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European Corporate Tax Policy since the Crisis

How the EU steps up the Fight against Corporate Tax Avoidance

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Contents

Figures

Introduction

In recent years, public awareness about tax havens and the connected issues of tax evasion and corporate tax avoidance has dramatically increased. With the financial crisis, tax havens came increasingly under fire because of their central role in the rise of the so-called shadow banking system. Criticism towards tax havens was also deeply rooted in social justice and fairness considerations. The following growth of public deficits and austerity plans in many G20 countries combined with a series of prominent tax scandals, such as the Lux leaks revelations and the Panama Papers, seemed to have put a major strain on tax havens and abusive tax behaviour, both by single individuals and multinational corporations. At their London Summit, the G20 leaders declared themselves ready to 'protect public finances and international standards against the risks posed by non-cooperative jurisdictions' and 'take agreed action against those jurisdictions' (2009: 4). As a result, the OECD increased its efforts in promoting international tax transparency and launched a new project against base-erosion and profit-shifting (BEPS) practices of multinational corporations. Also the EU didn't rest on its laurels and initiated a range of measures addressing specifically the issues of tax evasion and avoidance.

Accordingly, taxation reappeared on the agenda of many scholars, with issues of international tax governance and tax cooperation being at the centre of a growing body of literature in political sciences and political economy. This literature has worked from national or global perspectives, focusing on either the influence of powerful nation states and interest groups or the work of international organizations, such as the OECD. Important developments at the EU level were at best mentioned briefly, but not investigated in a comprehensive manner. This paper proposes to close this gap by adding a European perspective to the ongoing discussion on tax cooperation. By analysing the evolution of EU corporate tax policy since 2003 it provides a detailed account of all tax provisions related to corporate taxation (and not only single measures) and it reconstructs the evolution of this policy field over a longer time period, thereby allowing for a better understanding of the conditions under which tax cooperation and policy change can happen at the EU level. My main results show that the EU is increasingly gaining influence over taxation and the series of recent initiatives represent a substantial shift in EU corporate tax policy in comparison to the pre-crisis status quo. Not only is the EU clearly intensifying its regulatory efforts in the field of tax transparency and company taxation. This change also came with the identification of new problems, solutions and underlying justifications along the ideas of fairness and transparency. Furthermore, this change did not happen immediately after the crisis but later, from 2013 on.

The paper is structured as follows. First, I will review the existing literature dealing with the issues of tax competition and cooperation at the international and European level. Based on a critical assessment of those contributions, I will then provide a short overview of the theoretical considerations underlying the decision to investigate policy change in line with the Multiple-

Streams Framework. In a next step, I will reconstruct the change in EU corporate tax policy by chronologically reviewing EU corporate tax provisions since 2003 and conducting a quantitative content analysis of 936 official documents published by the Commission and the Council between 2003 and 2017. Finally, I will discuss possible explanations for this change, such as the impact of the crisis, the interrelationship between the EU and the OECD, the role of prominent tax scandals and the Commission's entrepreneurship.

1. Understanding tax competition and tax cooperation

Seeking an explanation for the reduction in marginal tax rates in most industrialized countries since the 1970s, numerous scholars emphasize the role of globalization and tax competition in creating convergence pressures on national tax policies (e.g. Lee and McKenzie 1989; Swank and Steinmo 2002; Tanzi 1995). They argue that increasing capital mobility forces governments to decrease effective tax rates on capital income, corporate profits and high-income earners, thereby leading to a race to the bottom (Frey 1990). To explain the emergence of tax competition, Rixen (2008) reconstructed the institutional trajectory of international tax governance. According to him, it was the necessity to eliminate double taxation in a context of economic liberalization at the beginning of the 20th century that lead to the current system of bilateral tax treaties supervised by the OECD. From the 1960s onwards, this system created the problematic situation of tax competition, under-taxation and tax avoidance. As a reaction, the OECD launched a project on Harmful Tax Competition (HTC) in 1998. While it is generally seen as the first relevant attempt to curb tax competition and tax avoidance, it was also undermined by several problems (Woodward 2016). Explanations differ as to why the work of the OECD resulted in such a suboptimal outcome. Some authors focus on the critical role of small tax havens and powerful business groups who managed to undermine the legitimacy of the project by framing it as being unfair and following a double standard (Sharmann 2006; Webb 2004). Others claim that the project failed because of the withdrawal of US support after the election of the Bush administration (Hakelberg and Rixen 2017; Rixen 2010). Since then, international tax cooperation has been limited to a system of voluntary bilateral Tax Information Exchange Agreements (TIEAs). After the financial crisis however, the OECD improved this system by making the TIAEs mandatory. Similar to the literature about the HTC project, most contributions insist on the limitations of the new rules. Rixen (2013) refers for instance to the problem of capture of national governments by powerful domestic financial interest groups. Another aspect consists in the international organizations' tendency to compromise on weak standards to secure international agreements. Accordingly, the OECD preferred to promote an unambitious solution in order to gather a broad support for its own tax agenda (Eccleston and Woodward 2015).

A few years later the OECD stepped up to the plate with the introduction of a new multilateral system of automatic information exchange (AEOI) in 2012. Most authors trace this game-changing development back to the diffusion effect of the Foreign Accounts Tax Compliance Act (FATCA), which was enacted in 2010 in the US (Lips 2018; Palan and Wigan 2014). Finally, reacting to parliamentary inquiries in the US and UK in early 2013 and a range of tax scandals involving high-profile multinationals, the G20 mandated the OECD to develop an action plan addressing explicitly the issue of tax avoidance. This resulted in the latest Base Erosion and Profit Shifting (BEPS) project. While the OECD developed this project on behalf of the G20, Eccleston and Smith (2016) argue that the motivation for the BEPS project came less from the G20 than from within the OECD itself. Other authors emphasize the central role of new actors, such as the professionals of the Tax Justice Network and the impact of a politicization process, whereby the debates on international taxation shifted from a technical to a political level and also increasingly included fairness considerations (Büttner and Thiemann 2017; Forstater and Christensen 2017; Seabrooke and Wigan 2016).

Parallel to those changes at the international level, similar developments can be observed within the European context. Notwithstanding the no-taxation thesis advanced by many scholars (e.g.: Börzel 2005; Majone 1998; Moravcsik 2002), the EU does play a role in the taxation field. Despite restricted own resources, a narrow tax mandate and the limitation of the unanimity rule, the EU's influence over national tax systems is not only substantial but also increasing (Genschel and Jachtenfuchs 2009). Clearly, this phenomena varies across the different types of taxes, as direct taxation is less constrained than indirect taxation. However, the EU influence on corporate taxation is not negligible either. Because of its concerns with the fundamental freedoms and the general principle of non-discrimination, the European Court of Justice was highly critical of protective national legislations and worked diligently towards the elimination of corporate tax obstacles (Genschel and Jachtenfuchs 2011). At the same time, the EU adopted several directives that aimed specifically at removing tax barriers and abolishing double taxation, such as the Merger Directive and the Parent-Subsidiary Directive from 1990 and the Interest & Royalties Directive from 2003 (Uhl 2006). Taken together, the ECJ jurisprudence and EU legislation accelerated corporate tax competition to a point that it is now stronger within the EU than in the rest of the world (Ganghof and Genschel 2008; Genschel et al. 2008).

Similar to the OECD, the EU started to address the problem of harmful tax competition at the end of the 1990s, mostly with the establishment of the Code of Conduct for Business Taxation in 1998. However, the code is not legally binding and its impact is quite limited. In this context, most scholars were concerned with explaining the unlikelihood of tax cooperation in the EU. Dehejia and Genschel (1998) trace back the unsuccessful attempts to implement a common withholding-tax on interest income in the 1990s to two specific distributional conflicts: between winners and losers of tax competition, and between co-operators and non-cooperating outsiders. In a similar way, Holzinger (2005) reconstructed the bumpy road to the 2003 agreement on the Savings Directive by looking into the preference heterogeneity of the member states in an asymmetric coordination dilemma. Adopting a different perspective, Radaelli (1995) looked into the policy process that led to the adoption of the Merger Directive and Parent-Subsidiary Directive in 1990. He identifies the emergence of new frames, such as subsidiarity and neutrality, and the building of a supranational advocacy coalition as the main factors explaining this policy change (Radaelli 1995). More recently, Radaelli and Kraemer investigated the adoption of the tax package of 2003 and argue that tax cooperation was made possible through the emergence of two different governance arenas, which were the result of a political strategy of the European Commission to 'balance the power relations between Brussels, the member states, and the business community' (2008: 318).

Following the increasing efforts of the EU in the fight against tax evasion and avoidance, a growing number of scholars recognize that the EU is becoming a 'major player in international tax politics' (Christensen 2016). Accordingly, a range of contributions started to provide descriptive reviews and qualitative assessments of the new EU provisions, such as the Anti-Tax Avoidance Directive (Cédelle 2016; Kuzniacki 2017), the Common Consolidated Corporate Tax Base (Hakelberg 2017; Morgan 2017) or the latest project on digital taxation (Christensen 2018). Yet, this emerging body of literature focuses only on single and recent measures, or even on proposals that are highly unlikely to be adopted. In comparison, the present analysis includes all provisions relevant to corporate taxation since 2003, thus providing a more accurate picture of the evolution of EU corporate tax policy over time.

2. Policy-making and Multiple Streams Framework

Most of the contributions focusing on the institutional embeddedness of tax competition, the power relations between winners and losers of tax competition, the role of single states or the influence of interest groups can only explain as much as failed tax cooperation. When it comes to the few success stories, the authors mentioned above have to resort to a more differentiated set of tools. On the actors' side, they would for instance include the role of experts and professionals, NGOs and tax activists, media organizations, international bureaucracies, single politicians or parliamentary committees. On the mechanisms' side they would refer to diffusion processes and learning, bureaucratic logics inherent to international organizations, aspects related to political salience and politicization, the impact of crisis, and last but not least discursive elements, such as rhetorical contests, framing and narratives. Indeed, those explanations acknowledged the issue of bounded-rationality, and tend to resort to more constructivist or sociological and discursive institutionalist explanations based on the role of ideas and related discursive processes.

While providing a detailed overview of constructivist theories would go beyond the scope of this paper, I would like to clarify my understanding of policy-making in line with the Multiple-Streams Framework (MSF) of John Kingdon (1984). Accordingly, policy-making should be understood as a socially constructed process where problems are identified and selected, solutions are produced and choices are made. Following the logic of the Garbage Can Model, it is a process 'in which problems, solutions, and participants move from one choice opportunity to another' (Cohen et al. 1972: 16). This understanding is also the basis for Kingdon's Multiple-Streams Framework that 'explores which issues get attention and when, how and which actors are mobilized to participate in a given choice opportunity, how issues are framed and meaning generated, and how the process is politically manipulated by skilled policy entrepreneurs' (Ackrill et al. 2013: 872). The underlying assumptions of the MSF are concerned with three different aspects: Actors have to act under substantial time constraints, problems and solutions are produced independently from each other, and the policy-making is characterized by a high level of ambiguity. Time especially plays a crucial role, because the elaboration of policy solutions requires time, whereas the selection of problems generally happens in a short time span. This contradiction constrains the options of the decision-makers who cannot deal with all problems and will probably have to settle on suboptimal solutions or even make a choice before having clear and well-defined preferences. Then, according to the MSF, the policy-making process consists of three independent streams: the problem stream (issues identified by policy-makers and citizens), the policy stream (ideas and solutions developed by experts) and the politics stream consisting of the political environment (Ackrill et al. 2013). Eventually, policy change happens 'when a "window" of opportunity opens and a policy entrepreneur merges the three streams by applying an idea from the policy stream to an issue in the problem stream at a time when the problem/solution coupling is acceptable within the political stream' (Nowling 2011: 44-45). In this process, (mass) media and public opinion can play 'a significant role in temporal sorting, propelling politics forward and exerting pressure to act' (Rüb 2016: 60). As such, media become a driving force behind the coupling mechanism of problems and solutions. In short, the three streams of problems, policies and politics usually flow independently from each other and have to meet to produce policy change. This can happen only when a policy window opens and makes it possible for new ideas to be considered, and when policy entrepreneurs come into play to couple the streams around those new ideas. Before looking into the policy and problem streams of EU corporate tax policy, let us examine first what happened in terms of concrete policy development. For a better overview, I will systematically evaluate the relevant provisions according to two differentiation criteria: whether they belong to the area of tax transparency or company taxation, and whether they qualify as hard- or soft-law tools.

3. EU corporate tax policy since the crisis

Until the crisis, hard-law provisions in the area of company taxation consisted of three directives that aimed at eliminating tax obstacles and preventing double taxation in the Single Market: the Merger Directive, the Parent-Subsidiary Directive and the Interest & Royalties Directive. Introduced in 1990, the Merger Directive aimed at removing fiscal obstacles to cross-border re-organizations involving companies situated in different Member States. In 2005 it was amended to broaden its scope, cover a larger range of companies and further facilitate cross-border re-structuring. The Parent-Subsidiary Directive from 1990 was introduced to eliminate double taxation of parent companies on the profits of their subsidiaries and abolish withholding taxes on payments of dividends between associated companies of different Member States. The directive was amended in 2003 to strengthen those two provisions. In the same year, the EU adopted the Interest & Royalties Directive, which aimed at removing withholding tax obstacles in the area of cross-border interest and royalty payments within a group of companies. In addition, the discussions about a common system of corporate taxation were revived in 2001 with a Communication from the Commission on a Common Consolidated Corporate Tax Base (CCCTB).

In the area of tax transparency, hard-law measures consisted of the Mutual Assistance Directive from 1977 and the Savings Directive, which was agreed upon in 2003. The Directive on Mutual Assistance provided a framework for national tax administrations regarding the recovery of taxes, customs and certain fees, and complemented the existing provisions of bilateral tax treaties concluded between the Member States. With the Savings Directive the EU introduced for the first time an automatic system of exchange of information on private savings income. However, it took more than 15 years to reach an agreement on the Directive, whose impact was weakened because of many flaws. Finally, in the soft-law area, the EU set up the Code of Conduct for Business Taxation in 1990 and the Joint Transfer Pricing Forum (JTPF) in 2002. As mentioned already, the code is a non-binding instrument dealing with the issue of harmful tax competition. The JTPF works within the OECD framework and proposes the Commission non-legislative solutions to practical problems posed by transfer pricing practices.

Immediately after the crisis, we can observe a few new developments. In the area of company taxation, the Commission proposed to amend the Interest & Royalties Directive to add provisions against tax evasion via hybrid financial instruments. No agreement could be found until now, even though the proposal was made in 2011. In addition, the proposal of the Commission regarding the CCCTB was rejected in 2011. In the area of tax transparency, the Mutual Assistance Directive was repealed and replaced by the Directive on Administrative Cooperation in 2011, which implements the OECD standard for exchange of information on request. In the soft-law field, the promotion of tax good governance, mostly in relations to third-countries, was added to the existing tools. It seems that corporate taxation and tax avoidance did not belong to the priorities of the EU when dealing with the immediate consequences of the financial crisis. Indeed, the most interesting developments in this field happened later.

In March 2012, the European Council called on the Council of the EU and the Commission to elaborate policy solutions to the problem of tax fraud and tax evasion. In reaction, the Commission presented its action plan in December 2012. The main goal of the action plan is to set out ‘concrete steps to enhance administrative cooperation and to support the development of the existing good governance policy’ (European Commission 2012: 1). In addition, the Commission produced two specific recommendations regarding tax havens and aggressive tax planning. After the action plan, the EU became increasingly involved with the issues of tax evasion and avoidance, especially with measures related to the field of tax transparency. A major step was taken with the introduction of country-by-country reporting (CBCR) for financial institutions with the fourth Capital Requirements Directive in June 2013, as well as for other major corporations with the revision of the Accounting and Transparency Directives between June and October 2013. A second innovation consisted in the introduction and expansion of AEOI with several amendments of the Directive on Administrative Cooperation. In line with the new OECD standards, the EU introduced the automatic exchange of financial account information in December 2014. After four amendments, the Directive now provides for the automatic exchange of a broad range of information, such as: tax rulings, country-by-country-reports, anti-money laundering information and information related to cross-border arrangements. In addition to the Directive on Administrative Cooperation, the EU also signed agreements entailing similar provisions with five non-EU countries, such as Switzerland and Liechtenstein. Also interesting is the Commission’s proposal from 2016 that requires multinational companies to make their country-by-country reports accessible to the public. However, the Member States could not find any agreement on the proposal so far, mostly because of Germany’s resistance (Schumann 2018).

The EU became increasingly active in the area of company taxation too. In January 2015, a general anti-abuse rule was added to the Parent-Subsidiary Directive with the aim of closing loopholes being used for particular tax planning arrangements. With the adoption of the Anti-Tax Avoidance Directive in October 2016, the EU introduced a set of six legally binding measures targeting the most common forms of aggressive tax planning. While the interest limitation rule, the rule on hybrid mismatches and Controlled Foreign Company (CFC) rules were derived directly from the BEPS project, the exit taxation rule, the switch-over clause and the general anti-abuse rule were additional proposals from the Commission (De Masi 2016). In May 2017, the directive was amended to include hybrid and other forms of mismatches, which were not covered previously. In addition, the Commission initiated two other ambitious projects, which are still waiting for an agreement in the Council: the CCCTB and rules regarding the taxation of the digital economy. After the first proposal was rejected in 2011, the Commission proposed to re-launch the CCCTB in October 2016 with a two-step process: the common base should be implemented first, before consolidation can take place. Regarding the taxation of the digital economy, the Commission proposed two new directives in March 2018. The first one would introduce a tax on digital services as an interim solution, until the second one is agreed upon. The second directive consists in a long-term solution ensuring that taxation occurs where profits are generated, even if a company does not have a physical presence there.

Regarding soft-law provisions, the work on tax good governance resulted in the elaboration of the common EU list of non-cooperative jurisdictions in December 2017. After a lengthy screening and dialogue process, 17 countries were put on the blacklist and 47 countries were put on notice. However, the fact that the list does not cover well-known tax havens (both within the EU and internationally) left observers highly sceptical. Even Pierre Moscovici, the Commissioner for Economic and Financial Affairs, Taxation and Customs acknowledged that the list 'remains an insufficient response to the scale of tax evasion worldwide' (cited in: Gallego 2017). In the meantime, the Directorate General for Competition took on a pragmatic stand towards tax avoidance by investigating the tax ruling practices of Member States on a case by case basis. The goal of these state aid investigations is to determine whether the tax treatments granted to a specific company in one Member State constitute a breach of EU state aid rules and as such contribute to unfair competition. Some of the prominent cases include the tax treatment of Apple in Ireland, Starbucks in the Netherlands, as well as Amazon, Fiat, and ENGIE in Luxembourg.

To sum up, the change in EU corporate tax policy did not occur in the aftermath of the crisis, but later, from 2013 on. The change in the policy stream can be described along three broad lines. First, there is a clear increase of hard-law provisions, both in the tax transparency and company taxation fields. Especially in the area of company taxation, there is a shift from legislation eliminating tax obstacles and double taxation to an anti-abuse legislation dealing explicitly with aggressive tax planning and tax avoidance. Second, a new soft-law dimension focusing on tax good governance and relations with third-countries was added to the dimensions of harmful tax competition and transfer pricing. Finally, those developments were accompanied by tougher state aid investigations, eventually leading Donald Trump to complain to Jean-Claude Juncker about the Competition Commissioner Margrethe Vestager for being the 'tax lady' who 'hates the US' (cited in: Zalan 2018).

4. Evolution of the problem and policy streams since the crisis

After having reconstructed the development of the policy stream in terms of concrete corporate tax provisions, I now intend to understand how the identification of problems and selection of solutions at the EU level evolved over time. For this purpose, I conducted a quantitative content analysis of 936 official documents published by the Commission and the Council of the EU between 2003 and 2017.[1] All documents refer to corporate taxation. They range from legislative acts and proposals to working documents, meeting documentation and documents related to public communication, such as press releases and speeches. The decision to focus on the Commission and the Council was based on the fact that the European Parliament was involved only in a limited number of cases, and the ECJ does not participate in the decision-making process at all. The 2003-2017 time frame was selected because there are enough studies investigating tax policy developments before 2003 (see section 1), and it allows for a comparison between the periods before and after the crisis. After cleaning the data, I created a dictionary of relevant keywords or key phrases, which I selected on the basis of a previous explorative analysis of a representative sample of documents (Grimmer and Stewart 2013; Rooduijn and Pauwels 2011). Inspired by the differentiation between the problem and policy streams, the structure of the dictionary consists of three root categories: solutions, problems and goals. The detailed structure of the dictionary is outlined in appendix 1.

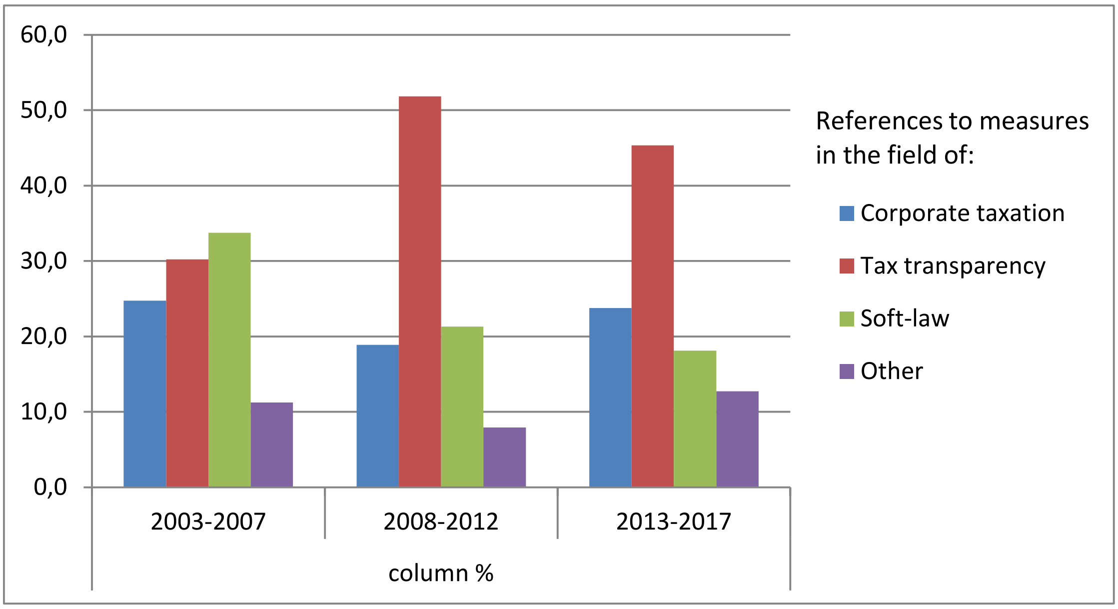
Working with the content analysis and text mining software WordStat, I then performed a descriptive frequency analysis depending on three time periods (2003-2007, 2008-2012, 2013-2017). Specifically, I looked at the column percentage, meaning how the frequency of a specific keyword/key phrases in relation to the total frequency of all other keywords/key phrases in a given time period changed from one period to the other. Thus, the following figures display the percentages for a certain keyword in relation to all keywords from the same category for the three time periods, not the absolute frequencies. The column percentage and significance level of the different elements of each category (solutions, problems and goals) can be found in appendix 2. The first interesting result relates to the distribution of the documents over the three time periods. While 50 % of the documents were produced between 2013 and 2017, the two former time periods are covered with only 25 % of the documents respectively. This confirms the observations made above, that the EU did intensify its legislative efforts in corporate tax policy, and that this change did not happen immediately after the crisis, but later.

Regarding concrete policy solutions, figure 1 shows that there is a clear increase of references related to hard-law provisions (company taxation and tax transparency), accompanied by a steady decrease of references associated with soft-law instruments. This suggests that hard-

[1] About the use of quantitative text analysis, see for instance: Krippendorff (2004), Lemke and Wiedemann (2016) or Monroe and Schrodt (2008).

law became the preferred policy tool, while soft-law approaches progressively became less important.

Figure 1: Policy solutions between soft- and hard-law



The increasing relevance of hard-law in comparison to soft-law can be attributed to a rapid growth of references related to tax transparency measures, while mentions referring to company taxation stayed more or less constant between the first and the last period. In the area of company taxation the almost exclusive emphasis on the CCCTB was weakened for the benefit of anti-tax avoidance measures (figure 2). A similar development occurred in the tax transparency field, where the focus on AEOI slightly shifted towards CBCR (figure 3).

Figure 2: Hard-law in the field of company taxation

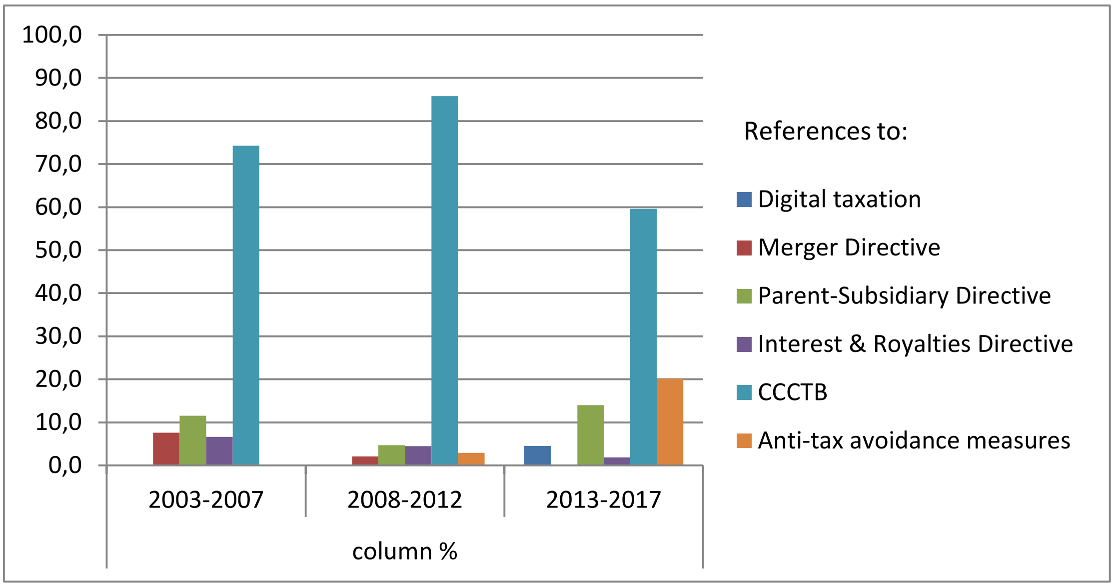
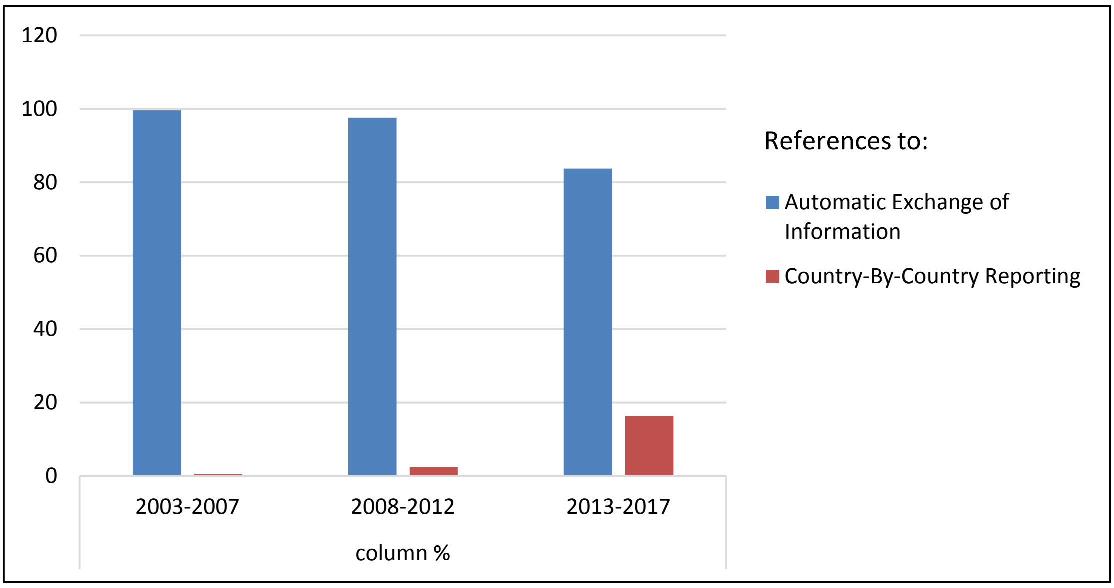
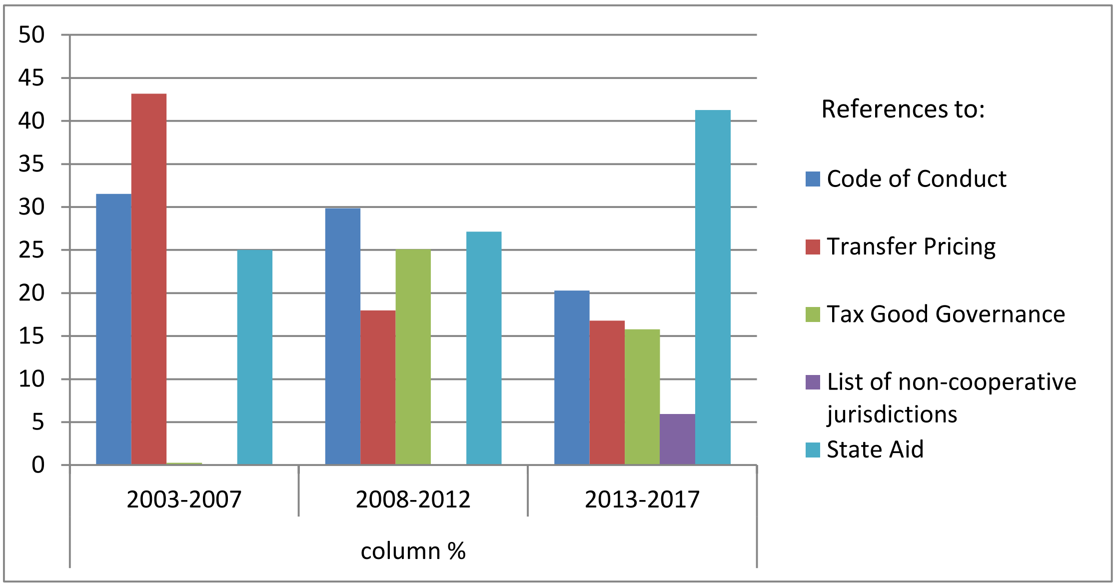


Figure 3: Hard-law in the field of tax transparency



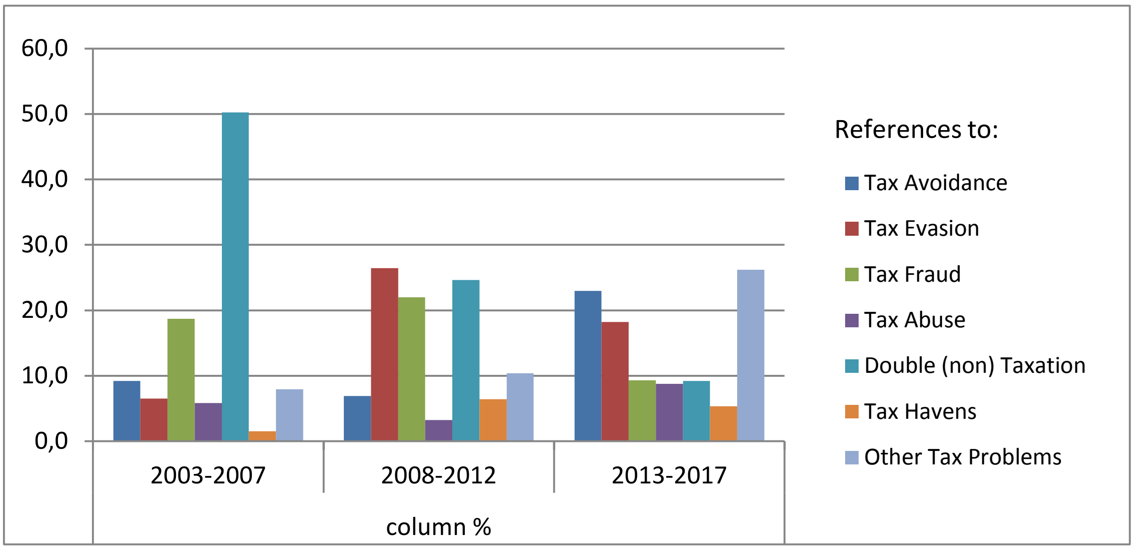
The decreasing weight of soft-law in comparison to hard-law is particularly extreme for references related to transfer pricing measures and to some extent also to the code of conduct (figure 4). Instead, references belonging to the soft-law area are increasingly associated with tax good governance, including the list of non-cooperative jurisdictions. State aid also seems to have play a significant role through the three different periods, with a marked increase in the last period. The change in the policy stream observed above seem to be confirmed by the results of the content analysis.

Figure 4: Soft-law and state aid



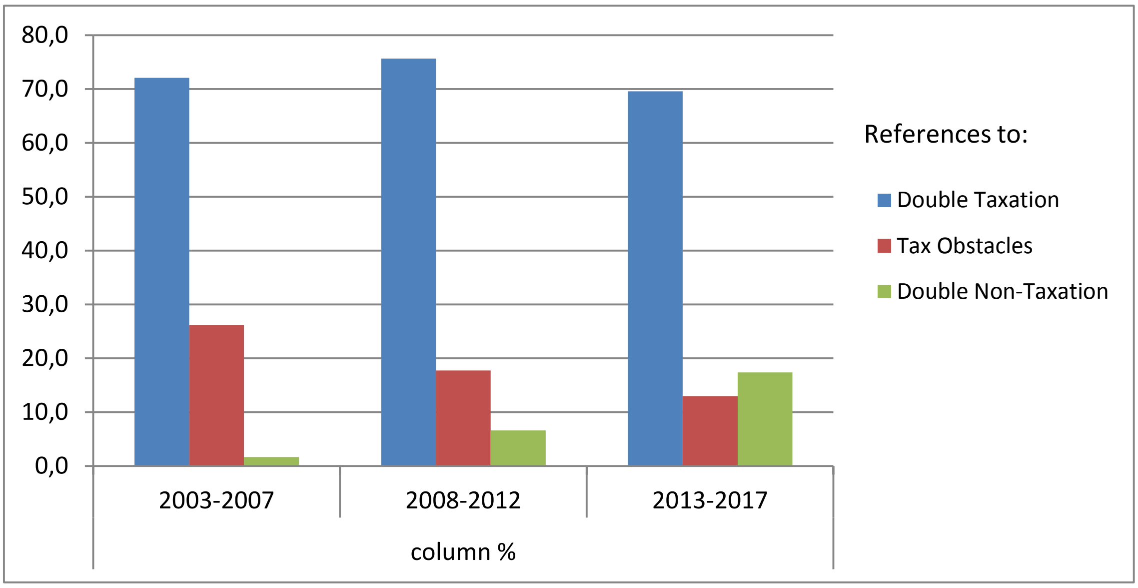
Now turning to the problem stream, figure 5 illustrates the evolution of the relative importance of references related to tax avoidance, evasion, fraud and abuse, issues related to double taxation and other problems over the different time periods. In the years before the crisis, the focus was clearly on issues related to double taxation and tax fraud. This changed after the crisis, when tax evasion was added to the repertoire of problems to deal with. Tax avoidance did not become a priority immediately after the crisis, but from 2013 on. In fact, the term corporate tax avoidance was not mentioned once in the years before 2013, indicating that it was not perceived to be a problem at all! The new focus on tax avoidance, which is increasingly apparent in the documents, can be best illustrated with this quote from a Commission's press release about the AEOI. Accordingly, 'corporate tax avoidance is thought to deprive EU Member States' public budgets of billions of euros a year. It also undermines fair burden-sharing among tax-payers and fair competition between businesses. Companies rely on the complexity of tax rules and the lack of cooperation between Member States to shift profits and minimise their taxes' (European Commission 2015a).

Figure 5: Shifting problem definitions



Over the years, the issue of double taxation stays present (figure 6). Yet, concerns are less about tax obstacles, but increasingly about the issue of double non-taxation, which was a central reason for the amendment of the Parent-Subsidiary Directive in 2013. According to the Commission's proposal, 'double non-taxation is one of the key EU areas for urgent and coordinated action: it forms part of an on-going effort to improving the proper functioning of the Internal Market, by closing tax loopholes generated by exploiting the differences in national tax systems. Double non-taxation deprives Member States of significant revenues and creates unfair competition between businesses in the Single Market' (European Commission 2013).

Figure 6: From double taxation to double non-taxation



Furthermore, the initial emphasis over harmful tax competition has progressively shifted towards the issue of aggressive tax planning (figure 7). In its Communication about the Anti-Tax Avoidance Package, the commission explains for instance that 'a healthy Single Market needs a fair, efficient and growth-friendly corporate tax system, based on the principle that companies should pay taxes in the country where profits are generated. Aggressive Tax Planning undermines this principle' (European Commission 2016a).

Figure 7: From harmful tax competition to aggressive tax planning

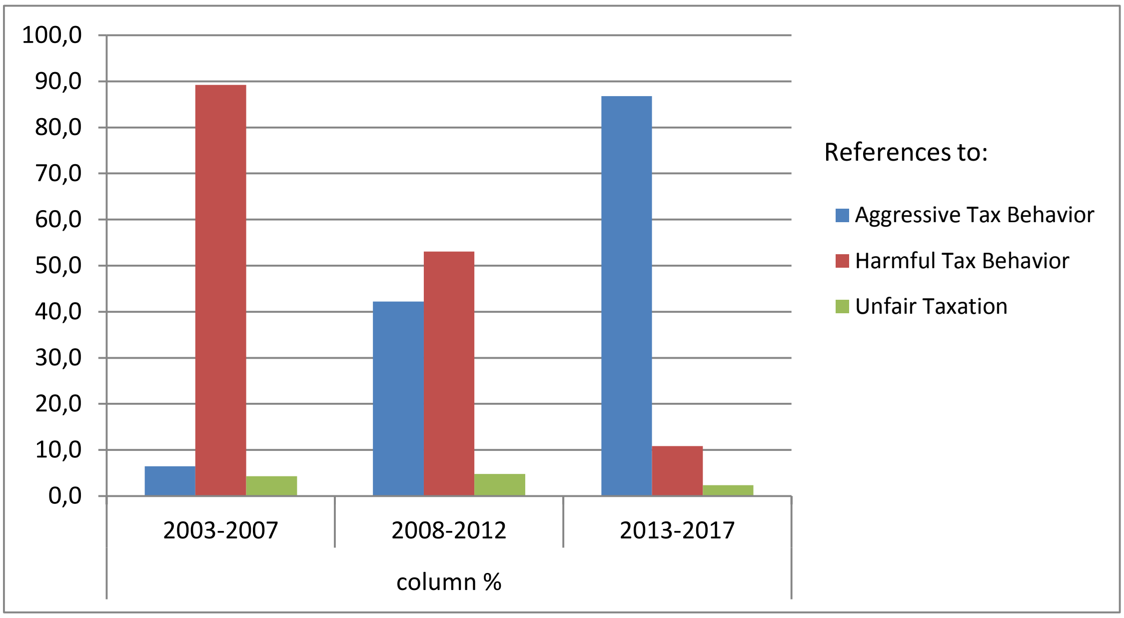
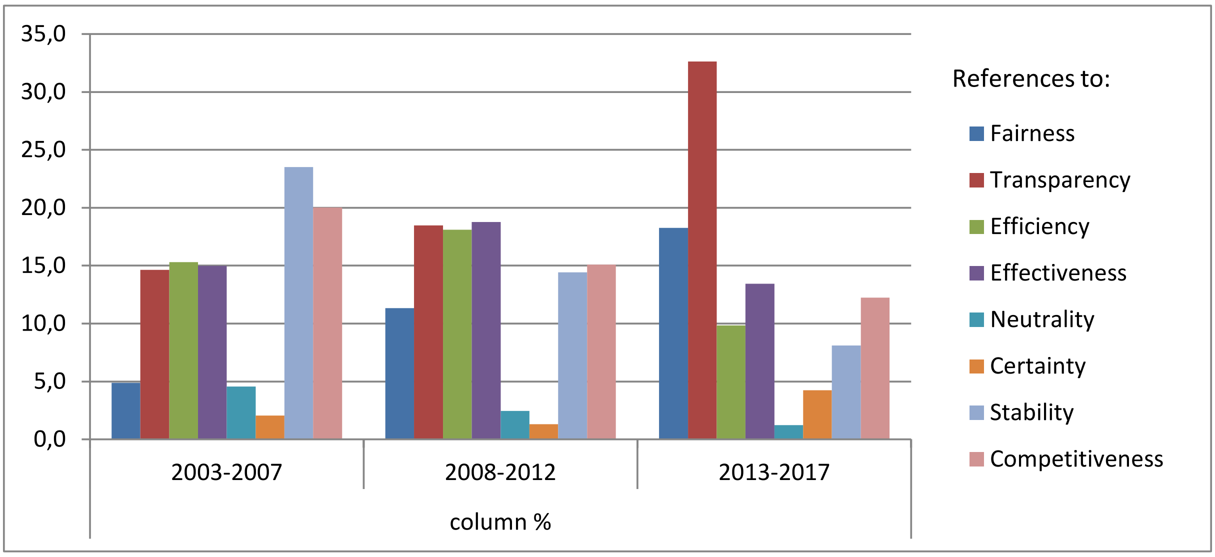


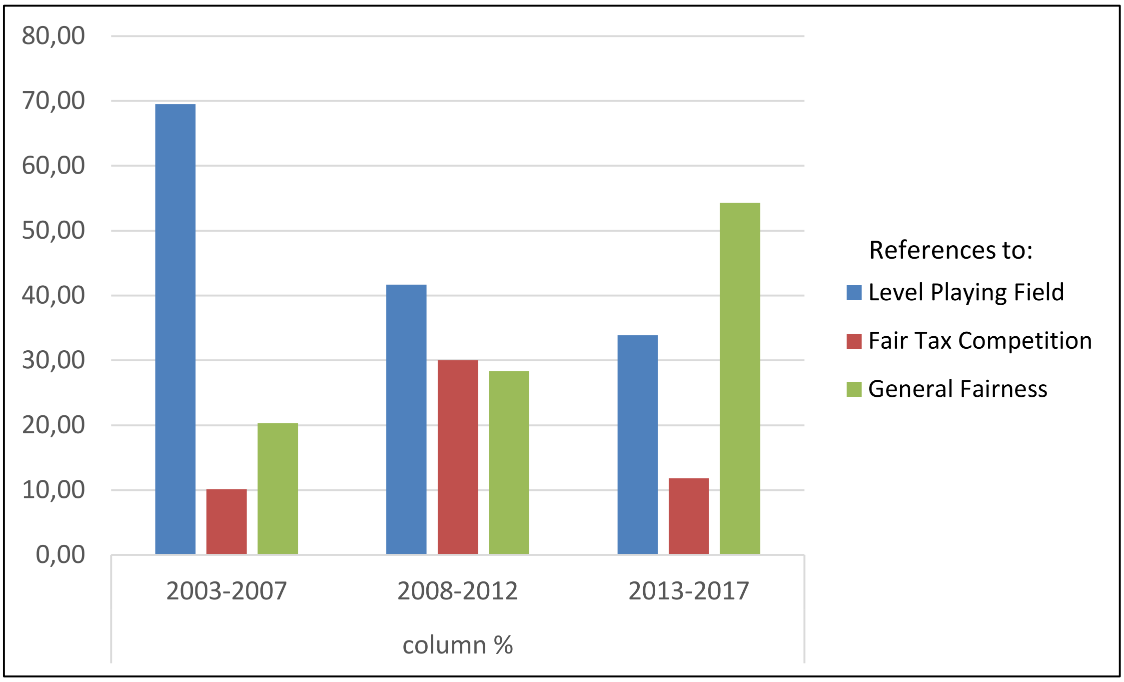
Figure 8 shows how references to the most common goals of tax policy change in relation to each other over the three periods. Looking at those goals contributes to a better understanding of the justifications behind the selection of problems and solutions. While the focus was clearly on stability and competitiveness in the first period, it progressively shifted towards transparency and fairness. According to Pierre Moscovici, the EU has even a 'duty to make corporate taxation fairer and more transparent, and to use every means possible to block tax abuse. We have an obligation to take every measure possible to stop profit shifting, prevent base erosion and ensure that all companies pay their fair share of tax where they make their profits' (European Commission 2016b).

Figure 8: Goals shifting from competitiveness and stability to fairness and transparency



Yet, it should be noted that transparency and fairness have a specific and somewhat limited meaning in this context. Greater transparency does not imply full public access to tax data, but solely better information sharing between tax authorities. Similarly, the recurrent claim that multinationals should pay their fair share of tax does not give any indication about the amount of tax they should pay, or what tax rate would actually be a fair one. It only means that they should pay some taxes, in contrast to no taxes at all. The fairness narrative is further undermined by the fact that it is often associated with the concepts of tax competition and level-playing field (figure 9). Fair tax competition is generally used as the acceptable opposite pole to harmful tax competition. In this view, fairness refers only to non-distorted competition, which is still considered as being a positive incentive for investment and fiscal discipline: 'Fair competition on tax rates is to be encouraged. Differences in rates allows a certain degree of tax competition to be maintained in the internal market and fair tax competition based on rates offers more transparency and allows Member States to consider both their market competitiveness and budgetary needs in fixing their tax rates' (European Commission 2011).

Figure 9: Fairness and competition



The repeated references to the concept of level-playing field add another limitation to the understanding of fairness, as it focuses on a fair distribution of the tax burden between different types of businesses. As such it excludes other (non-business) taxpayers from the fairness consideration. The emphasis generally lies on small- and medium sized enterprises: 'SMEs will also benefit from measures against tax avoidance – which can offer them fairer competition and a more level playing field. International profit shifting creates a competitive disadvantage for smaller companies that do not have the means for aggressive tax planning […]. Corporate tax avoidance can result in SMEs carrying a heavier tax burden, as governments compensate for the revenue losses' (European Commission 2015b). Interestingly, this specific understanding of fairness seems to weaken, as references related to fair tax competition and level-playing field decrease over time, and tend to be supplemented by more generic accounts of fairness. The broader definition of fairness in terms of universal social justice can be illustrated with this quote from Pierre Moscovici about the Anti-Tax Avoidance Directive: 'Billions of tax euros are lost every year to tax avoidance – money that could be used for public services like schools and hospitals or to boost jobs and growth. Europeans and businesses that play fair end up paying higher taxes as a result. This is unacceptable and we are acting to tackle it. Today we are taking a major step towards creating a level-playing field for all our businesses, for fair and effective taxation for all Europeans' (European Commission 2016c).

Discussion

This article has examined the possibility of tax cooperation from a European perspective. In contrast to existing contributions, it provided a detailed review of all provisions related to corporate taxation over a longer period and was able to show that EU corporate tax policy has undergone a significant change in recent years: Away from removing tax obstacles and double taxation, towards more transparency and elimination of abusive tax practices. Apparently, tax cooperation is becoming a viable option within the EU. In addition, this paper analysed this change from a multiple streams perspective to understand how the EU perception of corporate tax problems and solutions has also changed over time. As the last section shows, the stream metaphor fits well the case of European tax policy. The new emphasis on fairness and transparency is very much in line with the identification of new problems (e.g. tax avoidance and aggressive tax planning) in the problem stream, and the selection of new solutions (e.g. AEOI and anti-abuse rules) in the policy stream.

Now, a next step consists in explaining this change. A first aspect is related to the role of the EU as an international actor in relation to the OECD and the US. Some of the measures mentioned above directly followed from OECD recommendations or US unilateral initiatives, thus relativizing the potential leadership of the EU. Yet, the EU introduced the AEOI with the Savings Directive already in 2003, far before the US or OECD. The EU also initiated many innovations independently from the OECD and actually took the fight against tax avoidance so far, that it has been accused of launching a tax war on the US. Investigating the nature of the relationship of the EU with the US and OECD appears as a promising avenue for future research on EU corporate tax policy in particular, and international tax cooperation in general.

Crises are also common explanations for changes similar to those described above. After the financial crisis however, the EU was not concerned with the issue of corporate tax avoidance, which appeared on its agenda only in 2013. Admittedly, the sovereign debt crisis may have had an indirect impact by fostering a general feeling of unfairness when taxpayers discovered that multinationals were not paying taxes and not contributing to the general efforts following from the austerity plans. But this free-riding behaviour needed to be exposed in the first place thanks to the range of major tax scandals, such as the Lux leaks or Paradise Papers. Still insufficiently studied, the role of media leaks and strategic media organizations seem worthy of investigation to better understand processes of policy change. A final question addresses the position of the Commission as a strong and independent actor influencing the international tax agenda. While the Commission's entrepreneurship is no longer contested, the reasons for it are still quite obscure. Possible lines of inquiry could include the lack of legitimacy of the Juncker Commission after the Lux leaks revelations, the role of single personalities, such as Pierre Moscovici and Margrethe Vestager, and the supranational agenda of the Commission as a whole.

In any cases, better understanding EU corporate tax policy opens up interesting opportunities for future research. International relations scholars could get useful insights into the conditions under which cooperation takes place. Similarly, this case study provides valuable material to the research on EU integration and policy-making processes. And finally, by exploring the role of media leaks in the emergence of windows of opportunity or differentiating the concept of policy entrepreneurship, this research agenda yields promising results for scholars wishing to further elaborate the Multiple-Streams Framework.

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Appendix 1: Solutions, problems and goals - Coding and absolute word counts

Appendix 1 a: Solutions - Coding and absolute word counts

Coding			Absolute word count		
			2003-2007	**2008-2012**	**2013-2017**
Hard-law: Company taxation		DIGITALTAX*			54
		MERGERDIRECTIVE	48	8	
		PSD	73	18	170
		IRD	42	17	23
	CCCTB	CCCTB	276	263	617
		CCTB	2	15	65
		CTB	192	49	42
	Anti-tax avoidance	ATAD			87
		ATAP			54
		GAAR		11	103
Hard-law: Tax transparency	**AEOI**	*AEOI	45	70	739
		*EOI	270	426	393
		AUTOMATICEXCHANGE	1	7	72
		EXCHANGE_INFORMATION	41	39	139
		SAVINGSAGREEMENT	18	37	12
		SAVINGSDIRECTIVE	85	127	182
		SAVINGSTAX*	266	101	108
		ADMINISTRATIVECOOPERATION*	44	214	294
		ACCOUNTINGDIRECTIVE*	3		27
	CBCR	CRD		18	32
		CBCR		7	319
Soft-law and State aid		CODEOFCONDUCT*	363	176	320
		TAXGOODGOVERNANCE	3	148	249
	List	LISTNON*			75
		LISTTHIRD*			18
	Transfer pricing	TRANSFERPRICING*	309	73	229
		JTPF	188	33	36
		STATEAID	288	160	651

Appendix 1 b: Problems – Coding and absolute word counts

Coding		Absolute word count		
		2003-2007	2008-2012	2013-2017
Tax avoidance	*AVOIDERS	2	4	13
	ANTIAVOIDANCE*	25	5	99
	ANTITAXAVOIDANCE			18
	AVOID_PAYING		4	48
	AVOID_TAXATION		5	17
	CORPORATETAXAVOIDANCE			181
	TAXAVOIDANCE*	81	80	696
Tax evasion	*EVADERS	2	21	64
	ANTIEVASION*	1		3
	EVASION	3	32	27
	TAXEVASION	70	322	756
Tax fraud	ANTIFRAUD*	31	69	138
	FRAUDSTERS	9	20	18
	TAXFRAUD	179	223	278
Tax abuse	ABUSIVE_TAX*		3	41
	ANTIABUSE*	52	40	291
	TAXABUSE	16	3	61
	TAXTREATYABUSE			17
Double (non) taxation	DOUBLETAX*	424	264	300
	*TAXOBSTACLE	154	62	56
	DOUBLENONTAXATION	10	23	75
Tax havens	*NONCOOPERATIVEJURISDICTION		22	42
	TAXHAVEN	18	69	208
Other problems	AGGRESSIVE_TAX*	6	62	1063
	HARMFUL_TAX*	83	78	133
	UNFAIR_TAX*	4	7	29

Appendix 1 c: Goals – Coding and absolute word counts

Coding		Absolute word count		
		2003-2007	2008-2012	2013-2017
Fairness	*PLAYINGFIELD	41	50	221
	FAIR_TAX*	10	52	230
	FAIRNESS*	8	14	183
	FAIRNESSOF_TAX*		4	18
Transparency	TAXTRANSPARENCY		4	279
	TRANSPARENCY*	175	187	869
	TRANSPARENCYOF_TAX*	2	4	6
	TRANSPARENT_TAX*		1	11
Efficiency	EFFICIENCY*	184	168	286
	EFFICIENCYOF_TAX*		8	25
	EFFICIENT_TAX*	1	16	40
Effectiveness	EFFECTIVE_TAX*	74	77	203
	EFFECTIVENESS*	105	119	265
	EFFECTIVENESSOF_TAX*	2	3	12
Neutrality	NEUTRAL_TAX*	9	1	3
	NEUTRALITY*	37	18	33
	NEUTRALITYOF_TAX*		2	3
	TAXNEUTRALITY	9	5	5
Certainty	CERTAINTY	25	14	50
	TAXCERTAINTY			101
Stability	STABILITY*	282	153	283
	STABILITYOF_TAX*			3
	STABLE_TAX*	2		3
Competitiveness	COMPETITIVE_TAX*	2	9	8
	COMPETITIVENESS*	239	150	428
	COMPETITIVENESSOF_TAX*	1	1	1

Appendix 2: Shifting solutions, problems and goals - Column percent and significance level[2]

Appendix 2 a: Shifting solutions - Column percent and significance level

	Absolute values			Column %		
	2003-2007	2008-2012	2013-2017	2003-2007	2008-2012	2013-2017
Policy solutions between soft- and hard-law						
HARDLAW: COMPANY TAXATION	633	381	1215	24,8 (n.s.)	18,9 (***)	23,8 (n.s.)
HARDLAW: TAXTRANSPARENCY	773	1046	2317	30,2 (***)	51,9 (***)	45,3 (**)
SOFTLAW	863	430	927	33,8 (***)	21,3 (n.s.)	18,1 (***)
STATE AID	288	160	651	11,3 (n.s.)	7,9 (***)	12,7 (**)
Hard-law in the field of company taxation						
DIGITALTAX*	0	0	54	0 (***)	0 (**)	4,4 (***)
MERGERDIRECTIVE	48	8	0	7,6 (***)	2,1 (n.s.)	0 (***)
PSD	73	18	170	11,5 (n.s.)	4,7 (***)	14 (***)
IRD	42	17	23	6,6 (**)	4,5 (n.s.)	1,9 (**)
CCCTB	470	327	724	74,2 (n.s.)	85,8 (*)	59,6 (n.s.)
ANTITAXAVOIDANCE	0	11	244	0 (***)	2,9 (***)	20,1 (***)
Hard-law in the field of tax transparency						
AEOI	770	1021	1939	100 (**)	98 (*)	84 (**)
CBCR	3	25	378	0 (***)	2 (***)	16 (***)
Soft-law and state aid						
CODEOFCONDUCT*	363	176	320	32 (***)	30 (n.s.)	20 (***)
TRANSFERPRICING*	497	106	265	43 (***)	18 (***)	17 (***)
TAXGOODGOVERNANCE	3	148	249	0 (***)	25 (***)	16 (***)
LIST			93	0 (***)	0 (***)	6 (***)
STATEAID	288	160	651	25 (***)	27 (*)	41 (***)

Appendix 2 b: Shifting problems - Column percent and significance level

	Absolute values			Column %		
	2003-2007	2008-2012	2013-2017	2003-2007	2008-2012	2013-2017
Shifting problem definitions						
AVOIDANCE	108	98	1072	9,2 (***)	6,9 (***)	22,9 (***)
EVASION	76	375	850	6,5 (***)	26,4 (***)	18,2 (**)
FRAUD	219	312	434	18,7 (*)	22 (***)	9,3 (***)
ABUSE	68	46	410	5,8 (***)	3,2 (***)	8,8 (***)
DOUBLE-TAXATION	588	349	431	50,3 (***)	24,6 (**)	9,2 (***)
TAXHAVENS	18	91	250	1,5 (***)	6,4 (n.s.)	5,4 (**)
OTHER_TAXPROBLEMS	93	147	1225	7,9 (***)	10,4 (***)	26,2 (***)
From double taxation to double non-taxation						
DOUBLETAX*	424	264	300	72,1 (n.s.)	75,6 (n.s.)	69,6 (n.s.)
*TAXOBSTACLE	154	62	56	26,2 (***)	17,8 (n.s.)	13 (**)
DOUBLENONTAXATION	10	23	75	1,7 (***)	6,6 (n.s.)	17,4 (***)
From harmful tax competition to aggressive tax planning						
AGGRESSIVE_TAX*	6	62	1063	6,5 (***)	42,2 (***)	86,8 (***)
HARMFUL_TAX*	83	78	133	89,2 (***)	53,1 (***)	10,9 (***)
UNFAIR_TAX*	4	7	29	4,3 (n.s.)	4,8 (n.s.)	2,4 (n.s.)

2 The differences between the different time periods are tested for significance with the Chi²-Test, which indicates whether the correlation between the frequencies of specific keywords and the respective text corpus is significant. The significance is calculated based on the standardised residuals:

Stand. Res. >=2,0, Sign. P<0,05, symbol: *

Stand. Res. >=2,6, Sign. P<0,01, symbol: **

Stand. Res. >=3,3, Sign. P<0,001, symbol: ***

Appendix 2 c: Shifting goals - Column percent and significance level

	Absolute values			Column %		
	2003-2007	2008-2012	2013-2017	2003-2007	2008-2012	2013-2017
Goals shifting from competitiveness and stability to fairness and transparency						
FAIRNESS	59	120	652	4,9 (***)	11,3 (*)	18,3 (***)
TRANSPARENCY	177	196	1165	14,7 (***)	18,5 (***)	32,6 (***)
EFFICIENCY	185	192	351	15,3 (***)	18,1 (***)	9,8 (***)
EFFECTIVENESS	181	199	480	15 (***)	18,8 (***)	13,4 (***)
NEUTRALITY	55	26	44	4,6 (***)	2,5 (n.s.)	1,2 (***)
CERTAINTY	25	14	151	2,1 (n.s.)	1,3 (***)	4,2 (*)
STABILITY	284	153	289	23,5 (n.s.)	14,4 (n.s.)	8,1 (***)
COMPETITIVENESS	242	160	437	20 (***)	15,1 (n.s.)	12,2 (***)
Fairness and competition						
*PLAYINGFIELD	41	50	221	69,5 (***)	41,7 (n.s.)	33,9 (n.s.)
FAIR_TAXCOMPETITION	6	36	77	10,2 (n.s.)	30 (***)	11,8 (n.s.)
FAIRNESS	12	34	354	20,3 (**)	28,3 (**)	54,3 (*)