EUROPEAN COMMISSION

Brussels, 27.1.2016
C(2016) 364 final

Dear President

The Commission would like to thank the Camera Deputaţilor for its Opinion on the Commission Communication "A fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action" {COM(2015) 302 final}.

The June 2015 Action Plan Communication sets out an ambitious package of measures designed to combat aggressive tax planning within the EU. There is now a broad political consensus that we need new, coordinated measures to re-align taxation to real economic activity and ensure that profits made in the EU are fairly taxed in the EU.

While taking into account the necessity to reinforce the efficiency of the tax environment for businesses in the Single Market, the key objective of this Action Plan is to ensure that companies are taxed where their profits are generated and cannot avoid paying their fair share of tax through aggressive tax planning.

Tackling profit shifting and harmful tax competition is a high priority for the Commission and with this purpose the Action Plan aims to coordinate Members States' tax systems and provides the foundation on which to build a fairer, growth-friendly corporate tax framework for the EU. The measures proposed would contribute to achieving revenue stability, a stronger Single Market, greater corporate resilience and efficiency and a fair and level-playing field for businesses.

This Action Plan provides the basis for Commission work on corporate tax policy over the coming years. In this respect, the Commission Work Programme for 2016 includes a Corporate Tax Package to be adopted early in the year as a concrete follow-up to the Action Plan.

The Commission welcomes the Camera Deputaţilor's broad support for the aims of the Action Plan and is pleased that it shares the view that action at the EU level, as envisaged in the communication, is required to combat fiscal evasion at the level of the companies.

Mr Valeriu Ştefan ZGONEA
President of the
Camera Deputaţilor
Palace of the Parliament
Str. Izvor nr. 2-4, sector 5
RO – 050563 BUCHAREST

At the same time, the Commission takes seriously the concerns expressed by the Camera Deputaţilor regarding the consolidation elements in the proposal for a common consolidated corporate tax base (CCCTB) and a possible cross-border recuperation of loss mechanism. The Commission would like to refer the Camera Deputaţilor to the attached annex where it offers a more detailed response to these concerns and the other observations made by the Camera Deputaţilor in its Opinion,.

Following the Action Plan, the Commission Work Programme for 2016 also announced that the Commission will introduce a package of measures which will implement international standards on base erosion and profit shifting. The Commission aims at providing common rules, through hard law where possible, to ensure that anti-avoidance measures are implemented in a coordinated manner in the EU.

These measures will both provide legal certainty on base erosion and profit shifting issues, and enhance coherency in the Single Market.

The Commission hopes that the explanations provided in this reply address the issues raised by the Camera Deputaţilor and looks forward to continuing our political dialogue in the future.

Yours faithfully,

Frans Timmermans
First Vice-President

Pierre Moscovici
Member of the Commission

<u>ANNEX</u>

The Commission has carefully considered the issues raised by the Camera Deputaţilor in its Opinion and would like to offer the following observations grouped by topic:

Key area 1 – The Common Consolidated Corporate Tax Base (CCCTB) – A Holistic Solution to Profit Shifting

The Commission is currently working on a possible staged approach with a mandatory tax base, as announced in its Work Programme 2016. It will take into account the outcome of the discussions held in the Council on the various provisions of the tax base, as well as the results of the public consultation that was open until 8 January 2016.

The re-launched CCCTB will be deployed in two steps: Efforts would first concentrate on agreeing the rules for a common corporate tax base (CCTB). As a second stage, consolidation is postponed until the common base has been agreed and implemented, in order not to hold back progress on other important elements of the proposal such as anti-base erosion measures. The Commission remains fully committed to consolidation which offers a holistic solution to the problem of profit shifting in the EU.

A cross-border loss relief regime is envisaged as an integral part of the first step of the Commission's CCCTB work (i.e. CCTB) in order to balance defensives measures with a guarantee of a better business environment. Pending the public consultation, in which a cross-border relief system is proposed as an option, and without prejudging its outcome, the Commission does not preclude engaging in exploratory exchanges on the different technical and legal aspects of such a possible regime. It has to be noted that finally, this cross-border loss relief regime would be automatically cancelled when the full CCCTB enters into force.

Key area 2 – Ensuring effective taxation where profits are generated

The Action Plan argues that profits generated in the EU should be taxed at the place where the activities take place.

In this regard, the Commission welcomes Romania's stance and appreciates that, despite not being a member of the OECD, Romania supports the measures and actions adopted in that forum in order to ensure that national tax systems are fair and effective.

Key area 3 – Additional measures for a better tax environment for business

The Commission agrees with the Camera Deputaţilor that the multilateral Arbitration Convention between Member States could resolve disputes between them.

Currently, the Arbitration Convention, a multilateral treaty among EU Member States, provides for arbitration in cases where mutual agreement procedures (MAP) between tax authorities do not result in the elimination of double taxation. However, it only covers the valuation of transactions within multinational groups, that is to say operations between associated companies. Moreover, it is not an EU legal instrument and hence the European Court of Justice has no jurisdiction over it.

The Commission's June 2015 Action Plan set out a number of Commission actions to improve tax disputes resolution mechanisms. The Commission services are currently conducting analyses to conclude on the concrete actions that the Commission may propose to improve the dispute resolution mechanisms, including the adoption of arbitration between Member States.

Key area 4 – Further progress on tax transparency

The Commission welcomes the efforts made by Members States to reach political agreement on the Commission proposal for amending Directive 2011/16/EU as regards the automatic exchange of information on tax rulings which was formally adopted by ECOFIN Council on 8 December 2015. Member States will have to transpose the text into national law by January 2017. The Commission will review the implementation of the Directive in 2018 and if appropriate consider further transparency requirements.

In addition, in order to further improve tax transparency, the Commission is currently working on an impact assessment of country-by-country reporting, which will be the basis for deciding what kind of legislative action should be taken. The impact assessment is expected to be finalised by the first quarter of 2016 and depending on the results, a new legislative proposal would be presented. This work is being carried out in line with the Commission's Communication of 18 March 2015 on Tax transparency to fight tax evasion and avoidance and with the June 2015 Action Plan, and based on the input received in a public consultation.

Key area 5 – EU tools for coordination

The Commission takes note that the Camera Deputaţilor's Opinion supports the Commission's goal of strengthening the role of the Code of Conduct.

As set out in the June Action Plan, the Code should be modified so that the Group can continue its successful work in combating harmful tax competition and give high priority to effective taxation. In particular, the Commission believes that the Code needs to ensure that it is more effective at monitoring Member States' compliance with their conclusions and decisions.