



Schadelijke belastingconcurrentie in de Europese Unie

M.F. Nouwen

Inside the EU Code of Conduct Group: 20 years of tackling harmful tax competition

This PhD examined the Code of Conduct for Business Taxation and the activities of its governing body: the diplomatic EU Code of Conduct Group (Business Taxation), and seeks to assess how effective the Group has been in the fight against tax avoidance by multinational companies and against the facilitation thereof by harmful tax competition between Member States. This Group, which recently celebrated its twentieth anniversary, brings together representatives of the Member States, the European Commission, and the Council of the European Union.

As Member States still adhere to the Group's diplomatic character, implying confidentiality and closed meetings, its work is hidden by a veil of confidentiality. With the help of the EU Transparency Regulation and much persistence, more than 2,500 unpublished documents on the work of the Group were obtained by the author from the Council and the European Commission. They proved to be of great scientific value and provide a rare glimpse into the decision-making process and results of the Group, and with that, into its effectiveness and the positions of individual Member States on preferential tax regimes and tax avoidance practices.

The study concluded that the Group has achieved impressive results in tackling harmful tax practices, but also that the Group's political nature and decision-making has led to the bogging down and blocking of decision-making. There still are, therefore, loose ends in the form of inconsistent and unsatisfactory results, many forms of unfair tax competition not having been adequately addressed.

Overview

The PhD analysed the historical background and purpose of the Code (Chapter 2), its legal status (Chapter 3), the governance and working methods of the Group (Chapter 4), and the geographical and substantive scope of the Code (Chapters 5 and 6). It assessed the substance and effectiveness of the Group's decisions in respect of national preferential tax regimes (pseudo-case law; Chapter 7) and in respect of coordinated tax policies on general competition sensitive tax issues (pseudo-legislation; Chapter 8), as well as the interaction between the Code (soft law) and hard law, notably the State aid rules and the market distortion rules (Chapters 9). It concludes with an outlook on the Group's future (Chapter 10).