

Open letter to Pierre Moscovici, European Commissioner for Economic and Financial Affairs, Taxation and Customs

8th April 2015

Dear Commissioner Moscovici,

We would like to continue the discussion we had in TAXE regarding the question posed by Molly Scott Cato MEP:

"On April 17 2012, in the code of conduct working group, the Commission expressed its disappointment with the results of its questioning of member states regarding information exchange. Then Belgium took the floor and stated it had not exchanged any information because it had not received any information from other member states. Later the Council legal service clarified that there was no such thing as a legal obligation for reciprocity in the directive on administrative cooperation (or the previous directive on mutual assistance).

So there was clear evidence of a breach but there is no responding evidence of action taken to enforce member state obligations. In this case the offending state is Belgium, but Belgium in the same time confirms that other Member States have not fulfilled their obligations either. What Belgium is implicitly saying is that, for example, Ireland did not inform about its Apple ruling, nor Luxembourg about the Amazon ruling.

To recall the legal context: Since the late 1970s member states are obliged to exchange information concerning egregious rulings."

The questions:

Why did the Commission decide not to launch infringement proceedings when Belgium admitted it disregarded EU law obligations, and implicitly stated that other member states had not exchanged information either?

Are you ready to instruct your services NOW to introduce the first steps of infringement procedures? Yes or no?"

Your reply :

[...] Le Code de conduite est intergouvernemental et trop peu outillé en termes d'informations pour faire face à la complexité des situations actuelles. La Commission n'a pas compétence en la matière, n'avait pas compétence. Maintenant, dans notre position, si elle est adoptée, ce sera du droit de l'Union européenne, donc toute incompatibilité conduira à des infractions.

Firstly, we would like to point out that, although the code was referred to, there is also Treaty Law requiring disclosure of information. Both the existing directive on administrative cooperation and the previous directive on mutual assistance constitute EU law. The exchange quoted provides prima facie evidence that this law was broken

and it is our view that the Commission is not merely fully competent but obliged to enforce these obligations.

Do you agree that this is the case, and could you rectify your statement in this respect?

You also stated:

"Pour la Belgique, la Commission doit agir sur des preuves, certes, mais dans ce cas, ni les règles existantes n'étaient claires, ni les preuves n'étaient suffisantes et c'est la raison pour laquelle nous avons agi comme nous le pouvions."

Can you confirm that the Commission was present when the Belgian representative in the code of conduct confirmed that:

- a) they had completely ignored the exchange obligation**
- b) other Member States had not exchanged information with Belgium?**

If you feel that you cannot comment on conversations in the code of conduct Working Group, please explain why, and please confirm in general terms that you were aware of the Belgian admission.

Can you also confirm that the current legal framework is sufficiently clear when it comes to information exchange obligations? This is in case the competent authority of a Member State has grounds for supposing that there may be a loss of tax in the other Member State, or has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises.

Do you agree that the rulings currently investigated by DG Competition (Apple, Starbucks, Fiat, Amazon) meet at least on or even both criteria that trigger the exchange obligation?

Can you also elaborate why, in light of this, you claim that the evidence was not sufficient to launch at least the first steps of infringement proceedings? In the Commission's view, does a Member State's admission to have flouted EU rules constitute sufficient grounds for infringement procedures?

Finally, we would like to repeat our call for you not to delay the adoption and entering into force of the new proposal to launch infringement procedures. As revolutionary as you might consider it to be, the current legal framework also provides binding obligations and you as Commissioner must take responsibility for the application of EU law.

Signed by:

Molly Scot Cato MEP
Philippe Lamberts MEP
Michel Reimon MEP
Ernest Maragall MEP

Sven Giegold MEP
Eva Joly MEP
Ernest Urtasun MEP