directive on a Common Corporate Tax Base*, COM (2016) 685 final, Strasbourg, 25 October 2016, p. 2.

<sup>21</sup> *Ibid.*, p. 3.

<sup>22</sup> European Commission, *Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, COM (2016) 683 final, Strasbourg, 25 October 2016, p. 15.

The main difference between the 2011 and the 2016 proposals, apart from the two-stage approach, is that the 2011 proposal intended to set an optional system for companies to use the common tax base. However, the 2016 proposal would make following the tax base compulsory for MNEs (companies with a yearly turnover of more than EUR 750 million). The files are now under discussion at the Council.

This research concentrates on understanding the reasoning behind the re-launch of the 2011 CCCTB proposal in 2016, considering that it was unpopular among many Member States in the Council and had very little success in discussions.<sup>23</sup> Thus, the research question is the following:

*“Why, without changing the unanimity rule and with little success in previous action, has the European Commission tabled a more ambitious politics for the harmonization of the corporate tax base?”*

To answer the research question, the multiple streams framework is applied. The main argument of the framework states that success of a policy depends on an interplay of three streams: problems, solutions and politics.<sup>24</sup> According to Nikolaos Zahariadis, in order to understand this interplay, one needs to use coupling – “the notion that the effects of these three factors are not additive, but only a combination of all at the same time can produce the desired outcome”.<sup>25</sup> Thus, the essential answer to the puzzle of the CCCTB is the position and strategy of the policy entrepreneur (hereafter the European Commission) who joins the streams together here in an opportune moment of a policy window to couple the existing solution (CCCTB) with the other streams.

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<sup>23</sup> Marini, *loc. cit.*

<sup>24</sup> N. Zahariadis, ‘Selling British Rail: An Idea Whose Time Has Come?’, *Comparative Politics Studies*, vol. 29, no. 4, 1996, p. 400.

<sup>25</sup> *Ibid.*, p. 401.

H: The re-launch of the CCCTB proposal is due to the continuation of the EC strategy that has tried to use an opening in the ‘window of opportunity’ to push for more integration in the field of corporate taxation.

This research is based upon: semi-structured interviews with the EU and MS officials (specifically, officials from the DG TAXUD, Alain Lamassoure, MEP EPP; officials from the French and the Irish Permanent Representations to the European Union); as well as analysis of documents (specifically texts of 1988, 2011 and 2016 CCCTB proposals, communications of the European Commission and the European Parliament; OECD/G20 documents; articles containing previous research on the topic).

### **Theoretical framework**

The multiple streams framework “views the agenda-setting process as consisting of three streams that flow largely independently of one another”:<sup>26</sup>

- a) a stream consisting of information about problems;
- b) a ‘soup’ of solutions generated in narrow policy communities;
- c) a broad politics stream that consists of such dimensions as legislative and administrative turnover, the national mood and the balance of organized interests.<sup>27</sup>

According to John Kingdon, issues may arise and get onto the agenda only when policy windows open, which is when there is an opportunity for the policy entrepreneurs to couple the three independent streams together.<sup>28</sup> Nikolaos Zahariadis has built upon the work of Kingdon to explain the processes of policy formation and decision-making through the combination of the three streams in the politics stream and the coupling by the policy entrepreneur “to refer to the policy choice, not just setting the agenda”.<sup>29</sup> He also extended Kingdon’s findings, emphasising the importance of ‘coupling’: “the structure of each stream

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<sup>26</sup> J. Kingdon, *Agendas, Alternatives and Public Policies*, New York, Harper Collins, 1995.

<sup>27</sup> Zahariadis, ‘Selling British Rail: An Idea Whose Time Has Come?’, *op. cit.*, p. 403.

<sup>28</sup> Kingdon, *loc. cit.*

<sup>29</sup> Zahariadis, ‘Selling British Rail: An Idea Whose Time Has Come?’, *loc. cit.*

is likely to condition the availability of problems, solutions and politics at any given moment, (and) the feature that will affect the choice directly is coupling”.<sup>30</sup>

Zahariadis describes coupling as a “search for fit”<sup>31</sup> in which, “Solutions scan their environments for clues to what problem they can solve; participants seek problems to attend to, and problems search for possible solutions”. It leads to the fact that “policy makers search for solutions to problems or they may attach problems to their pet solutions”.<sup>32</sup>

Zahariadis’ work showed that coupling not only functions in the way that the problems influence the corresponding solutions, but also that possible solutions in a given political context look for which problems they can solve.<sup>33</sup> Decisions would depend, first, on the policy entrepreneurs, and second, on the opportunity that provides the occasion for the policy to appear.<sup>34</sup> The policy entrepreneurs constantly look to “match problems to appropriate solutions and vice versa while making it palatable to the political audience at an opportune time”.<sup>35</sup>

I analyse the three attempts to propose the harmonization of corporate tax base on the EU level in 1988, 2011 and 2016 through looking at the proposals themselves and at the three streams (problems, solutions and politics), trying to understand whether there has been a window of opportunity, and whether the EC as the policy entrepreneur had the willingness and the strategy to couple the streams. The problems stream concentrates on problems existing in corporate taxation at the moment of the proposal. The solutions stream focuses on what the EC has actually proposed (as the policies may vary one from another) and whether the solutions are adequate responses to the problems. Finally, the stream of politics includes changes in the politics of the MS (possible pressure from governments, based on one of the

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<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> N. Zahariadis, ‘Garbage cans and the hiring process’, *Political Sciences and Politics*, no. 27, 1994, pp. 98-99.

<sup>34</sup> Zahariadis, ‘Selling British Rail: An Idea Whose Time Has Come?’, *loc. cit.*

<sup>35</sup> *Ibid.*

most supportive countries to the 2011 proposal – France, and one of the most opposing ones – Ireland); the situation in the EU (appointment of the new Commission (since 1<sup>st</sup> November 2014); role of the EP); the possible influence of the European Court of Justice (ECJ); the overall world global change in the way corporate taxation is perceived (on the example of G20/OECD work); and public opinion (by using Google trends). The conclusion confirms the aforementioned hypothesis, which demonstrates that the EC managed to step up with a more ambitious CCCTB policy in 2016 as it strategically coupled the opening in the problems, solutions, and politics streams.

## **THE 1988 ATTEMPT TO HARMONISE THE TAX BASE IN THE EEC**

Discussions to create a common corporate tax base have been held long before the 2011 proposal. The first attempt to harmonize the corporate tax base was developed in 1988, but it has never been officially sent to the Council due to the “reluctance of most MS to support it”.<sup>36</sup> The draft of the 1988 pre-proposal has been discovered in the archives of the European Commission and is available only in French.

### **The 1988 draft proposal**

The original 1988 draft proposal has technically the same goal as the 2016 proposal: to set the same rules for all enterprises to count their tax bases in the whole Community.<sup>37</sup> The proposal starts with the explanation of the motives of the proposal: the main one is that there can be no internal market without putting in place a certain amount of rules linked to harmonisation of company taxation? as there can be no free movement if fiscal conditions

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<sup>36</sup> Commission of the European Communities, *Commission Staff Working Paper: Company Taxation in the Internal Market*, SEC (2001) 1681, Brussels, 23 October 2001, p. 17.

<sup>37</sup> Commission des Communautés européennes, *Projet de proposition de directive concernant l'harmonisation des règles de détermination des bénéfices imposables des entreprises*, Bruxelles, 8 Novembre 1988, (unpublished).

vary drastically from one MS to another.<sup>38</sup> According to the authors of the proposal, setting a common corporate tax base would be the first step towards harmonizing the corporate tax rules, as the harmonization of tax rates would follow.<sup>39</sup> It would help achieve the following two objectives: bring more transparency to the regimes that are imposed on enterprises; and make the fiscal environment less complex and more stable for companies.<sup>40</sup> The Commission underlined that this system would be particularly beneficial for SMEs, as the administrative costs of dealing with different tax administrations would be significantly reduced. It also underlined that these common rules potentially could increase competitiveness of European companies compared to foreign firms.<sup>41</sup>

The 1988 proposal argues that even though the rules set out in the directive would be common, a lot of freedom would still remain with the MS, specifically, the application of the rules, but also tax credits and granting of subsidies. However, once the rules would be adopted, individual MS could not change them.<sup>42</sup> Thus, the 1988 proposal is in many ways a precursor of a compulsory CCTB proposal for all types of enterprises.

### **Analysis of the streams in 1988**

This draft proposal for setting common rules to determine taxable benefits of enterprises was blocked even before becoming an official Commission proposal. Why was there such a result in 1988?

First of all, it is important to analyse whether there was an opening in the problem stream. Jacques Delors' first Commission's aim was to eliminate the barriers to the existence of the single market. Thus, the ultimate goal was removing obstacles for enterprises to operate freely. However, as this has been on the table since the creation of the EEC, this cannot be

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<sup>38</sup> *Ibid.*, p. 2.

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

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*, p. 3.

<sup>42</sup> *Ibid.*, p. 4.



viewed as an opening in the problem stream. The motivations that have been expressed in the draft are quite similar: facilitating the rules for enterprises that operate in other MS (specifically the SMEs) and making the rules more transparent. Thus, all the benefits of solving the problem would be attributed to enterprises.

It is also important to see whether there has been a significant event that could be used by the policy entrepreneur to bring the public attention to the issue and propose a solution. As no mention of such event has been identified in the motives of the proposal, I tend to conclude that there was no opening in the problems stream.

The solution in the draft proposal presented in 1988 is technically the compulsory CCTB proposal (it defines common rules for calculating the tax base, such as tax amortisation benefits, costs, definitions of what is an active enterprise, taxation of capital gains, but does not propose a common consolidation formula). Does this solution respond to the problem it wishes to address? Judging on the impact assessment of the 2011 and 2016 proposals, the fact that the proposal would make it mandatory for all enterprises to obey common rules would have created an unproportioned financial burden.<sup>43</sup> When comparing the 1988 proposal to the one of 2011, which opted for a voluntarily tax base, a more efficient way to address the problem of reducing tax burdens linked to cross-border trade by SMEs is indeed an optimal solution.<sup>44</sup>

In the politics stream, there also was no opening: in the Commission white paper “Completing the Internal Market”, no proposals for harmonization of direct (base or rate) tax rules were listed, and more attention is instead paid to indirect taxation (e.g. VAT).<sup>45</sup> Although

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<sup>43</sup> European Commission, *Commission Staff Working Document, Impact Assessment, Accompanying document to the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, SEC (2011) 315 final, Brussels, 16 March 2011, p. 10.

<sup>44</sup> European Commission, *Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, COM (2011) 121/4, *loc. cit.*

<sup>45</sup> Commission of the European Communities, *Completing the Internal Market: White Paper from the Commission to the European Council*, *loc. cit.*

it was announced that the EC had the intention to “publish a white paper on the taxation of enterprises”, no white paper has ever been presented, which shows that even the policy entrepreneur has changed its strategy.<sup>46</sup>

The reason why the draft was prepared, but the Commission of the European Communities failed to even officially send it to the Council, has been offered by an official from the French Permanent Representation to the EU: the Commission only recently adopted the strategy of consulting with an important amount of MS before tabling its proposals and was mostly putting forward proposals upon request from several MS.<sup>47</sup> Thus, it can be argued that no correlation has been made by the policy entrepreneur between the proposal and the situation in MS. However, further research could be done in order to detect a possible link.

In this research, a lot of attention is paid to the international situation, particularly the influence of the most important international actor working on forming the rules of international taxation – the OECD. The OECD states on its official website that it has become a “linchpin of a major overhaul of the international tax architecture...only since the London Summit in 2009”.<sup>48</sup> Thus, the influence of the OECD on the politics stream cannot be considered as an opening in 1988.

Building on the analysis of the 1988 draft proposal for harmonizing the rules for corporate tax base and of the three policy streams (problems, solutions and politics), as well as the fact that the proposal was blocked by the MS even before been sent to the Council, there has been no opening in any of the three streams. Secondly, the policy entrepreneur (the Commission) had no strategy to couple those streams, even with the information it had.

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<sup>46</sup> US International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States: Fifth Follow-up Report*, USITC Publication 2628, April 1993.

<sup>47</sup> Interview with an official, Permanent Representation of France to the European Union, Brussels, 21 March 2018.

<sup>48</sup> *Ibid.*

## **THE 2011 PROPOSAL FOR AN OPTIONAL CCCTB**

The next proposal to create a CCCTB was presented on the 16<sup>th</sup> of March 2011.<sup>49</sup> Its primary purpose was very similar to the previous one – “to remove the remaining obstacles to the completion of the Internal Market and stimulate growth and job creation”.<sup>50</sup> However, the details of the proposed option varied drastically. This time the EC proposed an optional tax base for all EU companies:

the CCCTB will be available for all sizes of companies; MNEs would be relieved from certain tax obstacles in the single market and SMEs would incur less compliance costs when they decide to expand to another MS.<sup>51</sup>

Thus, what the proposal intended to achieve was to give more benefits to the European firms in the single market, so that they could count which option of the tax base would be more beneficial for them to use and return to the national taxation rules if needed. The proposal has been blocked at the Council, “where no visible progress was made since 2011, although it was discussed under various presidencies”.<sup>52</sup>

### **Analysis of the streams in 2011**

To understand which problems were addressed by the 2011 proposal, impact assessment of the EC has been analysed. According to the document,

The remaining tax barriers to the internal market that have prompted the current policy initiative were: additional compliance costs linked to cross-border activities, international double taxation, and over-taxation in cross border situations, which occur when cross-border activities create tax liabilities that would not occur in a purely domestic context.<sup>53</sup>

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<sup>49</sup> European Commission, *Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, COM (2011) 121/4, *op. cit.*, p. 1.

<sup>50</sup> *Ibid.*, p. 4.

<sup>51</sup> *Ibid.*, p. 5.

<sup>52</sup> ‘Legislative train schedule’, *European Parliament*, 2018, retrieved 23 April 2018, <http://www.europarl.europa.eu/legislative-train/theme-deeper-and-fairer-internal-market-with-a-strengthened-industrial-base-taxation>.

<sup>53</sup> European Commission, *Commission Staff Working Document, Impact Assessment, Accompanying document to the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, SEC (2011) 315 final, *op. cit.*, p. 9.

According to the impact assessment, additional compliance costs are the “hidden costs of taxation”.<sup>54</sup> These costs, according to studies, are high (2-10% of the tax paid), hit SMEs more than MNEs, and, finally, are not becoming smaller with time.<sup>55</sup> Concerning the second major problem – double taxation, it “has detrimental effects on efficiency and growth” and is a “significant problem for many EU enterprises”.<sup>56</sup> Finally, the so-called over-taxation “occurs due to the absence or limited availability of cross-border loss relief”.<sup>57</sup> All these problems lead to discouragement of cross-border economic activity.<sup>58</sup> The proposal aims to address all of them.

Could these problems be considered as an opening of the problems stream? When compared to the text of the 1988 draft proposal, the problems addressed stay practically the same. No major events have been described in the 2011 impact assessment document in order to justify the re-launch.

A large impact assessment prepared for the 2011 proposal is the “comparison of the policy options”, in which four options “aiming to improve the competitive position of European companies by providing them with the possibility to compute their profits according to one set of rules” were presented: an optional CCTB; a compulsory CCTB; an optional CCCTB; and a compulsory CCCTB.<sup>59</sup> An optional CCTB would create an option for EU-resident companies to “compute their tax base pursuant to a set of common rules across the Union instead of any of the 27 national corporate tax systems. The compulsory option of the CCTB would oblige all the EU companies to follow this single set of rules”.<sup>60</sup> The optional CCCTB would function as the optional CCTB, but the consolidation would mean that “tax

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<sup>54</sup> *Ibid.*, p. 10.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*, p. 11.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> European Commission, *Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, COM (2011) 121/4, *loc. cit.*, p. 7.

<sup>60</sup> *Ibid.*

results of each group member would be aggregated to form a consolidated base and re-distributed according to a pre-established sharing mechanism based on a formula”,<sup>61</sup> which would substitute the ‘separate accounting’. Finally, the last option – the compulsory CCCTB – would oblige all EU established enterprises to follow this set of rules with consolidation.<sup>62</sup>

The optional CCCTB was chosen as the most preferred option because it is estimated that it would have a positive impact on employment and it would not be forced on companies.<sup>63</sup> This is, indeed, a new solution that could be used by policy entrepreneurs to push decision makers to change the negative perception of the previous attempt. It tackles the ultimate issue of making it more convenient for companies to file their company tax reports. The official representative of the Irish Permanent Representation to the EU concludes that this policy choice would solely be beneficial for companies and, possibly, for the functioning of the internal market, but not at all for the MS.<sup>64</sup> If each company has the right to choose to use the national tax bases or the CCCTB, it would make the necessary assessment and choose which option would be the most beneficial. Thus, MS might lose important amounts of tax revenue<sup>65</sup> and the proposal has not found sufficient support in the Council.

The economic and financial crisis had a very important influence on how MS perceived the CCCTB proposal in 2011. As underlined by an official of the French Permanent Representation to the EU, MS were in a much better financial situation just before the financial crisis. However, by the time the proposal had actually been presented, the situation had worsened substantially.<sup>66</sup> Officials from DG TAXUD pointed out that, as the proposal is not intended to be compulsory for companies, they would only use the common tax base if it

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<sup>61</sup> *Ibid.*, p. 8.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> Interview with an official, Permanent Representation of Ireland to the European Union, Brussels, 5 March 2018.

<sup>65</sup> *Ibid.*

<sup>66</sup> Interview with an official, Permanent Representation of France to the European Union, Brussels, 21 March 2018.

would be to their advantage compared to the national tax bases.<sup>67</sup> It follows that countries would possibly lose important sums of money, and even if it was not that great of a problem for them before, in 2011 they could not take this risk.<sup>68</sup> Therefore, the 2011 proposal was blocked in the Council, as it was considered inadequate and even dangerous for the MS.

Moreover, an official of the French Permanent Representation confirmed that France and Germany had been advocating for the harmonisation of corporate tax base back in 2004-2005, but by 2011, in the aftermath of the euro crisis, the situation became more difficult.<sup>69</sup> Thus, even with some support from MS, the proposal was not at all appealing to most of them, including its biggest former advocates.

In order to assess whether there has been an opening in the politics stream at the level of the EU, the initiatives taken by the European institutions in between the 2001 communication ‘Towards an internal market without tax obstacles: A strategy for providing companies with a consolidated corporate tax base for their EU-wide activities’, and the 2011 proposal, as well as the amount of ECJ cases that could have opened a window of opportunity in the politics stream, ought to be considered.

According to the impact assessment accompanying the proposal for a directive on a CCCTB, the Commission announced a series of targeted measures in the area of corporate taxation, aimed at removing specific corporate tax barriers in the short term.<sup>70</sup> However, these initiatives were focused more on the topic of tax evasion and transfer pricing, rather than on the topic directly related to the CCCTB rules (except for the communication on the need for coordination of MS tax policies). Still, according to the impact assessment accompanying the proposal, “many of these initiatives had led to hardly any action by MS and had no practical

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<sup>67</sup> Interview with officials, DG Taxation and Customs Union, European Commission, Brussels, 6 March 2018.

<sup>68</sup> *Ibid.*

<sup>69</sup> Interview with an official, Permanent Representation of France to the European Union, Brussels, 21 March 2018.

<sup>70</sup> European Commission, *Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, COM (2011) 121/4, *loc. cit.*

impact”.<sup>71</sup> Thus, no evident impact of these initiatives can be seen on the opening in the politics stream.

It is also important to consider the influence of the ECJ rulings. According to the EC impact assessment, “the number of cases in the area of company taxation referred to the ECJ has indeed grown considerably over the last 10 years...After 150 decisions in this area, there can be no doubt that the case law of the European Court of Justice has influenced the shaping of company taxation policy in the European Union”.<sup>72</sup> While some of these cases concerned the interpretation of direct tax already existing in secondary law, the majority of them concerned the “compatibility of corporate tax provisions of the MS with the fundamental freedoms of the Treaty”.<sup>73</sup> However, there was an important amount of judgements concerning MNEs, which can be directly related to the proposed optional CCCTB solution in 2011, as this system would facilitate cross-border activities for multinational companies. The impact assessment has drawn the conclusion that:

[the] judicial process has its limitations and does not produce generally applicable solutions. As a result, taxpayers face considerable uncertainty as to how to interpret the principles of the jurisprudence of the ECJ when structuring cross-border activities within the EU. Also, as the Court only rules on the specific questions it has been addressed to, its jurisprudence cannot offer a systematic tool for tackling features of the Member States’ corporate tax systems which are in breach of EU law. It follows that it would not be advisable to rely solely on the judicial process to secure compliance with EU law. It is necessary to work in parallel and try to resolve problems through legislation, particularly where those are common to a number of Member States.<sup>74</sup>

Thus, there has, indeed, been an increase in the amount of official EC and EP documents, as well as a vast increase of ECJ rulings in the area of direct corporate tax, which has been an opening in the politics stream.

As it has been shown in the analysis of official documents as well as through the interviews with the officials, the aim of the proposal was to facilitate cross-border activities

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<sup>71</sup> *Ibid.*

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

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

for enterprises and to diminish the administrative costs for them. However, in 2010-2011 the international community was concentrated on trying to cope with the aftermath of the financial crisis. It can be viewed in the G20 Toronto Summit Declaration, which was called “the first Summit of the G20 in its new capacity as the premier forum for the international economic cooperation”. The declaration concentrated on coping with the remaining challenges that were demonstrated by the crisis: “uneven recovery, unemployment, and social impact of the crisis”.<sup>75</sup> This corresponds to the aim of the EC to increase growth through removing additional barriers in the EU for enterprises.

The impact assessment also refers to the work of the OECD: “the economic literature has emphasized that taxes on different bases have dissimilar implications for economic growth”.<sup>76</sup> This demonstrates that the EC has started to actively use corresponding openings on the international level to justify its proposals. Even though no direct link between the creation of the optional CCCTB system and politics at the international level can be established, the EC referred to it in its justification.

To conclude on the policy streams in 2011, I argue that there has been no window of opportunity in 2011– as there was no opening in the problem stream, as the problems addressed in the proposal are very similar to the draft of 1988. Concerning the international politics stream, no OECD/G20 recommendation has been put forward directly by the EC to argue for the proposal. Thus, an inopportune moment to table the proposal had been selected.<sup>77</sup> The solution proposed was seen to be inadequate and possibly negative for MS, and no coupling of the streams by the EC was thus possible.

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<sup>75</sup> G20, *The G-20 Toronto Summit Declaration*, Toronto, 26-27 June 2010.

<sup>76</sup> European Commission, *Commission Staff Working Document, Impact Assessment, Accompanying document to the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, SEC (2011) 315 final, *loc. cit.*

<sup>77</sup> Interview with officials, DG Taxation and Customs Union, European Commission, Brussels, 6 March 2018.



## THE AMBITIOUS 2016 RE-LAUNCH: THE FINAL CHAPTER?

*“Since 2011, new issues have come into light that reinforce the need for a common approach to corporate taxation in Europe”.*<sup>78</sup>

European Commission, 2016 CCCTB proposal

On the 17<sup>th</sup> of June 2015, Commission presented the communication on ‘A Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action’, where it underlined the need to re-launch the 2011 CCCTB proposal as a way to holistically approach profit shifting.<sup>79</sup> “CCCTB is a tool against tax avoidance”, as described by EU Tax Commissioner Pierre Moscovici during his speech on tax fairness.<sup>80</sup> What is interesting is that the 2011 proposal (just like the one of 1988) concentrated mostly on solving the problem of eliminating burdens for enterprises to operate in the single market, rather than on fighting shifting profits.

This section presents the 2016 CCTB and CCCTB proposals and discuss why, after the blockage at the Council, the proposal has been re-launched in a more ambitious form.

### The CCTB and the CCCTB proposals

On the 25<sup>th</sup> of November 2016, the two proposals – CCTB and CCCTB – were officially presented.<sup>81</sup> What are the main differences? First of all, the EC has adopted a two-stage approach: the CCTB should first be discussed and adopted at the Council, as the CCCTB

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<sup>78</sup> European Commission, *Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, COM (2016) 683 final, *op. cit.*, p. 3.

<sup>79</sup> European Commission, *Communication ‘A Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action’*, COM (2015) 302 final, Brussels, 17 June 2015, p. 3.

<sup>80</sup> U. Lomas, ‘Moscovici: CCCTB Is a Tool Against Tax Avoidance’, *Tax-news.com*, 2017, retrieved 25 April 2018, [https://www.tax-news.com/news/Moscovici\\_CCCTB\\_Is\\_A\\_Tool\\_Against\\_Tax\\_Avoidance\\_\\_\\_\\_74619.html](https://www.tax-news.com/news/Moscovici_CCCTB_Is_A_Tool_Against_Tax_Avoidance____74619.html)

<sup>81</sup> ‘Taxation’, *European Commission*, 2018, retrieved 26 April 2018, [https://europa.eu/european-union/topics/taxation\\_en](https://europa.eu/european-union/topics/taxation_en).

has been too complex to be discussed at once.<sup>82</sup> Another major change to the 2011 version of the proposal is that the CCTB and the CCCTB should be mandatory for MNEs.<sup>83</sup>

The CCTB proposal is presented as a “way forward towards a CCCTB” and is the first step of the two-step approach.<sup>84</sup> The CCTB is “limited to the elements of the common base , i.e. rules for calculating the corporate tax base, including certain provisions against tax avoidance and on the international dimension of the proposed tax system”.<sup>85</sup> Additionally, the proposal covers two new topics compared to the 2011 proposal: super-deduction for research and development, and rules against debt bias.<sup>86</sup>

The CCCTB proposal concentrates on building upon the common base and “computing the tax base of companies which are tax resident in the EU and of EU-located branches of third-country companies”.<sup>87</sup> So, in detail, the CCCTB, just as the 2011 proposal, would allow for the computation of “each company’s individual tax results, the consolidation of those results when there are other group members and the appointment of the consolidated tax base to each eligible MS”.<sup>88</sup>

The main novelty, as was already underlined, is the fact that CCTB and the CCCTB would be compulsory for MNEs and optional for SMEs, thus addressing the problems of tax evasion by MNEs, boosting growth of SMEs, and removing the remaining obstacles in the internal market for cross-border economic activities.

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<sup>82</sup> Interview with officials, DG Taxation and Customs Union, European Commission, Brussels, 6 March 2018.

<sup>83</sup> European Commission, *Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, COM (2016) 683 final, *op. cit.*, p. 8.

<sup>84</sup> European Commission, *Proposal for a Council Directive on a Common Corporate Tax Base*, COM (2016) 685 final, *op. cit.*, p. 3.

<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*

<sup>87</sup> European Commission, *Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, COM (2016) 683 final, *op. cit.*, p. 5.

<sup>88</sup> *Ibid.*

## **The three policy streams: the time of strategic coupling has come?**

*“The ultimate answer to the question why CCCTB has been re-launched in 2016 is Lux Leaks.”<sup>89</sup>*

Alain Lamassoure, MEP

By analysing the three policy streams for the 2016 re-launched CCTB and CCCTB proposals, I aim to demonstrate that there has, indeed, been an opening in all of them. This has presented a window of opportunity for the EC, and it has used it in a political momentum.

The revolution of the 2016 re-launch lies in the fact that the EC has chosen to address two major problems through one solution: diminishing the costs for SMEs to pursue cross-border economic activities (through the creation of an optional single system of counting the tax base) and fighting tax evasion of MNEs (through making it compulsory for them to apply the common rules). The latter had become a very important issue at the international level in 2014.

On the 6<sup>th</sup> of November 2014, the world found out about one of the biggest tax scandals in history, the so-called Lux Leaks, that demonstrated that “one of the EU’s smallest states helped multinationals save millions in tax, to the detriment of its neighbours and allies”.<sup>90</sup> The revelations changed the way the world community viewed corporate taxation, demonstrating “that over 340 multinational companies use schemes to avoid paying taxes – schemes made possible by Luxembourg's particularly favourable tax laws”.<sup>91</sup> I argue that this event led to an opening in the problems stream for the re-launch of the CCCTB in 2016. It can be demonstrated by analysing the impact assessment and understanding the problems the new proposals addresses.

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<sup>89</sup> Interview with Alain Lamassoure, MEP (EPP), Brussels, 21 March 2018.

<sup>90</sup> S. Bowers, ‘Luxembourg tax files: how tiny state rubber-stamped tax avoidance on an industrial scale’, *The Guardian*, 2014, retrieved 27 April 2018, <https://www.theguardian.com/business/2014/nov/05/-sp-luxembourg-tax-files-tax-avoidance-industrial-scale>.

<sup>91</sup> L. Lepretre, ‘Tax Avoidance: The Lux Leaks Scandal Explained’, *Café Babel*, 2014, retrieved 27 April 2018, <http://www.cafebabel.co.uk/politics/article/tax-avoidance-the-luxleaks-scandal-explained.html>.

The impact assessments of the 2011 and the 2016 CCCTB proposals vary drastically: “Practically the same proposal” (solution) is being presented through the angle of solving two different problems”.<sup>92</sup> The main problem identified in the impact assessment for the 2011 CCCTB proposal is the difficulty for businesses that are active in different MS to confront 27 various and possibly constantly changing tax regimes.<sup>93</sup> This is seen to lead to the creation of the so-called tax-barriers, such as additional compliance costs for businesses, over-taxation, or double taxation.<sup>94</sup> These tax barriers “directly hinder the achievement of the Internal Market”.<sup>95</sup> The general objective of the proposal has been to “improve the simplicity and efficiency of the corporate income tax systems in the EU”, that would further “impact competitiveness and performance of enterprises”.<sup>96</sup> The impact assessment of the 2016 proposal differs drastically from the previous one. The main problems to be addressed were identified to be fighting aggressive tax planning strategies of MNEs, coping with the tax-induced company finance structures, and making it easier for EU businesses to invest in R&D.<sup>97</sup> The main motive of the impact assessment is concentrated on fighting corporate tax avoidance.<sup>98</sup> For this reason, the CCCTB is being made compulsory for MNEs and optional for SMEs.

The reactions to the Lux Leaks have been very sharp; the New York Times has described it as a “rising furor” in Europe.<sup>99</sup> Juncker, then recently appointed President of the

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<sup>92</sup> Interview with Alain Lamassoure, MEP (EPP), Brussels, 21 March 2018.

<sup>93</sup> European Commission, *Commission Staff Working Document, Impact Assessment, Accompanying document to the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, SEC (2011) 315 final, *op. cit.*, p. 8.

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*, p. 14.

<sup>96</sup> *Ibid.*, p. 16.

<sup>97</sup> European Commission, *Commission Staff Working Document, Impact Assessment, Accompanying the document Proposals for a Council Directive on a Common Corporate Tax Base and a Common Consolidated Corporate Tax Base (CCCTB)*, SWD (2016) 341 final, Strasbourg, 25 October 2016, p. 4.

<sup>98</sup> *Ibid.*

<sup>99</sup> J. Kanther & A. Higgins, *Jean-Claude Juncker, Top EU Official, Faces Rising Furor Over Luxembourg Tax Revelations*, The New York Times, 2014, retrieved 26 April 2018, [https://www.nytimes.com/2014/11/07/world/europe/head-of-european-commission-under-pressure-over-luxembourg-tax-revelations.html?\\_r=2](https://www.nytimes.com/2014/11/07/world/europe/head-of-european-commission-under-pressure-over-luxembourg-tax-revelations.html?_r=2).

EC, was exposed to a lot of criticism from all sides.<sup>100</sup> Even a vote was organised for the motion of censure against Juncker at the European Parliament, which was, however, rejected by a large majority of MEPs on the 12th of November 2014.<sup>101</sup> Furthermore, at the G20 Leaders' Summit that took place on 15-16 November, "Juncker's EC presidency was compared to 'Dracula in charge of blood bank'".<sup>102</sup> The MS also reacted: French Minister of Finance Michel Sapin stated that "taxes must be paid by individuals or business and no one has the right – even legally – to place themselves beyond this obligation", adding that "the EC now has a chance to show it is a real Commission and that it has the will to put an end to situations like this".<sup>103</sup> This could be seen as an open call on the EC to start the action against tax avoidance. Thus, there has been an important opening in the problems stream of corporate tax avoidance and the world reaction to it, and the CCCTB was seen as a solution.

The solution that was proposed in 2011 has been changed slightly in order to better address the new problem of corporate tax evasion and the old one of removing the remaining barriers for cross-border economic activities.<sup>104</sup> Thus, the proposal aims to make the common rules compulsory for MNEs (those with the annual turnover of over 750 million EUR, that, according to the impact assessment, account for approximately 64% of the general turnover) and optional for SMEs, in order to boost their growth and let them choose which tax base rules – national or common - would be more beneficial for them.<sup>105</sup> According to an official from the Permanent Representation of France to the European Union, the solution does not vary

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<sup>100</sup> 'Leaked Documents Expose Global Companies' Secret Tax Deals in Luxembourg', *International Consortium of Investigative Journalists*, 2014, retrieved 25 April 2018, <https://www.icij.org/investigations/luxembourg-leaks/leaked-documents-expose-global-companies-secret-tax-deals-luxembourg/>.

<sup>101</sup> 'Motion of censure against the Commission rejected by a large majority', *European Parliament, Press Releases*, 2014, retrieved 27 April 2018, <http://www.europarl.europa.eu/news/en/press-room/20141121IPR79864/motion-of-censure-against-the-commission-rejected-by-a-large-majority>.

<sup>102</sup> 'Leaked Documents Expose Global Companies' Secret Tax Deals in Luxembourg', *International Consortium of Investigative Journalists*, 2014, retrieved 25 April 2018, <https://www.icij.org/investigations/luxembourg-leaks/leaked-documents-expose-global-companies-secret-tax-deals-luxembourg/>.

<sup>103</sup> *Ibid.*

<sup>104</sup> Interview with an official, Permanent Representation of France to the EU, Brussels, 21 March 2018.

<sup>105</sup> European Commission, *Proposal for a Council Directive on a Common Corporate Tax Base*, COM (2016) 685 final, *op. cit.*, p. 5.

much from the previous one but has only been adapted slightly, as the EC had to make “a different packaging to change the narrative”.<sup>106</sup> The official also argued that the CCCTB proposal would not directly tackle tax avoidance, as the re-launch represents an opportunity to push for more harmonization of corporate taxation in the EU.

Additionally, some of the solutions that were discussed at the Council concerning the 2011 proposal have been incorporated in the re-launched initiative. For example, the two-stage approach was proposed by Ireland in order to simplify the discussions.<sup>107</sup> Another point that has been argued by both officials of Permanent Representations of MS and by the DG Taxation and Customs Union is that the 2016 proposals build upon mistakes that MS have made before and thus aim to share the ‘good practices’ within the EU.<sup>108</sup> Thus, the ‘verified solutions’ have been incorporated in the 2016 CCTB and CCCTB proposals. This has been an important adaptation to the old solution that incorporated parts of the MS’ good practices and slightly changed the rules, but which did not propose an entirely new policy (compared to the previous attempts).

In order to understand whether there has been a radical change in the approach of MS, I analysed whether the MS that have been advocating for the harmonization of corporate tax base before (notably France and Germany), as well as those MS which were the most opposing to the 2011 proposal, have changed their opinion. Interviews were conducted with tax attachés from the Permanent Representation of France (one of the most supportive MS to the 2011 proposal) and from the Permanent Representation of Ireland (one of the most opposing MS to the 2011 proposal). The assumptions concerning the relation of a MS towards the proposal have been made based on Council reports.

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<sup>106</sup> Interview with an official, Permanent Representation of France to the European Union, Brussels, 21 March 2018.

<sup>107</sup> ‘Legislative train schedule’, *European Parliament*, 2018, retrieved 23 April 2018, <http://www.europarl.europa.eu/legislative-train/theme-deeper-and-fairer-internal-market-with-a-strengthened-industrial-base-taxation>.

<sup>108</sup> Interview with officials, DG TAXUD, European Commission, Brussels, 6 March 2018.

I also analysed whether the Brexit vote had an influence on the timing of the proposal, as the UK was one of the most opposing MS (the Brexit referendum took place on the 23<sup>rd</sup> of June 2016 and the re-launch of the CCCTB proposal was on the 25<sup>th</sup> of October).

First of all, as it has already been demonstrated, Germany and France were pushing for the proposal back in 2004-2005 and continued to do so in 2016.<sup>109</sup> Additionally, Germany and France have been working on the bilateral common corporate tax base that is considered a basis for the EU agreement.<sup>110</sup> However, an important number of MS, such as Belgium, Cyprus, Hungary, Luxembourg, Malta and the Netherlands together with Ireland, were not supportive of the proposal, as in 2011:

Small Member States are afraid of harmonization to lose their competitiveness (Luxembourg, the Netherlands, Hungary; Baltics; Sweden, etc.) Germany and France do want it, but also have different approaches: France would prefer allowing national deductions and Germany would rather have full harmonisation.<sup>111</sup>

According to an official from the French Permanent Representation, the situation at the Council was much better in 2016 than in 2011. This, however, was not due to the fact that MS' approaches have changed, but mostly because of the growing amount of discussions and higher number of legislation linked to corporate tax that was successfully adopted.<sup>112</sup> Thus, there has not been an important opening in the politics stream on the national level, as countries such as France and Germany have continued to actively support the proposal, whereas many MS have continued to oppose it just as before. Furthermore, the argument that the opening in the politics stream has been linked to Brexit has been rejected by both Permanent Representations of MS to the EU that were interviewed as well as by the DG Taxation and Customs Union at the EC.

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<sup>109</sup> Interview with an official, Permanent Representation of France to the EU, Brussels, 21 March 2018.

<sup>110</sup> *Ibid.*

<sup>111</sup> Interview with an official, Permanent Representation of Ireland to the EU, Brussels, 5 March 2018.

<sup>112</sup> Interview with an official, Permanent Representation of France to the EU, Brussels, 21 March 2018.

Concerning the EU level, the role of the EP in the 2016 re-launch should also be taken into account. According to the EPP MEP Alain Lamassoure, the EP has played a very important role in the CCCTB re-launch, as it has reacted very actively to the Lux Leaks revelations and called on the European Commission to undertake the actions needed to fight tax avoidance.<sup>113</sup> In February 2015, the EP “adopted the request setting up the special committee on tax rulings and other measures similar in nature or effect by 612 votes in favour, 19 against, and 23 abstentions”.<sup>114</sup> On the 26<sup>th</sup> of November 2015, the EP adopted the “recommendations on how to make corporate taxes fairer across Europe”.<sup>115</sup> One of the recommendations of the EP called to:

Put an end to transfer pricing, preferential regimes, mismatches between national tax systems and the issues leading to tax base erosion at European level through a compulsory EU-wide common consolidated corporate tax base (CCCTB, which should be introduced as soon as possible).<sup>116</sup>

Thus, there has been a definite opening in the EP politics. However, the DG Taxation and Customs Unions officer has stated that there has been no direct linkage, and even though this would make it easier to justify the proposal, as the EP has only a consultative role in taxation issues, the role of MS has been much more important in the re-launch. They also revealed that the EC tends to use the political message of the European Parliament in order to receive support by a political body that is pushing for the politics that it has aimed to do.<sup>117</sup>

Concerning the influence of the rulings of the Court of Justice, the officials from the DG Taxation and Customs Union, as well as the MEP Alain Lamassoure have denied that it

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<sup>113</sup> Interview with Alain Lamassoure, MEP (EPP), Brussels, 21 March 2018.

<sup>114</sup> ‘EP reaction to the Lux-leaks revelations’, *Ask EP – EP Answers*, 2014, retrieved 27 April 2018, <http://www.europarl.europa.eu/EPRS/EP-answer-EP-reaction-to-the-Lux-leaks-revelations-EN.pdf>

<sup>115</sup> ‘Parliament calls for corporate tax makeover’, *European Parliament, Press Releases*, 2015, retrieved 27 April 2018, <http://www.europarl.europa.eu/news/en/press-room/20151120IPR03607/parliament-calls-for-corporate-tax-makeover>.

<sup>116</sup> *Ibid.*

<sup>117</sup> Interview with officials, DG Taxation and Customs Union, European Commission, Brussels, 6 March 2018.



had any influence on the re-launch: “The ECJ no longer makes revolutionary judgements as it did in the 1960s, 1970s and 1980s”.<sup>118</sup>

It is also important to consider the amount of secondary legislation that has been adopted in the field of direct corporate taxation in the EU in recent years, as it could have a potential influence on the CCCTB file: ATAD, the directive on mismatches with third countries, the directive on double-taxation dispute resolution mechanism, and the conclusions on the criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes were all adopted in 2015-2016.<sup>119</sup> According to an official of the French Permanent Representation to the European Union, this is very important, because it has totally changed the atmosphere at the Council during discussions on legislation on corporate taxation. This can be considered as an opening in the politics stream in the EU level, as not only the EP had pushed for action, but the atmosphere at the Council of Ministers has become more positive towards discussing tax harmonization.<sup>120</sup>

Finally, the influence of international politics on the politics stream should be discussed through the analysis of the official documents and declarations of the OECD, as well as G20 leaders. Another point of analysis is the public opinion towards tax avoidance that is to be demonstrated based on the results of Google trends.

The OECD’s “Global Forum was restructured in response to a G20 request to strengthen the implementation of standards and to launch an ambitious peer-review process of national legislation in the realm of tax transparency”.<sup>121</sup> The work of the OECD that has influenced the EU taxation policies and the CCCTB in particular (as it is stated in the 2016

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<sup>118</sup> *Ibid.*

<sup>119</sup> ‘Legislative train schedule’, *European Parliament*, 2018, retrieved 28 April 2018, <http://www.europarl.europa.eu/legislative-train/theme-deeper-and-fairer-internal-market-with-a-strengthened-industrial-base-taxation>.

<sup>120</sup> Interview with an official, Permanent Representation of France to the European Union, Brussels, 21 March 2018.

<sup>121</sup> ‘G20, Taxation’, OECD, retrieved 1 May 2018, <https://www.oecd.org/g20/topics/taxation/>

CCCTB impact assessment) is BEPS – Base Erosion and Profit Shifting that was started in 2013.<sup>122</sup> BEPS is the work, developed by the OECD on the request of G20, to cope with the situation that “multinational companies avoid taxation in their home countries by pushing activities abroad to low or no tax jurisdictions”.<sup>123</sup>

However, according to Alain Lamassoure, the CCCTB proposal does not take much from BEPS (as, for example, the proposal on country-by country reporting, or ATAD), but goes further than the OECD.<sup>124</sup> This has also been demonstrated in the impact assessment, which underlined that “the directive against tax avoidance practices included most of the elements of the international and BEPS related aspects of the CCCTB”.<sup>125</sup> Thus, parts of the 2011 CCCTB proposal have already been included in the 2016 ATAD proposal that was built on BEPS. Therefore, there is no direct link between BEPS and the 2016 CCCTB re-launch.

The change of the perception of corporate taxation can be clearly seen in the G20 communication. The Leaders’ Communiqué of the Brisbane Summit that took place in November 2014 has concentrated a lot on “preventing cross-border tax evasion”.<sup>126</sup>

Another important point that can be an opening in the politics stream is public opinion towards corporate taxation, specifically fighting tax avoidance of multinational enterprises. Measuring public opinion is not an easy task. Due to the fact that better sources cannot be found for my research, the data used to measure whether public opinion considering the need to control corporate taxation at the EU level will be sourced from the Google trends. I analysed the searches of the keywords linked to the problems addressed in the 2016 proposal: tax avoidance; tax evasion; profit shifting. The maximum number of searches on ‘tax evasion’

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<sup>122</sup> European Commission, *Commission Staff Working Document, Impact Assessment, Accompanying the document Proposals for a Council Directive on a Common Corporate Tax Base and a Common Consolidated Corporate Tax Base (CCCTB)*, SWD (2016) 341 final, *op. cit.*, 7.

<sup>123</sup> OECD, *Action Plan on Base Erosion and Profit Shifting*, OECD Publishing, Paris, 2013.

<sup>124</sup> Interview with Alain Lamassoure, MEP (EPP), Brussels, 21 March 2018.

<sup>125</sup> European Commission, *Commission Staff Working Document, Impact Assessment, Accompanying the document Proposals for a Council Directive on a Common Corporate Tax Base and a Common Consolidated Corporate Tax Base (CCCTB)*, SWD (2016) 341 final, Strasbourg, 25 October 2016, *loc. cit.*

<sup>126</sup> G20, *G20 Leaders’ Communiqué*, Brisbane Summit, Brisbane, 15-16 November 2014.

and ‘tax avoidance’ which took place in between 2011 and 2016 has taken place in April 2016.<sup>127</sup> The maximum number of searches for ‘profit shifting’ was in August 2016.<sup>128</sup> Thus, the maximum was hit when the policy was in development and right before it was proposed in November 2016. This could also be considered an opening in the politics stream.

Thus, we have seen that there was a major change in the way corporate taxation is viewed in the world, as well as in the EU and its MS, since the 2011 proposal had been tabled. The scandals linked to tax evasion that leaked to the outside world, especially Lux Leaks, have changed the perception of the world on tax avoidance. This has served as an important opening in the politics stream in 2016.

### **New problem, adapted old solution, what kind of politics?**

This section identified that the 2016 re-launched CCCTB proposal has changed the problem it addresses: now the main concentration is on fighting corporate tax avoidance (linked to the leaks about corporate tax avoidance of MNEs). The solution has been slightly modified and the analysis of the politics stream has revealed an opening on every level, that was linked to Lux Leaks. I apply the findings of the last section to the research question and test the hypothesis that were developed in the introduction.

The research question aimed to understand why, without changing the unanimity rule and with little success in previous action, the European Commission started a more ambitious politics of harmonization of the corporate tax base. The core hypothesis has suggested that the ambitious re-launch of the CCCTB proposal in 2016 can be explained by applying the multiple streams framework to the attempts of the proposal, resulting in the conclusion that in 2016 the European Commission, as the policy entrepreneur, has strategically and willingly used the

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<sup>127</sup> Information gathered through the service ‘Google trends’, retrieved 1 May 2018, <https://trends.google.com/trends/>.

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

window opportunity by coupling the openings in the streams of problems, stream of solutions, and stream of politics. The hypothesis has been verified in the research, as the analysis has revealed that the previous attempts to harmonize the corporate tax base involved no coupling, as there were no openings in the problems stream. However, the Lux Leaks that have revealed massive tax avoidance of MNEs have created an opening in the problems stream and the politics stream. The EC managed to slightly adapt the existing solution to the new problem and use the political situation (national, EU, and international) as well as public opinion to push for a more ambitious policy.

## CONCLUSION

*“Coupling can be viewed as a search for fit; solutions scan the environment as to what problems they can solve, participants seek problems to attend to, and problems search for possible solutions”.*<sup>129</sup>

Nikolaos Zahariadis

This paper concentrated on the 2016 proposal of the European Commission for the creation of a Common Consolidated Corporate Tax Base in the EU. It has been demonstrated that even though the first draft proposal for a compulsory common corporate tax base prepared back in 1988 was blocked even before being officially sent to the Council, and the 2011 proposal for an optional CCCTB was also blocked at the Council, the EC re-launched the proposal in 2016, making it compulsory for multinational enterprises.

After having analysed the evolution of the CCCTB file through the prism of the multiple streams framework, the ultimate conclusion is that the policy entrepreneur (the EC) managed to couple the three streams:

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<sup>129</sup> Zahariadis, ‘Selling British Rail: An Idea Whose Time Has Come’, *loc. cit.*

- The problem stream – corporate tax avoidance, which has been demonstrated by the different leaks linked to corporate taxes, such as Lux Leaks;
- The solutions stream (the previous CCCTB proposal that has been modified by adapting certain parts of the Councils’ solutions identified as the 2011 proposal was discussed (super-deduction for R&D; two-stage approach, good practices) and the solution to the problem (making CCCTB compulsory for multinationals to respond to the tax avoidance);
- The politics stream (choice of momentum linked to the appointment of the new Commission in 2014, the EP work on limiting tax evasion, continuous demand on the side of some of the MS to proceed with the CCCTB) and the change in the overall world conception of corporate taxation (demonstrated by the evolution of the OECD/G20 work).

Thus, there were openings in each of the three streams that created a window of opportunity for the EC to choose the political momentum and use the process of coupling in order to attain its goal – to further the harmonisation of corporate taxation in the EU.

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