INVESTING IN TIMES OF AUSTERITY

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ABSTRACT

Member States that have signed the treaties on fiscal consolidation ("Six pack", reinforced Stability and Growth Pact, SGP, 2011, and Treaty on Stability, Coordination and Governance, TSCG, "Fiscal compact", 2013) are now experiencing difficulties to finance infrastructure and social services. Following the treaties, governments must urgently reduce their loans since their annual budget deficit should not exceed 0.5% of GDP and total sovereign debt should be lowered to 60% of GDP. Moreover Eurostat recently expanded its definition of sovereign debt to include public-private collaboration and financial guarantees by public authorities. The private sector on the other hand is not using its huge amounts of cash to increase production and employment. Instead corporations raise dividends, buy back shares and pay for take-overs and mergers. The latter rarely create jobs and often destroy some. The financial sector invests in the stock market instead of in the productive economy.

While the European treaties prohibit additional borrowing by MS, they do not exclude that governments generate higher income. This is possible by preventing the massive tax avoidance and evasion that was recently documented, estimated by the EC at 1000 billion euro annually.

Europe should implement and extent actions against tax evasion decided by the OECD, the G20 and the US Treasury. They include automatic exchange of information on bank accounts in more than 40 countries; the BEPS tax Action Plan (OECD-G20, 2013); and, in the US, FATCA (2010) and retroactive actions against tax inversion already effective. Also, the EU should add the corporate earnings in all relevant nations, and reappoint them to MS using objective criteria. All this does not require a change in legal tax rates in MS. Another lead is taxing capital that leaves the EU if resulting in lower taxation. Each MS should ban rulings that lower the tax revenue.

By increasing their internal revenue MS can reduce their debt, and simultaneously finance economic growth, in order to 1) avoid the massive loss of jobs in the public sector decided under austerity policies; 2) remedy the waiting lists in social housing, affordable nurseries, old age homes, hospitals and care for handicapped, school buildings, insulation, maintenance of roads, canals and rail, green energy, water conservation, and the ridiculous shortage of proper personnel in internal revenue services, the police, justice departments and detention centres, in several MS. This immediate rise in employment will increase demand and business results. According to the IMF-IEO and the G20 (Brisbane), demand is instrumental to growth.

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[2] http://www.european-council.europa.eu/home-page/highlights/treaty-on-stability,-

The UK and the Czech Republic have not signed the fiscal compact, and issue their own currency. They might start this growth policy at once if so decided by their government.

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THE EUROPEAN TREATIES

The Treaty on Stability, Coordination and Governance TSCG, also called "Fiscal compact", entered into force 1/1/2013 (signed by the heads of state on 2/3/2012, but not by the UK and Czechia)[2]. It was subsequently voted by all parliaments of undersigning MS.

The treaty contains "*the obligation for those Contracting Parties whose general government debt exceeds the 60 % reference value to reduce it at an average rate of one twentieth per year as a benchmark*"[3].

The second relevant treaty is the reinforced Stability and Growth Pact (SGP), also called 'Six pack'. It is dated 13 dec 2011 and stipulates (excerpts): "*In case a euro area Member States does not respect its obligations, a financial sanction can be imposed by the Council on the basis of a Commission recommendation, unless a qualified majority of Member States vote against it…. a new numerical debt benchmark has been defined: if the 60% reference for the debt-to-GDP ratio is not respected, the Member State concerned will be put in excessive deficit procedure (even if its deficit is below 3%!), after taking into account all relevant factors and the impact of the economic cycle, if the gap between its debt level and the 60% reference is not reduced by 1/20th annually (on average over 3 years). ….Given that that most Member States are already in excessive deficit procedure, and therefore have to comply with agreed fiscal consolidation paths …The new rules define a new 'expenditure benchmark' to help assess progress towards these MTOs. This expenditure benchmark <u>places a cap on the annual growth of public expenditure…However, it does not constrain, in any way, the level of public expenditure, as long as it is financed effectively</u>"*[4].

Most MS are now experiencing the consequences of these treaties: their governments and all publicly financed agencies must cut spending, and are prevented from making investments. The latter would result in growth of production and job creation; but these are automatically curtailed. Moreover Eurostat recently expanded its definition of sovereign debt to include public-private partnership and financial guarantees by public authorities. In addition,

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[2] http://www.european-council.europa.eu/home-page/highlights/treaty-on-stability,-coordination-and-governance-signed?lang=en

[3] http://european-council.europa.eu/media/639235/st00tscg26_en12.pdf

[4] http://europa.eu/rapid/press-release_MEMO-11-898_en.htm The last two sentences of the citation (underlined by FR) are contradictary to some degree: 'the brakes are put on growth of public expenditure…but it is not constrained in any way as long as…'. Is this a reflection of the ambivalence in the minds of the experts who drafted the texts? Or was it written on purpose in order to open doors to alternative public financing?

such expenses must be included in the budgets of that single year, instead of spread out over many as is customary for investments in the private sector. This took some governments and national budget controllers by a disagreeable surprise. By the sudden lack of public money, unseen situations have arisen, such as the sudden cancellation of expected public support of 1 billion euro for approved infrastructure renovation and maintenance of all 996 Flemish resthomes for the elderly; or translators who do not turn up in court because they are not paid, so a judge decided for acquittal[5].

In order for public authorities to finance the massive needs in all fields, new resources must be looked for. These are available, without raising new taxes, through the retrieval of taxes that are now avoided by loopholes and sophisticated fiscal techniques.

THE PRIVATE SECTOR

The private sector on the other hand has huge amounts of cash[6] but does not use it to increase production and employment. Instead corporations spend hundreds of billions to raise dividends, buy back shares and pay for take-overs and mergers[7]. The latter rarely create jobs and often destroy some. Mergers also often result in lower taxation by moving the new corporate address to a low tax region (see below). Large amounts of cash flow from the financial sector to the stock market instead of to productive enterprises. This situation can be

[5] Other anecdotic examples: cuts of 17% personnel in the internal revenue service of Belgium; thousands of children are refused by any school because of crowded classes; for ex. 1291 pupils in Flemish primary schools in Brussels, on a total of 43.420, or 3%. The approved building plans for schools have delays because funding is lacking; there are no plans to take care of the prospected increase in secondary students. Plans for social housing lag far behind the waiting lists and will not catch up in the future. In Britain, the cutback of public spending and services is an ideological choice of the Cameron governments, for example the budget of the public broadcasting system has been cut 25% since 2000, and in addition it should now pay licence fees. The British police force has lost 15% of its budget, and this year would lose another 15%; it is overwhelmed by rape cases and in order to deal with them has moved murder teams (The Times, June 3rd). But the BoE, in contrast to the ECB and eurozone, started with QE ('quantitative easing') in March 2009, injecting 375 billion pounds into the financial system. Although there is no direct relationship, wages went up, 3.2% in May 2015, and the economy expanded, with output per head returning to its pre-recession level http://www.bloomberg.com/news/articles/2015-08-05/carney-opens-dam-to-boe-policy-torrent-as-super-thursday-arrives

[6] For example, halfway 2014 non-financial companies in the region of Europe, Middle-East and Africa together possessed around 850 billion eur cash, according to Moody's Investors Service. This is a rise of 40% since the crisis of 2008-9. The big five are Volkswagen, Gazprom, BP, Electricite de France en Total which each have at least 16 billion cash.

[7] A series of examples: Roels https://biblio.ugent.be/input/record/4356763 and footnote in http://www.apache.be/gastbijdragen/2014/12/18/investeren-in-tijden-van-besparingen/ http://www.bloomberg.com/news/2015-01-05/berkshire-soars-as-buffett-shifts-focus-from-stocks-to-takeovers.html Daily, mergers/deals/acquisitons are listed by Reuters.com and Bloomberg.com.

explained because productivity has risen much faster than demand, which has even decreased in part of the EU population, while on the other hand the stock market offers high returns in the presence of massive cash.

1000 BILLION EUROS OF TAX REVENUE LOST ANNUALLY

This rough estimate was published in February 2012 but based on older data[8], and was adopted by the European Commission[9]. It includes illegal (punishable) tax evasion as well as legal tax avoidance. Separate figures are given for 27 member states. For example, Italy loses the most in Europe as a result of tax evasion. Its loss exceeds €180 billion a year. Estonia is, however, the biggest loser when the tax lost is expressed as a proportion of government spending; more than 28% of Estonia's government spending is lost to tax evasion each year.

The report contains an extensive and detailed list of the methods that are applied to avoid and evade taxes. Well-known are reallocation of income to a person or entity that has a lower tax rate; change the location of a transaction, by simply creating new subsidiaries in alternative countries; transfer pricing to relocate profits to low tax jurisdictions; VAT not recorded; etc, etc.

The fiscal techniques used, and a number of the benefitting corporations[10], have also been documented in detail by the ICIJ (International Consortium of Investigative Journalists). They reported the Offshore Leaks in April 2013, about the British Virginislands, Singapore, the Cook Islands and other tax

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8 "Closing the European Tax Gap. A report for Group of the Progressive Alliance of Socialists & Democrats in the European Parliament", by Richard Murphy FCA, 97 pages: http://www.taxresearch.org.uk/Documents/EUSocialists.pdf
More recent data on UK: £ 122 billion pounds in 2014:
http://www.taxresearch.org.uk/Documents/PCSTaxGap2014Full.pdf
http://www.taxresearch.org.uk/Blog/?s=tax+gap&searchsubmit=
http://www.taxresearch.org.uk/Blog/reading/ Transfer pricing between daughters of the same company, which represents 60% or more of the international trade, is estimated to cause loss of tax revenue of several hundreds of billion annualy, or 1100 billion, see
http://www.taxjustice.net/topics/corporate-tax/transfer-pricing/
VAT tax gap, table: http://www.taxresearch.org.uk/Blog/2014/10/29/can-we-close-the-tax-gap-answer-yes-we-can/
UK tax gap 2014: http://www.taxresearch.org.uk/Blog/2014/09/22/new-report-the-tax-gap-is-119-4-billion-and-rising/

9 http://ec.europa.eu/taxation_customs/taxation/tax_fraud_evasion/a_huge_problem/index_en.htm Video "One fifth of public money is missing":
http://ec.europa.eu/avservices/video/player.cfm?ref=I080915
http://ec.europa.eu/taxation_customs/taxation/tax_fraud_evasion/further_reading/index_en.htm Former EU president Herman Van Rompuy publicly adopted the estimate of 1000 billion.

10 such as Pepsi, Ikea, Accenture, Burberry, Procter & Gamble, Heinz, JP Morgan and FedEx. Leaked papers relating to the Coach handbag firm, drugs group Abbott Laboratories, Amazon, Deutsche Bank and Australian financial group Macquarie are also included.

havens[11]. Luxleaks (Nov. 2014) revealed confidential tax agreements in Luxemburg of benefit to 378 corporations[12]. In February 2015 SwissLeaks (Hervé Falciani and coll.) made public the secret bank accounts in Switserland of more than 100.000 clients of the British HSBC bank[13]. The data also reveal the role of consultancy firms, such as PriceWaterhouseCoopers, in organizing the complex company structures enabling the tax avoidance. Recently in Belgium[14], Luxemburg[15] and other MS the existence of so-called rulings was revealed, i.e. negotiations and agreements between a corporation and the internal revenue service about the future taxes to be paid on a fraction only of corporate earnings. These agreements are not subject to government or parliament approval, and in practice unknown to them. Administrators received legal power to undersign such rulings for a taxation period of five years, after which they can be extended. The EC is investigating the Belgian and Luxemburg rulings, but the principle applied by the Commission is often to combat unfair competition, and less the loss of finances by the public authorities.

Hedge fund managers benefit from a lower taxation rate, called 'carried interest deduction'[16], in the US and perhaps in other countries.

MEASURES AGAINST TAX EVASION

Introduced in 2010 by the USA, FATCA, *Foreign Account Tax Compliance Act,* contains the template for automatic exchange, which tightens reporting requirements for non-U.S. financial accounts. The five biggest EU economies - Germany, France, the U.K., Italy and Spain - agreed last year to exchange data among themselves along the lines of FATCA. Joining today's pledge to automatically exchange data collected by financial institutions are most EU countries, Liechtenstein, Mexico, Argentina, South Korea and jurisdictions such as Bermuda, the Cayman Islands and the Isle of Man. More than 40 countries have agreed to adopt the standard starting in 2017. Others, including Switzerland, Brazil, Canada, China, Hong Kong, Monaco and Russia, have

[11] http://www.theguardian.com/technology/2013/jun/15/database-app-icij-tax-havens http://www.icij.org/blog/2013/10/users-can-now-search-country-icij-offshore-leaks-database

[12] http://www.theguardian.com/business/2014/nov/05/-sp-luxembourg-tax-files-tax-avoidance-industrial-scale http://www.theguardian.com/world/2014/nov/06/luxembourg-tax-leaks-put-pressure-on-g20-leaders-to-act-on-loopholes One of the French journalists, Edouard Perrin, is now on trial in Luxemburg for making company and trade secrets public.

[13] http://www.theguardian.com/news/series/hsbc-files

[14] http://www.tijd.be/politiek_economie/belgie_federaal/Belgische_belastingdeals_ontbloot.9581257-3136.art?highlight=rulings http://europa.eu/rapid/press-release_IP-15-4080_en.htm?locale=en

[15] http://www.bloomberg.com/news/articles/2015-01-16/amazon-luxembourg-tax-pact-clashes-with-global-rules-eu-says

[16] A rate of 20% instead of 39.6%; the argument for the 'carried interest deduction' is that this income is not guaranteed: http://www.cepr.net/publications/op-eds-columns/the-hedge-fund-managers-tax-break-because-wall-streeters-want-your-money

committed to start in 2018, according to OECD documents. 90 countries have agreed to automatic exchange from 2017-2018[17]. The UK and Australia signed a bilateral agreement on *Diverted Profit Tax,* and the Conservative Party made an election promise to collect £ 5 billion of extra revenue from a crackdown on tax avoidance[18].

While Switzerland isn't an early adopter, its government has a mandate to negotiate with the EU. Ministers expressed confidence that the Swiss will join. More than 100 Swiss banks seeking to avoid U.S. prosecution asked the Justice Department on Oct. 21 to back off a dozen demands, including that they cooperate with other nations. The demands were part of a disclosure program tied to a proposed non-prosecution agreement signed on to by about a third of Swiss banks in a bid to avoid the six-year US IRS crackdown[19].

BLOCK TAX INVERSION

On July 7th 2014 the Secretary of the US Treasury Jacob J. Lew communicated the decision of President Obama to block corporate actions of tax avoidance. Secretary Lew: "*But one particular tax loophole has become increasingly urgent to address: the fact that the law rewards U.S. corporations with substantial tax benefits when they buy foreign companies and declare that they are based overseas.(…) By moving their tax homes overseas, these companies are making the decision to reduce their taxes, forcing a greater share of the responsibility of maintaining core public functions on small businesses and hardworking Americans. That includes paying for the things all of us, particularly U.S. businesses, depend on: our national defense, education, medical research, courts and vital infrastructure such as roads, bridges and airports. (…) To make sure the merged company is not merely masquerading as a non-U.S. company, shareholders of the foreign company would have to own at least 50 percent of the newly merged company*".

Most remarkably, Secretary Lew adds: "*For legislation to be effective, it must be retroactive (…). Making legislation effective before the date that a bill is enacted is not a new or novel approach; (…). Passed by a Republican-led Congress and signed into law by President George W. Bush in October 2004, it had an effective date of March 2003*". So the novel rules against tax inversion will apply from early May on[20].

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17 except Nauru, Vanuatu, the Cook islands, Bahrein and Panama. Interview with Pascal Saint-Amans, 27/5/2015. He estimates that the increasing transparency already yielded 40 billion euro tax revenue.

18 http://www.theguardian.com/business/2015/may/20/fresh-spending-squeeze-has-already-begun-says-george-osborne

19 http://www.bloomberg.com/news/2014-10-29/bank-data-sharing-accord-expands-push-to-find-tax-cheats.html

20 http://www.treasury.gov/press-center/press-releases/Pages/jl2586.aspx

On Sept 22nd 2014, the Treasury published the actions to rein in corporate tax inversions. As excerpts show, the ownership (shareholders), as well as its business activity, will determine whether the IRS will consider a company as U.S. for tax purposes, notwithstanding its corporate address.

"…if, after the transaction: (1) less than 25 percent of the new multinational entity's business activity is in the home country of the new foreign parent, and (2) the shareholders of the old U.S. parent end up owning at least 60 percent of the shares of the new foreign parent. If these criteria are met for an inverted company, the tax consequences depend on the continuing ownership stake of the shareholders from the former U.S. parent. If the continuing ownership stake is 80 percent or more, the new foreign parent is treated as a U.S. corporation (despite the new corporate address), thereby nullifying the inversion for tax purposes. Techniques as "hopscotch" (taxfree borrowing cash abroad), "spinversion", "cashbox", are no longer recognized by the IRS for delimiting the tax base"[21].

Since 1982 there have been 45 such mergers, 14 since 2012, and 8 were in preparation. They cost the United States billions of avoided tax[22]. The executive decision of Obama (he has no more legislative majoratiy in Congress) was immediately effective. Two major mergers that had been agreed upon, and that would have resulted in tax avoidance, were put on hold by the companies, which saw their share price go down: AbbVie Inc merger with the Irish Shire plc[23], and Medtronic Inc. merger with the Irish Covidien.

However, in August 2015 novel mergers by US companies with tax inversion are announced[24], suggesting that the Treasury was not succesful, perhaps after the chances in court had been studied by the fiscal lawyers of the companies (Morgan Stanley, Goldman-Sachs, Skadden, Arps, Slate, Meagher & Flom LLP, Bank of America Merryll Lynch, JP Morgan, Allen & Overy LLP).

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[21] http://www.treasury.gov/press-center/press-releases/Pages/jl2645.aspx

[22] Zachary Mider 2014; http://www.bloomberg.com/news/articles/2014-09-23/lew-tries-to-limit-tax-cut-deals-with-inversion-crackdown
http://www.bloomberg.com/news/articles/2014-12-02/-unpatriotic-loophole-targeted-by-obama-costs-2-billion

[23] http://www.bloomberg.com/news/articles/2014-10-16/abbvie-cold-feet-on-deal-shows-some-too-late-to-invert

[24] CF Industries Holdings with OCI NV; and Monsanto continues trying to convince Syngenta: http://www.thestreet.com/story/13252330/1/treasury-warnings-havent-stopped-wave-of-tax-inversions.html http://www.bloomberg.com/news/articles/2015-08-06/cf-plans-8-billion-nitrogen-merger-with-oci-units-to-rival-yara Terex can return large amounts of cash outside US without being taxed: http://www.taxjusticeblog.org/archive/2015/08/latest_inversion_attempt_illus.php#.Vdb5w_mqdR http://www.bloomberg.com/news/articles/2015-08-11/terex-to-merge-with-konecranes-creating-10-billion-crane-maker

THE G20-OECD 'BASE EROSION AND PROFIT SHIFTING' (BEPS) ACTION PLAN

On April 2nd 2009, the G20 decided that the widespread loss of tax revenue should be tackled, and charged the OECD with this task. The BEPS Action plan of 2013 includes a timetable and action scheme[25]. Its aim is to limit the loss of the tax base that is a global phenomenon to-day, as a consequence of the shifting of corporate profit to low tax environments. Every step of the Plan is submitted to public consultation, and the comments received are posted online[26]. The texts are extremely technical and detailed. The possible impact of the BEPS Action is illustrated by the continuous attention it receives from tax consultancy businesses (PWC, KPMG, Deloitte a.o., for ex.[27]).

Activists for tax justice also monitor the progress by the BEPS Action Plan as well as the continous impediments it meets[28].

In Brisbane, November 2014, the G20 reiterated their determination to combat tax evasion, "…finalising this work in 2015, including transparency of *taxpayer-specific rulings found to constitute harmful tax practices*. We welcome progress being made on taxation of patent boxes. *To prevent cross-border tax evasion, we endorse the global Common Reporting Standard for the automatic exchange of tax information (AEOI) on a reciprocal basis"*[29].

EUROPEAN COMMISSION

An earlier European directive (2011) forbids Member States to tax corporate profit already taxed in another MS. However the EC recognizes that this directive is being used by daughter and mother companies to avoid tax. So a clause is added in 2015, called "anti-abuse". It is questionable whether the phrasing will be effective. The reasoning by the EC uses the terms "arrangement that is (not) genuine", "valid commercial reasons", "(not) reflecting economic reality" as criteria for taxation vs. being exempt from it. MS can preserve their own domestic taxation philosopy[30], such as low tax rates.

Future plans of the EC were published March 18th[31]. By the end of 2015, MS will be required to automatically exchange information on their tax rulings. The Commission will also "review the *Code of Conduct onBusiness,* one of the EU's main tools for ensuring fair corporate tax competition". This should be

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[25] http://www.oecd.org/ctp/BEPSActionPlan.pdf
[26] http://www.oecd.org/ctp/transfer-pricing/public-comments-actions-8-9-10-chapter-1-tp-guidelines-risk-recharacterisation-special-measures.htm http://www.oecd.org/tax/transfer-pricing/discussion-draft-action-10-low-value-adding-intra-group-services.htm
[27] https://news.pwc.be/beps-project-time-take-closer-look-treasury-intercompany-financing/
[28] https://bepsmonitoringgroup.wordpress.com/what-is-the-beps-monitoring-group/
[29] http://www.consilium.europa.eu/en/search/?q=G20+brisbane&search=search
[30] http://www.consilium.europa.eu/en/press/press-releases/2015/01/council-adopts-anti-abuse-clause/
[31] http://europa.eu/rapid/press-release_IP-15-4610_en.htm?locale=en

understood that the EC considers the present tax avoidance as exaggerated, and will try to restrict it. But the ambivalent view of the EC is proven by its plan "*to work with Member States to see how a reliable estimate of the level of tax evasion and avoidance can be reached… a precise quantification of the scale and impact of these problems has not been determined up to now*". This ignores the very detailed report by Robert Murphy (2012) ordered by the S&D parliamentary fraction is cited on the EC's own website, and recognized by the former EU president Herman Van Rompuy. The procedure announced now to reach a novel estimate is set to create long discussions with 27 finance ministers, of whom many are in favour of lower corporate taxation.

With respect to public information, a European directive is under the way that limits the publication of corporate data, such as those on tax avoidance. Investigative journalists might become subject to prosecution[32].

On June 17th, the EC announced a novel "Action Plan"[33]. It is called "ambitious", "taxation needs radical reform", "*everyone must pay their fair share"*. With respect to practical measures, the EC will propose a "common corporate tax base" in 2016, mandatory for multinationals. According to the EC, the CCTB is, "first and foremost, a pro-business initiative". But it will also contain "rules which ensure that profits parked in low or no tax companies are effectively taxed; realizing a strong, common defence against profit shifting out of the EU". "*Some companies make large profits in the Single Market, but do pay little or no tax on them in the EU. They take advantage of the Treaty freedoms, national mismatches and provisions in EU corporate tax law[1] to shift profits between Member States and out of the EU, untaxed"*. While the EC makes a correct diagnosis, a therapy is not included. Instead the EC institutes what it calls: "cross-border loss offset": "a parent company in one Member State would be able to receive temporary tax relief for the losses of a subsidiary in another Member State. Once that subsidiary became profitable, the Member State in which the parent company is established would "recapture" the taxes that it relieved during the loss phase".

Similarly, the Commission explains very well how transfer pricing lowers the tax revenues of MS; but it proposes no specific measures, only a vague promise: "*The Action Plan proposes to improve the transfer pricing framework in the EU, so that it better reflects current economic realities and modern business models. The Commission will work with Member States on possible options*"[34].

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32 http://europeanjournalists.org/blog/2015/06/10/efj-calls-on-meps-to-uphold-public-interests-over-trade-secrets/

33 http://europa.eu/rapid/press-release_IP-15-5188_en.htm
http://ec.europa.eu/taxation_customs/taxation/company_tax/fairer_corporate_taxation/index_en.htm

34 The EC writes: "Transfer pricing is one of the main tools used by multinationals to shift profits. Example: A company sets an unreasonably high price for a royalty for which there is no comparable market. It then requires other companies in the group, which are based in high

Tax rates are not modified: "Member States will continue to decide their own corporate tax rates, as is their sovereign right".

The Commission postpones "one of the most controversial aspects of the common corporate tax base for Member States", called "consolidation": "that would fundamentally change how *corporate profits and losses are allocated between Member States, with a definitive effect on Member States' revenues"*.

The Action Plan of the EC includes a **public consultation**, on whether corporate tax data should be public, or not; it closes Sept 9th[35].

CALCULATE CORPORATE EARNINGS OVER THE UNION

In the US and Canada, businesses are taxed on their results calculated over the federation, avoiding evasion that uses a fiscal address in one state or province that imposes a low tax rate. The EU should introduce the same mechanism, i.e. add the earnings in each MS, and allocate (apportion) this sum to the MS according to controllable parameters such as their local production, workforce and investment, forming the tax base in each MS. In fact, the Commission has proposed this idea in 2010, but did not make it mandatory[36]. What makes this reform attractive, is that national tax rates can stay as they are. The OECD more recently made the same requirement, but again the Commission postponed a decision, arguing about the protection of corporate data[37]. In 2013, the BEPS Action Plan said that the MS governments rejected the allocation according to a formula (BEPS Action Plan, p. 14, 20).

Transfer pricing, i.e. payment of high prices by one division of a multinational to an other localized in a low tax environment, might also be met by EC allocation of earnings. But other approaches should be developed, such as informing all relevant governments about the corporate allocation of income, economic activity and taxes paid (BEPS p. 20 and Actions 8, 13). According to the BEPS Plan, the novel rules should be completed by December 2015. But Tax Justice networks are very critical of the last proposals (March 2015)[38].

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tax countries, to pay this royalty to a branch in a low/no tax jurisdiction. In doing so, the corporation reduces its profits in the high tax countries and increases them in the low/no tax country, thereby minimising its overall tax burden substantially". http://europa.eu/rapid/press-release_MEMO-15-5175_en.htm

[35] http://ec.europa.eu/finance/consultations/2015/further-corporate-tax-transparency/index_en.htm http://ec.europa.eu/finance/consultations/2015/further-corporate-tax-transparency/docs/consultation-document_en.pdf

[36] http://www.alternatives-economiques.fr/page.php?controller=article&action=html&id_article=70282&id_parution=633 (2013) http://www.alternatives-economiques.fr/l-harmonisation-fiscale--c-est-maintenant_fr_art_1214_63767.html

[37] C. Chavagneux, in Alternatives Economiques 345, Apr. 2015, p. 48

[38] https://bepsmonitoringgroup.files.wordpress.com/2015/03/summary-march-2015.pdf

Since corporate income is easily transferred to non-member states, the so-called tax havens should be included in the adding of income and subsequent allocation. The success of the US FATCA a.o. actions proves that tax havens, such as Switserland, would not resist cooperation if the EU insists with political conviction.

The 2012 report on the tax gap cited earlier, lists the policy changes needed to block avoidance or evasion. More recent proposals for the British revenue service by Richard Murphy are dated Sept 2014[39]. Often these are small administrative decisions that can be taken without changes of law, and within each MS separately. But others interfere with free market principles, for example, limiting the right to incorporation at will; and the re-registration of the ownership of assets, such as land, in one jurisdiction, into the legal ownership of a legal entity such as a company in another jurisdiction.

Another action to avoid shifting of earnings, is taxing capital that leaves the Union.

TO TAX EXPORT OF CAPITAL

At present export of capital out of the Union is free. It represents however a loss of internal purchasing power and of potential for creation of jobs and wealth. As long as the public and/or private sectors in Europe are short of finances, export should be taxed. This is not prohibited by the European treaties (inside the Union travel of capital is liberated). Exceptions should be provided: payments of traded goods and services; the contributions to international bodies of public interest (UN…); if supporting non-profit development programs; corporate investment under specific conditions such as substantative creation of proper jobs together with correct taxing of profit. Trading on the stock market is not one of those exceptions, and fierce resistance by financial groups is predicted, even if the taxation rate is low (high frequency trading in particular would suffer).

AIMS OF PUBLIC EXPENDITURES

Diminishing the sovereign debt is a politically agreed obligation. But in addition there are huge social and economic needs that require public initiatives because the private sector does not solve them. This short list differs somewhat between MS: waiting lists in social housing, affordable nurseries, old age homes, hospitals and care for handicapped, school buildings, insulation, maintenance of roads, canals and rail, green energy, water conservation, and the ridiculous shortage of proper personnel in internal revenue services, in the police, justice departments and detention centres, in several MS. In a previous paper we documented several absurd situations of shortnesses of essentialities such as

[39] http://www.taxresearch.org.uk/Documents/PCSTaxGap2014Full.pdf

drinking water, heating of houses, overcrowded prisons, a.o.[40]. Since last year, the needs are increasing due to the stepwise implementation of spending cuts by governments, EC administration and IMF.

The OECD has rung the alarm on inequality which "is at its highest since records began"[41].

Relieving these needs will be accompanied by massive job creation, in the public but also the private sector. If financing is available, unemployment, which totals around 30 million in the Union, can be resolved within 3 years (my proposal, footnote 40).

It should be underlined again, that retail and businesses will greatly benefit if purchasing power of to-day's unemployed and parttime workers is increased, and from the new orders by public authorities, in infrastructure works, social housing, transport, green energy, etc. In contrast to the current narrative in the media, competitiveness of businesses will improve by such public investments, and on the contrary not by raising dividends.

OTHER FINANCIAL SOURCES FOR THE PUBLIC SECTOR

The Eurobonds proposed by prof. Bofinger a.o. were discussed earlier (Roels, 2014).

Obviously the European Investment Bank can contribute, but has very limited means, compared to the needs (300 billion annually in my proposal of 2014, footnote 17), and vs. the size of the tax gap.

The Juncker-plan for stimulation of investment and job creation will use 16 billion already budgetted for other purposes (for example 2.7 billion from Horizon 2020 for scientific research), and 5 billion from the EIB; while speculating/hoping that the private sector will add 315 billion[42]. In this way the chairman of the EC clearly demonstrates that the Union lacks financial power for most urgent socio-economic planning.

IMPLEMENTATION AND IDEOLOGICAL CHOICE

When it comes to actual implementation of reforms to retrieve avoided taxes, the results will be determined by the ideology of the political majorities in MS and the coalition in the EC. Indeed, more financial means for the public sector are in short-term conflict with higher dividends, with share buyback that raises

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[40] See pages 4-7 in Roels, 2014, 21 pp. http://www.progressiveeconomy.eu/content/resolving-unemployment-0 For a short .ppt presentation, see https://biblio.ugent.be/input/record/4326738

[41] http://www.oecd.org/newsroom/reducing-gender-gaps-and-poor-job-quality-essential-to-tackle-growing-inequality.htm

[42] http://www.bruegel.org/nc/blog/detail/article/1491-junckers-investment-plan-no-risk-no-return/ http://www.bruegel.org/nc/blog/detail/article/1498-the-achilles-heel-of-junckers-investment-plan/

the stock price, and mergers/take-overs that can economize workforce and production costs. Political parties and media that promote and defend the latter options, are strongly opposed to public spending. They say: "Give the money to business; not to the State. They work for it, the State wastes it". Corporate CEO's have declined the invitation of the European parliament on the issue of tax avoidance[43]. The vice-chairman of the EC, Jyrki Katainen, says in his promotour for the Juncker plan: "Public investments are only accepted as public-private collaboration. We really are not going to create more sovereign debt. This fund aims in the first place to help SME's"[44].

This ideology explains the historical legislation and government policies that have enabled present day vast tax avoidance. The reports on the tax gap, listing the numerous techniques of avoidance, shows that legal policies have created incentives that encourage avoidance. Well-known examples are income legally transferred to a corporation or trust that is lower taxed, or income transformed in dividends avoiding social security and income tax[45]. Automatic exchange between EU members of tax rulings had been agreed already in 1977, and adapted in 2011, according to Philippe Lamberts (EP, Greens, 2015[46]); but it was never implemented in practice. Now the German finance minister Schäuble expresses concern because "privacy" and "confidentiality" might be at risk[47]. The G20, OECD and the US are fighting the tax gap, but simultaneously governments can lower the legal tax rate, nullifying the closure of the fiscal loopholes. In Belgium, the federal government is creating a specific taxation system for the diamond sector, in terms proposed by the diamond business itself. As another example, centralized financial information is assembled by the central bank; but it is not accessible by the special anti-white-wash team of the treasury (Jean-Claude Delepière, 2015). In addition, more than half of the criminal cases transmitted to the attorney are not prosecuted. Those who are, can benefit from the "settlement" procedure, paying fines of variable size and avoid any conviction. In the US also, several forms of impunity for businesses, so-called *deals*, were analysed from 385 cases, by B.L. Garrett, professor at the Virginia School of Law ("*Too big to jail*", 2014). In the UK, the Cameron-Osborne government is favouring instead of eradicating the tax gap, according to TaxResearch[48].

Although the EC says its last "Action Plan" (see above) "*is getting tough*

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43 http://www.bloomberg.com/news/articles/2015-06-05/corporate-ceos-too-busy-for-eu-lawmakers-probing-tax-loopholes

44 De Tijd 23/5/2015, my translation FR.

45 http://www.taxresearch.org.uk/Documents/EUSocialists.pdf

46 http://www.philippelamberts.eu/evasion-fiscale-luxleaks-premier-stress-test-pour-la-commission-speciale/

47 http://www.bloomberg.com/news/articles/2015-06-19/germany-sees-privacy-road-block-to-eu-plan-on-tax-rulings

48 http://www.taxresearch.org.uk/Blog/page/3/?s=tax+gap&searchsubmit

on tax"[49], any specific measures are missing that would increase tax revenue of MS. Taxresearch.org_calls it "incredibly weak plans", for ex. allowing_losses to be shared between states whilst profits cannot be similarly apportioned[50].

The European Court of Justice in Luxemburg is competent in fiscal/tax cases, and has ruled in several lawsuits, interpreting the European treaties that guarantee freedom of establishment, and free movement of capital[51]. International treaties for investment protection can favour tax avoidance. All this limits MS as well as the EC in the fight against legal tax avoidance, and effectively lowers the tax revenue of a MS. In order to restore fiscal souvereinity, changes in legislation are necessary.

In order to convince the citizens and voters of the alternative, i.e. a public sector taking on the multiple tasks that serve the population including businesses, the economic and financial feasibility should be explained by the progressive political parties and organisations. Such untertaking is jeopardized by the media because they are defending low corporate taxation, being corporations themselves.

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49 http://ec.europa.eu/taxation_customs/taxation/company_tax/fairer_corporate_taxation/index_en.htm EC Press releases, a.o. Commissioner Pierre Moscovici: http://www.taxresearch.org.uk/Blog/2015/06/17/the-eu-says-its-getting-tough-on-tax/

50 http://www.taxresearch.org.uk/Blog/2015/06/18/tax-abuse-goes-on-and-on-and-on/

51 http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-04/cp140061en.pdf
http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-04/cp140046en.pdf