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Policy Change in Times of Politicization: The Case of Corporate Taxation in the European Union*

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Abstract

EU corporate tax policy has long consisted solely in eliminating fiscal barriers. This changed after the financial and Eurozone crises when the European Commission proposed ‘market-correcting’ provisions to increase tax transparency and ‘fairness’, which were partially adopted by the Council. Analyses of EU responses to the crisis have largely ignored taxation issues. This article fills this gap and explains the substantive re-orientation of EU corporate tax policy through the concept of politicization. Based on 19 expert interviews, it details the politicization process of corporate taxation resulting from changes in global governance, media tax scandals, and the work of non-governmental organizations (NGOs). Through the politicization dynamic, new institutional and discursive opportunities were exploited by the European Commission, Parliament and NGOs to induce policy change. We explore this reciprocal interaction between social forces and supranational actors to demonstrate that ‘politicization at the top’ can facilitate a more progressive deepening of European integration.

Keywords: European integration; corporate taxation; politicization; supranational actors; NGOs

Introduction

Over the past decade, the European Union’s (EU) corporate tax policy has undergone a substantive change and seen increased levels of coordination. In the 1990s, and 2000s, EU corporate tax policy formed part of a broader integration agenda of ‘market-making’. Much emphasis was given to improving the ‘efficiency’ of corporate tax systems and eliminating cross-border barriers in the hope of stimulating trade and investment and bolstering the ‘competitiveness’ of the EU. Since the 2008 crisis, issues of harmful tax competition, tax evasion and tax avoidance have been increasingly problematized at the EU level and addressed through a range of ‘market-correcting’ provisions (Roland, 2020). This policy shift materialized in several secondary legislative provisions (mostly directives), the development of new soft-law instruments and the intensification of state aid investigations.

The policy change is puzzling, as taxation has long remained a core competence of EU member states. With the Council of the European Union (hereafter Council) as the sole European legislator, deciding by unanimity, the European Parliament (hereafter Parliament) is merely consulted. Although the introduction of qualified majority voting in matters of taxation has been tabled in all intergovernmental conferences since Maastricht, such discussions were quickly cast aside again (Wasserfallen, 2014). Many EU scholars therefore concluded that the EU has no power to tax and thus refrained from

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analysing this domain any further (Majone, 1998; Moravcsik, 2003). A notable exception is Radaelli (1997) who traced corporate taxation initiatives at the EU level back in the 1990s. Genschel & Jachtenfuchs (2011) have also shown how the European Court of Justice's jurisprudence and EU tax legislation constrained the ability of member states to set national corporate tax policies, a dynamic that has also been observed by legal scholars (for an overview, see Kofler, 2020; Panayi, 2019).

Although the EU is still far from being a fully-fledged supranational corporate tax regime, recent policy efforts went beyond a rhetorical exercise, which raises the question of how this reorientation of EU corporate tax policy can be explained. The article identifies the politicization of corporate taxation and the proactive agency of EU supranational actors in close interplay with non-governmental organizations (NGOs) as the driving forces behind this change. In the case of taxation, social forces rooted in civil society organizations tend to be understudied; most EU integration and governance theories do not account for them, or they are considered irrelevant. As observed by Radaelli, there were 'no citizens' movements advocating European tax reforms' throughout the 1990s, and therefore, the 'contribution of public interest or common cause groups' was absent from the European scene (Radaelli, 1995, p. 156). This changed with the work of investigative journalists and relentless pressure of progressive NGOs who successfully managed to politicize corporate taxation against the backdrop of the financial and sovereign debt crises. The political interface between the EU's institutional agency and social forces is key to understand contemporary corporate tax policy dynamics in the EU. Additionally, important developments in global tax governance, notably within the OECD as a leading international tax platform, increased the political salience of corporate taxation. While the global nature and effects of these developments have already been discussed in detail (see for example Rixen, 2008a; Eccleston, 2013), their impact on EU tax policy-making has remained underexposed so far. Importantly, the OECD cannot impose binding tax laws on its members, whereas the EU can. A closer look at the specific EU political dynamics is warranted, especially as EU corporate tax provisions may feed back into global developments. In fact, the EU has proposed and already implemented measures that go beyond agreements made under the OECD umbrella.

The contribution of this article is threefold. First, including social forces and global governance in our analysis helps to understand how and why supranational EU actors have actively played into the dynamics of politicization. The article thereby seeks to advance theoretical discussions about politicization 'at the top', a dimension that has been unexplored in the literature on politicization in EU Studies (Schmidt, 2019). Second, the analysis offers new empirical insights into earlier, pre-crisis accounts of corporate taxation (Radaelli, 1999; Rixen, 2008b). Finally, regarding the overall course of European integration, this case study shows that politicization is not merely a constraining factor associated with disintegration, populism and Euroscepticism (Hooghe & Marks, 2009; Börzel and Risse, 2018) but can also lead to the introduction of progressive elements in the further deepening of European integration.

Methodologically, the article offers a qualitative case study of politicization in the EU. Between October 2018 and November 2019, 19 semi-structured expert interviews were conducted with experts both within and outside of EU institutions engaged in EU corporate tax policy-making, including officials from the Commission and the Council, members of the Parliament and their staff, national civil servants, and representatives of

NGOs (see Appendix). In addition to the interviews, the analysis also draws on official documents (see Appendix), position papers, consultation documents and reports, as well as secondary literature.

The structure of the article is as follows: Section I offers a brief overview of the politicization literature in EU Studies and positions our contribution in ongoing debates. It then outlines the theoretical mechanism that links politicization to policy change. Section II details the observed shift in corporate tax policy. The remainder of the article offers an explanation for this policy shift based on an analysis of the politicization of corporate taxation in the EU (Section III) and the subsequent responses of supranational actors through their interactions with NGOs (Section IV). The conclusion (Section V) summarizes the main findings and critically discusses the prospects for further politicization and future progress in corporate tax matters.

I. From Politicization to Policy Change: A Theoretical Framework

In EU Studies, the concept of politicization has gained prominence to explain changes in the substantive content, form and scope of European integration. Although conflicts over the course of integration as such are not new, the extent to which EU integration has been discussed and contested in public spheres after the 2008 crisis has had a significant effect on the scope of action of EU institutions (de Wilde *et al.*, 2016; Schmidt, 2019). Following the seminal work of Hooghe and Marks (2009) that argues that politicization results in a ‘constraining dissensus’, the effect of politicization on patterns of disintegration, most notably Euroscepticism and populism, has been widely explored. Although struggles over (cultural) identity have received the most attention, Statham and Trenz (2015) have shown that redistributive issues have also been politicized in the context of the Eurozone crisis, revealing that national governments sought to de-politicize struggles over the (re)distribution of wealth to avoid mass mobilizations and protest actions. While there are numerous studies on the politicization of the Eurozone crisis and issues related to migration (see the special issue introduced by Voltolini *et al.*, 2020; Börzel and Risse, 2018; Schimmelfennig, 2018), analyses of taxation have largely been absent.

An exception is Schmidtke’s work (2016) on the politicization of EU tax governance in Germany, Ireland and Switzerland since 2000. However, like most politicization studies, it focuses on national manifestations of politicization and their constraining or, at times, enabling impact on European integration. Politicization ‘at the top’, understood as the ‘increasingly politically charged dynamics of interaction within and among EU actors’, tends to be overlooked (Schmidt, 2019, p. 1018). A more in-depth analysis of the interplay between politicization and EU-level institutions, and of the potentially changing relationship between the Commission, Council and Parliament is therefore required (Schmidt, 2019; Sack & Roland, 2021). Notwithstanding this, supranational institutions are no static entities operating in a social vacuum but need to be understood as embedded in a broader set of social power relations. We therefore need to account for the role of transnational interests represented by non-governmental actors, as well as developments on the global stage. In contrast to most studies on politicization that employ quantitative methods to measure levels and impact of politicization, we argue that a qualitative exploration of the interaction between non-governmental and EU institutional actors is needed to explain policy change in a politicized context.

Conceptually, politicization is understood as a process whereby the salience of an issue increases, the range of collective actors involved in this issue expands and their respective positions become more polarized (de Wilde *et al.*, 2016; Grande & Hutter, 2016; Börzel and Risse, 2018; Voltolini *et al.*, 2020). Politicization therefore occurs when the importance attributed to an issue and the number of actors with conflicting positions increase. However, such a conceptualization neither addresses the questions of how specific issues become politicized at specific moments in time, nor what the policy implications are. To that end, this article attributes a key role to the agency of supranational and non-governmental actors and understands politicization and subsequent policy change as the result of both structural changes *and* strategic action.

Adopting a relational understanding of structure and agency, we assume actors to be enabled or constrained in their strategic actions by structures that make up our social reality, albeit not in an equal manner (Jessop, 2008). In addition to material structures, specific discursive contexts can have a 'selective' effect (Hay, 2002, p. 382). Consequently, the EU policy context needs to be understood as empowering certain actors and their strategies and ideas over others. In recent decades, the EU has been entangled by a market-driven discourse of competitiveness, often resulting in policy solutions reflecting the interests of transnational business (Wigger, 2019). Such a selective predisposition does not, however, entail that opposing ideas and contesting strategies cannot make inroads. Indeed, politicization can make a difference by opening up windows of opportunity (Cox and Béland, 2013). The financial crisis followed by rising public debts, rigid austerity policies and increasing socioeconomic inequalities have altered material structures, and new developments in global governance have widened the scope of action.

In this politicized policy context, the interplay between supranational and non-governmental actors is analyzed through the concept of political opportunity structure, consisting of institutional and discursive opportunities (de Wilde and Zürn, 2012; Statham & Trezn, 2012).¹ Institutional opportunities in the form of institutionalized access points to the policy-making process can change the actor configuration. Discursive opportunities open up as new ideas and corresponding frames increase their 'likelihood of gaining visibility in the mass media, of resonating with the positions of other public actors, and of achieving legitimacy in the public discourse' (Statham & Trezn, 2012, p. 10). A shift from 'quiet' to 'noisy' politics is likely to temper the influence of business actors, as Culpepper (2010) already observed. An increase in issue salience thus tends to open up new political opportunities for other, non-business actors and their contesting ideas and interests that are not (yet) dominant in the public sphere. How such structural changes in times of politicization result in a policy change then depends on strategic actions by both non-governmental and institutional actors. These two types of actors respond to a newly opened window of opportunity by taking advantage of shifting political opportunities. Simultaneously, they can also actively reinforce such opportunities, for instance when they act as policy entrepreneurs who 'mobilize public sentiment (by revealing a scandal or capitalizing on a crisis), put the opponents of the plan publicly on the defensive (...), and associate the legislation with widely shared values' (Wilson, 1980, p. 370). In the European context, supranational actors are expected to

¹The of political opportunity structure concept has been developed primarily in social movement studies, but it is also employed in politicization analysis; see de Wilde and Zürn (2012).

respond to changes in power relations between interest groups in a number of ways. As policy entrepreneurs, they can take advantage of this window of opportunity, actively engage with NGOs and push for change by successfully ‘framing ideas in ways that generate stronger political support’ (Cox & Béland, 2013, p. 317). When the reform proposals involve a shift from market-making ‘negative integration’ towards market regulation and ‘positive integration’, supranational and non-business actors can also form alliances to promote policy change (Dür *et al.*, 2015, p. 958).

II. Policy Shift: Towards Tax ‘Fairness’ and Transparency?

At the outset of the European integration process, the European Community already considered some form of tax harmonization to be ‘unavoidable’ in achieving an economic union (European Community, 1968). The stipulations that allow European institutions to formulate common tax policies have remained unchanged since 1957. The Treaty on the Functioning of the European Union (TFEU) includes an explicit legal basis for the harmonization of indirect taxes, such as turnover taxes and excise duties (Article 113). A similar reference to direct taxation is lacking. Instead, the legal basis for harmonization of corporate taxes and other direct taxes is found in Article 115, which directly relates corporate tax laws to ‘the establishment or functioning of the internal market’ (Kofler, 2020).

In the course of achieving an ‘ever closer union’, numerous expert reports have recommended a variety of common tax policies. However, in the absence of member state support, no progress could be made. With an acceleration of the European integration process resulting in the European Single Act in 1985, negotiations focused on the establishment of the single market and the protection of the fundamental freedoms enshrined in the EU treaties. At the time, policy problems and proposed solutions with respect to taxation were informed by references to ‘efficiency’ and ‘neutrality’ and merely led to the removal of some tax barriers and distortions (Radaelli, 1995, 1997). In 1996, a taxation policy group headed by EU Competition Commissioner Mario Monti produced a policy package that reiterated the aim of breaking down barriers to cross-border transactions. Although the distortionary effects of harmful tax competition were mentioned as a challenge to the completion of the internal market, the package mostly suggested partial measures to ‘solve’ specific tax obstacles to market integration, without including a comprehensive approach to harmonize corporate tax systems in the EU (Hinnekens, 1997).

The Commission’s course changed in 2012 with the ‘Action Plan for a more effective EU response to tax evasion and avoidance’, which included new market-correcting measures aimed at transparency and ‘tax fairness’ (European Commission, 2012a; Panayi, 2019; Roland, 2020). This new commitment became manifest in several directives and various state aid cases that ruled specific corporate tax treatments as competitive distortions (Römgens, 2019; see Table 1 for an overview of relevant secondary tax legislation introduced before and after the crisis). Tax transparency was partially achieved in 2013 with the introduction of public country-by-country reporting (CbCR) for financial institutions through the adoption of the Capital Requirements Directive (CRD IV) and for major corporations in the extractive and forestry industries through revisions of the Accounting and Transparency Directives (on CbCR, see Seabrooke & Wigan, 2016). The Commission proposed similar transparency requirements for all multinational corporations in 2016. After years of negotiations, a majority in the Council supported public

Table 1: Secondary Tax Legislation Before and After the Crisis

1990s–2008	2008–2020
1990: <ul style="list-style-type: none"> • Parent–Subsidiary Directive • Merger Directive 2003: <ul style="list-style-type: none"> • Interest and Royalty Directive • Savings Tax Directive 2004: <ul style="list-style-type: none"> • Reform of 1977 Mutual Assistance Directive 	2011: <ul style="list-style-type: none"> • Directive on administrative cooperation in the field of taxation (DAC I; repealing Mutual Assistance Directive) • Recast of the Interest and Royalty Directive (proposal to eliminate tax evasion via hybrid financial instruments, <i>under negotiation</i>) 2013: Public country-by-country reporting (CbCR) <ul style="list-style-type: none"> • For the financial sector (Capital Requirements Directive IV) • For the extractive and logging industries (Transparency and Accounting Directives) 2014: <ul style="list-style-type: none"> • Automatic exchange of information (AEOI) of financial account information (Directive on Administrative Cooperation (DAC) II; repealing Savings Tax Directive) 2015: <ul style="list-style-type: none"> • Inclusion of anti-abuse rule in the Parent-Subsidiary Directive • Automatic exchange of tax rulings and advance pricing agreements (DAC III) 2016: <ul style="list-style-type: none"> • Automatic exchange of CbCR (DAC IV) • Automatic exchange of beneficial ownership information (DAC V) • Anti-Tax Avoidance Directive (ATAD I) • Proposal for public CbCR for multinational companies (<i>under negotiation</i>) • Proposal for common consolidated corporate tax base (CCCTB, <i>under negotiation</i>) 2017: <ul style="list-style-type: none"> • ATAD II • Directive on tax dispute resolution mechanisms 2018: <ul style="list-style-type: none"> • Automatic exchange of information on cross border arrangements (DAC VI) • Proposal for two directives on corporate taxation of a significant digital presence and a Digital Services Tax (<i>under negotiation</i>) 2019: <ul style="list-style-type: none"> • Proposal to move to qualified majority voting (<i>under negotiation</i>)

Notes: This table includes only (1) adopted (amended) directives and (2) (amendments to existing) directives currently under negotiation. It does not include soft law instruments, such as the Code of Conduct on Business Taxation, or changes in decision-making procedures (such as proposals to move to qualified majority voting).

CbCR for multinational corporations in February 2021 – considered a major breakthrough in the fight against tax avoidance. The introduction of automatic exchange of information (AEOI) in December 2014 and its subsequent expansion represented another implementation of the transparency discourse (albeit only with respect to the exchange of information amongst tax authorities, not publicly available information).

As others discussed extensively, the concept of fairness is multi-faceted and its definition depends on the specific actors (Burgers and Valderrama, 2017). From the viewpoint of the Commission, fairness relates to both the relation between member states (no harmful tax competition) and to an idea of social fairness between businesses and citizens, as well as between big and small businesses (Pirlot, 2020). The commitment to more fairness resulted in the adoption of the Anti-Tax Avoidance Directive (ATAD) in July 2016, six months after the Commission presented the first draft. Partly the result of the joint implementation of the OECD Base Erosion and Profit Shifting (BEPS) project, the directive introduced six legally binding measures targeting common forms of aggressive tax planning. In the same spirit, the Commission initiated other ambitious projects, such as the re-launch of the common consolidated corporate tax base (CCCTB) in 2016, new proposals regarding the taxation of the digital economy in 2018, and a call for introducing qualified majority voting in taxation matters – all initiatives that are currently awaiting a Council agreement. Equally important, the Commission has made use of its far-reaching supranational powers in the enforcement of competition law and investigated member states' tax rulings and tax schemes as part of distortionary state aid practices. While state aid investigations have traditionally been conducted to further neoliberal 'free competition' (Wigger, 2019, p. 359), they have now been deliberately included in the anti-tax avoidance and fairness agenda of the Commission, as demonstrated by the very public and emblematic nature of cases such as those involving Apple, Amazon or Starbucks.

As Table 1 shows, EU corporate tax policy has changed substantially, from a narrow focus on 'market-making' measures in the early 1990s and mid-2000s to the inclusion of 'market-correcting' provisions since 2012. Importantly, the form of the adopted measures has also changed from a soft-law approach towards a more hierarchical mode of governance that increasingly relies on hard-law and coercive mechanisms.

III. The Politicization of Corporate Taxation since the Financial Crisis

Increasing Issue Salience: The Impact of the Financial Crisis and the Media

The past crisis-ridden decade changed the context of corporate tax policy-making in the EU in a number of ways. First, it gave rise to discussions on the purpose and regulation of the financial system as a whole, thereby tangentially touching upon taxation. Although traditional banks were the most prominent actors in the financial crisis, shadow-banking entities, offshore financial centres and tax havens were seen as part of the systemic risks to the global financial system and framed as enablers of the risky and complex financial operations that were at the core of the crisis (Palan, *et al.*, 2009; Fernandez & Wigger, 2016). Second, the crisis resulted in substantial changes in global economic governance: 'the rise and consolidation of the G20 Leaders' Forum is the most obvious institutional consequence of the financial crisis with significant implications for the global tax regime' (Eccleston, 2013, p. 86). Immediately after the crisis, the G20 concerned itself mainly with transparency and exchange of information. Its agenda expanded through the BEPS project. With political steering from the G20 and a key coordination role for the OECD, the BEPS project and its follow-up processes constitute ambitious, albeit contested, efforts to reform parts of the international tax system. Finally, governments –

including those of EU member states – were forced to act in the wake of a crisis that was extremely costly in terms of public finances and also shed new light on existing and growing socio-economic inequalities. Governments were facing an acute need for public revenues, as well as growing feelings of injustice and public outcry over tax abuse during times of significant budget cuts and other austerity programmes (Lesage *et al.*, 2014). The financial crisis thereby became ‘a structural break’ for the politics of global tax governance (Christensen & Hearson, 2019, p. 26).

Corporate taxation also became a highly salient issue due to a series of scandals, leaks and papers. In the context of the EU, the most important scandals were the Offshore Leaks (2013), Lux Leaks (2014), Swiss Leaks (2015), Panama Papers (2016) and Paradise Papers (2017). The unprecedented media coverage was a ‘major accelerant’ in making the issues of tax evasion and tax avoidance even more salient (Dover, 2016). Since 2010, the number of online articles related to tax avoidance, tax evasion and tax reform increased remarkably, with peaks after the Panama and Paradise Papers scandals (Gonçalves, 2019). The coverage of the scandals was carefully coordinated by the International Consortium of Investigative Journalists (ICIJ), a global network of journalists from more than 80 countries who published their findings in renowned media outlets such as the Guardian, The Washington Post and the Süddeutsche Zeitung. The ICIJ can be described as a ‘well-resourced, transboundary, digital media organization’ (Johnson, 2018, p. 279) with a sophisticated *modus operandi* (Roland, 2020). Particular attention was given to the collection and analysis of the data (with high-end technology), to the publication of user-friendly editions (with dedicated websites, infographics and documentaries) and to the global character of the publications. These media actors consulted tax experts from academia and NGOs and were also in regular contact with policy makers. Within the Commission, for example, certain high-ranking officials in DG Competition were informed about upcoming scandals, and some even provided useful material to the journalists, whereas the officials in DG TAXUD were caught entirely by surprise (Interviews 7, 10 and 11).

A true game changer in terms of timing and content in the EU was Lux Leaks: it was made public in November 2014, only a few days after Jean-Claude Juncker – considered by many as the mastermind behind the Luxembourg tax system – took office as President of the Commission. The publication date was not random but strategically planned (Interview 4). While the scandal undermined the credibility and legitimacy of both Juncker and the Commission as a whole, it also provided Juncker with the opportunity to address the issue in an appropriate way by giving the Commissioners a ‘carte blanche’ to propose new legislation (Interview 7). Moreover, these revelations pointed out, for the first time, the wrongdoings of not only the usual suspects (multinationals and tax advisors) but also EU member state governments, legislators, and tax authorities. In the public eye, these entities were no longer seen as victims but as partners in crime.

The Politicizing Role of NGOs

Several scholars have documented how tax activists and NGOs succeeded in putting corporate tax abuse on political agendas worldwide (Eccleston, 2013; Seabrooke & Wigan, 2016). After the catalyzing impact of the financial crisis, ‘civil society groups

were able to leverage this dissatisfaction to elevate the public campaign against multinational corporate tax avoidance' (Elbra, 2018, p. 74). A plethora of tax activists and NGOs advocating tax transparency and tax fairness – from the points of view of developing countries, workers and representatives of social movements – gained access to the policy-making process, also in the EU. They are often concerned with tax transparency (such as country-by-country reporting) and tax havens. Arguably, these actors have been less visible in more technical processes such as the CCCTB or the revisions of the Parent-Subsidiary and Interest and Royalty Directives. This is due in part to the mandate of many NGOs advocating for tax justice, who tend to defend the interests of communities in developing countries or argue on behalf of a 'global perspective' (Interviews 2, 3).

This new influence of tax activists and NGOs was enabled by institutional opportunities that arose in three different venues: membership in expert groups, public consultations, and strengthening of tax research capacity. A few NGOs, namely, Eurodad, the BEPS Monitoring Group and the Financial Transparency Coalition (FTC), are members of the Joint Transfer Pricing Forum that 'assists and advises the European Commission on transfer pricing tax matters' (European Commission, 2021). As part of the Commission's Action Plan in 2012, the Platform for Tax Good Governance was set up with the aim of assisting 'the Commission in developing initiatives to promote good governance in tax matters in third countries, to tackle aggressive tax planning and to identify and address double taxation' (European Commission, 2012b). NGOs have been members of this expert group since its foundation. Currently, ActionAid, the BEPS Monitoring Group, Eurodad, Oxfam International and the Tax Justice Network (TJN) have seats in the platform. NGOs have gained membership in arenas traditionally restricted to business (representatives) and labour unions, which demonstrates their increased access to the policy-making process and NGOs are now being heard. As one representative expressed, 'The Commission – or TAXUD, I should say – is quite open to our points of view' (Interview 3). Discursive opportunities have also opened up, as ideas of 'fair taxation' and transparency have generally been welcomed. The fact that the Commission's template for CbCR is based on TJN recommendations illustrates this new development (Seabrooke & Wigan, 2016, p. 358).

The politicizing role of NGOs in the corporate tax policy-making process can also be seen through their responses to public consultations organized by the Commission. One recent example is the Public Consultation on Further Corporate Tax Transparency (17 June–9 September 2015), where 48 of the 422 responses were from NGOs (11%) (European Commission, 2015). NGOs also seem able to mobilize many EU citizens. A staggering number of private individuals (137) responded to the consultation, the vast majority of which (117) supported more tax transparency — a clear advocacy demand from NGOs and activists. It led the Commission to conclude that 'there is resounding support from private individuals for public disclosure of tax-related information' (European Commission, 2016a). The similarity of the NGOs' responses points to a high level of coordination, facilitated by a physical presence with offices in Brussels and overall guidance by the Tax Justice Europe network. As one representative mentioned, it helps to be geographically close to the policymaker: NGOs 'do not even have to actively pursue advocacy meetings; we get invited to a lot of things, and that is part of the democratic culture in this city' (Interview 2).

An additional institutional opportunity was initiated by the Commission, which consisted in strengthening tax research capacity. In the first half of 2017, it organized a tax training series meant for civil society organizations that also aimed at improving their network. Carried out by the International Bureau of Fiscal Documentation (IBFD), an Amsterdam-based tax expertise and training centre that pools the knowledge of both tax professionals and academics, the trainings provided ‘an excellent opportunity to learn more about the problem of tax avoidance, why it is relevant to you and how to tackle it’ (European Commission, 2017a). The trainings culminated in a conference in June 2017 where the Commission gathered academics, NGOs, and business representatives with the aim of discussing ‘how fairness and taxation can go hand in hand’ (European Commission, 2017b). Additionally, the Commission financially supports NGOs’ research capacity through the Horizon2020 framework. The COFFERS project, which contributed to the continuation of the Financial Secrecy Index of TJN, is a key example, but also the FAIRTAX and ENLIGHTEN projects are cases in point. Most recently, the Commission, acting upon a proposal from the Greens/EFA, established a new EU tax observatory led by French economist and tax justice advocate Gabriel Zucman. The development of the new tax observatory is very similar to the creation of Finance Watch, a European NGO set up as a counter-power to the lobby of finance. Like Finance Watch, the tax observatory is another joint initiative by the Commission and Parliament facilitating the institutional access of NGOs (Baker and Wigan, 2017).

While until the mid-2000s, EU corporate taxation was mostly a concern for business and expert communities working closely with the Commission, this is no longer the case. The previously dominant view represented by business interests, prioritizing the removal of tax barriers and increasing efficiency, was challenged by a configuration of increasingly knowledgeable NGOs. This resulted in a polarisation of policy positions. Whereas NGOs expressed their belief that they were being heard (more), business actors stated the opposite. Various interviewees indicated that there seems to be less room for ‘the business voices’, particularly within the Commission (Interviews 1, 19).

However, this newly polarized environment has not materialized into policy outputs that reflect all the demands of NGOs. As one NGO representative put it, ‘If it’s only the NGOs pushing, nothing’s ever going to happen. When you get the private sector to push as well, then you get your politicians interested’ (Interview 3). Therefore, inequalities in ‘fire power’ remain. For example, despite an increase in NGO responses to consultations, the overwhelming majority of respondents still originate from the corporate sector. Through trainings offered to NGOs or the newly established EU tax observatory, the Commission made efforts to create institutional opportunities for other actors.

In sum, the combination of the financial and Eurozone crises, the developments in global tax governance and EU-specific tax scandals changed and politicized the structural conditions under which EU corporate tax policy is developed. Newly engaged actors, from civil society in opposition to business interests, gained more access to the policy-making process and thereby advocated their demands through the EU’s supranational actors. In a time of ‘noisy’ politics, both institutional and discursive opportunities opened up and NGOs’ ideas of tax transparency and fairness have grown in popularity: long dismissed as being unreasonable, measures such as public CbCR are now becoming reality.

IV. Supranational Responses: Politicization ‘at the Top’

To understand how politicization enabled the reorientation of corporate tax policy towards a more progressive agenda, this section turns to supranational actors. Although direct taxation remains an exclusive responsibility of member states, both the Commission and Parliament have continuously challenged their own institutionally weak position. Through a range of specific strategies, they were essential in partially translating NGOs’ expectations into a concrete policy change.

The European Commission

Within the Commission, two new specific strategies were adopted by different forces. The first strategy was ‘fairness re-framing’, which consisted of legitimizing the Commission’s tax agenda as the solution for issues of tax evasion and avoidance. The second one was a strategy of naming-and-shaming to pressure member states in the Council to accept the proposed legislation. The work of two Directorate-Generals, DG TAXUD under Commissioner Pierre Moscovici and DG Competition under Commissioner Margrethe Vestager, was particularly instrumental in this respect.

In terms of framing, Roland (2020) shows that the definition of problems to solve and goals to achieve (as formulated within EU institutions) has changed substantially over time, from market-making frames emphasizing principles of competitiveness and flexibility towards market-correcting narratives that promote transparency and fairness. While some important measures (such as country-by-country reporting and the anti-tax avoidance directive) were new proposals designed explicitly to tackle tax avoidance and improve tax fairness, others had already been long in the making, often designed with other purposes in mind. The most telling examples of this re-framing process were the re-launch of the CCCTB and tax-related state aid investigations. The CCCTB was first proposed (and rejected) in 2011 as an ‘important initiative on the path towards removing obstacles to the completion of the Single Market’ since it would solve the problems of over- and double taxation, as well as reduce the administrative burdens and compliance costs of companies doing business in the EU (European Commission, 2011, p. 4). In 2011, the stated purpose of the CCCTB was to foster a competitive internal market. When it was re-launched in 2016, it was still described as a central tool for the completion of the single market, but it was also expected to ‘increase the fairness of tax systems and create a level-playing field as a result of effectively removing incentives for aggressive tax planning in the EU’ (European Commission, 2016b, p. 7.). Thus, five years after it was first proposed, the CCCTB was repackaged as an anti-tax avoidance measure that fosters tax fairness.

State aid investigations conducted by DG Competition present another case of re-framing. Used extensively at the end of the 1990s to create and uphold competition in the single market, these investigations are not new. However, the addition of tax fairness to the otherwise competitiveness-driven discourse of DG Competition is now omnipresent and can best be illustrated with this recent quote from Margrethe Vestager: ‘All companies, big and small, should pay their fair share of tax. If Member States give certain multinational companies tax advantages not available to their rivals, this harms fair competition in the EU’ (European Commission, 2019a).

In addition to re-framing its tax policies in line with the increasing salience of tax evasion and tax avoidance, the Commission also employed a naming-and-shaming strategy towards member states that obstructed negotiations in the Council or whose national tax regime facilitated tax avoidance. State aid cases were, again, used as instruments here. The investigations targeted well-known multinationals, such as Apple, Starbucks, Amazon, Ikea and Nike, and they also pointed the finger at European tax havens, including the Netherlands, Luxembourg, Ireland and Belgium. These cases were extensively covered by European and international media because of the companies and countries involved and the amounts of unpaid taxes to be recovered (€13 billion in the case of Apple and Ireland alone). The case selection was not random but the outcome of a deliberate political decision (Interview 11). By revealing to the general public the complicity of national governments and tax authorities in large-scale tax avoidance schemes, the work of DG Competition put severe pressure on the member states to support policy change: they could no longer afford being seen as blocking important decisions in the Council.

Another instrument used by the Commission in its strategy of naming-and-shaming was the publication of research reports on so-called ‘aggressive tax planning indicators’ in connection to the European Semester. In 2018, a report pointed out that seven member states were particularly exposed to aggressive tax planning structures by multinationals: Luxembourg, Ireland, The Netherlands, Hungary, Belgium, Cyprus and Malta. This resulted in an unprecedented move by Commissioner Pierre Moscovici, who publicly called out these member states as ‘tax black holes’ (cited in Godin, 2019). These findings were then included in the framework of the European Semester and translated into concrete policy recommendations (European Commission, 2019b). As with other country-specific recommendations issued by the Commission, the member states were supposed to implement the recommendations in the subsequent budget year; otherwise, they risked facing further procedural steps and, ultimately, sanctions or fines.

As demonstrated, the Commission embraced the politicization of corporate taxation to push for a tax agenda that increasingly reflected tax fairness and transparency, to name and shame European tax havens and to increase the pressure on the Council. The impact of these strategies has been acknowledged by a national government official involved in Council negotiations who stated: ‘When you have the moral virtue on your side, and it is demonstrated objectively in every newspaper, the game, in terms of negotiation, is easier’ (Interview 8). By making tax evasion and avoidance more visible, and by sharpening the conflict lines with individual member states and the Council as a whole, the work of the Commission simultaneously reinforced the process of politicization.

The European Parliament

The European Parliament also capitalized on, and reinforced, the politicization of corporate taxation. Through strategies of knowledge building, the creation of new institutional venues, and alliances formation, it has structurally strengthened its role in corporate tax policy-making. The Parliament has been praised for its increasing efficiency and knowledge-based expertise in a variety of complex topics (Dinan, 2014). Taxation is no exception. While the MEPs dealing with taxation used to be considered a ‘bunch of sweet lunatics’, interviewees from the Commission now gratefully acknowledge the quality of the Parliament’s work in the field of corporate taxation (Interviews 7, 10, 11, 12). For

example, the IKEA report published by the Greens/EFA in 2016 provided the basis for further investigations of the Netherlands' tax treatment of Inter IKEA by DG Competition (Interview 9).

With the establishment of special committees, the Parliament strategically widened its own institutional venues to address issues of corporate taxation. The first committee, TAXE 1, was launched after Lux Leaks to investigate the tax rulings of EU member states and their compatibility with EU law. According to a member of the committee, this led to a clear improvement in almost all of the countries under scrutiny. Although the Parliament had no legal power, its investigations were significant because, as one MEP expressed, 'as a Parliament elected by the citizens, we had moral authority' (Interview 17). Moreover, 'against the background of the scandal, it was impossible for the governments to brush off all the recommendations of the European Parliament' (*ibid.*). Since then, three more committees followed (TAXE 2, PANA and TAX3), and the long-awaited permanent sub-committee on tax and financial crime (FISC) began its work in September 2020. Initially, the Parliament hoped that these committees would be able to make use of competences similar to those of the Parliamentary Accounts Committee chaired by Margaret Hodge in the UK or the Senate Permanent Subcommittee on Investigations chaired by Carl Levin in the US. Another motivation was based on previous experiences, where the establishment of committees led to the resignation of the Santer Commission in 1999 or to the complete institutional overhaul in the food safety area after the 'mad cows' scandal in early 2000 (Interview 7). To date, these expectations have not been entirely met, but the impact of the committees should not be underestimated. Launched after the publication of the tax scandals, their effect was similar to the state aid investigations: broad media coverage, increased public interest, naming-and-shaming and pressure on the Council. This influence materialized when the Parliament repeatedly pointed out the lack of cooperation from the Council and some reluctant member states or when it threatened to revoke the accreditation of the lobbyists of the multinationals that refused to attend the hearings of the committees, among other circumstances (Interview 17).

In this politicized context, the interrelationship between EU institutions also changed. Through its expertise and committee work, forces within the Parliament strategically supported the Commission's agenda and pressured the member states to reach agreements in the Council. In some cases, such as public CBCR, the Parliament also nudged the Commission into developing an ambitious approach. This closer relationship between the Parliament and the Commission was facilitated by the fact that the ambitions of the forces within the Commission in this specific field matched the rather progressive ambitions in the Parliament. Moreover, both actors share a pan-European, supranational logic (in contrast to the intergovernmental character of the Council). This resulted in a new constellation, with the Commission and Parliament working well together and clashing with the Council. A national government official affiliated with the Council compared this situation with 'a family with three siblings: there is always one left out, and here it is the Council' (Interview 8). Generally, the interviewees discussed this situation in a rather emotional way, which indicates a sharpening of the existing conflicts between the institutions. Officials from the Commission and MEPs were frustrated with the Council blocking every initiative. On the side of the Council and national governments, officials insisted that the recent progress should not be attributed to the Commission because the Commission did not have 'any political vision' and just did what the member states (or

at least some of them) wanted (Interviews 6, 13, 16). Another point of criticism was the 'purist' style of the Commission in the sense that its proposals were too ambitious and complicated consensus-building in the Council (Interview 13). The Parliament was even more unpopular with interviewees representing national governments or the Council who dismissed it as being 'extremist', 'too politicized' and an obstacle to the efficiency of the policy-making process (Interviews 8, 13). Notwithstanding the frustration of the Council, the strategic response of the Commission and Parliament enabled them to overcome the inertia characteristic of the EU in the taxation field.

Conclusion

This article sought to explain the rhetoric and partially substantive reorientation of EU corporate tax policy in the last decade. Traditionally driven by market-making aims, EU corporate tax policy now includes a new focus on market-correcting measures that explicitly target corporate tax avoidance. The demands for transparency and fairness by a coalition of NGOs have left tangible traces in both policy proposals and adopted policies. We argued that the politicization of corporate taxation that resulted from changes in the post-crisis context and the work of investigative journalists and NGOs is a key explanatory factor. In this politicized context, a window of opportunity opened up for NGOs, the European Commission and Parliament to put corporate tax avoidance on the political agenda, as well as pressure member states in the Council to induce policy change. Through their interaction, the supranational actors and social forces simultaneously seized and opened up new discursive and institutional opportunities for each other. In other words, they empowered one another, in a reciprocal rather than a clear top-down or bottom-up dynamic. This mutually reinforcing process resulted in the policy change detailed above as well as further deepening of the politicization of corporate taxation.

From this case of corporate taxation, we draw a number of relevant lessons for the wider politicization debate. First, it shows the need to be explicit about the origins and impact of politicization and take both structural changes and strategic action into consideration when explaining why a certain issue is politicized. Second, politicization does not automatically lead to either an 'optimistic' or 'pessimistic' integration scenario but is mediated through the agency of various actors. In that respect, the concept of political opportunities was helpful to understand why and when certain actors, particularly NGOs, could act upon politicization dynamics to promote their demands of tax fairness and transparency. Finally, our analysis shows that politicization 'at the top' should be taken seriously. Supranational agency is more complex than often portrayed or expected: The Commission is far from a unitary actor, and the Parliament can have a substantial political influence, despite its institutionally weak position.

Exploring the political interplay between NGOs and supranational actors provided important insights into the origin and effects of the recent politicization of corporate taxation in the EU. It should, however, be emphasized that politicisation has not led to a full-fledged progressive approach to corporate taxation. Market-making measures are still being pursued. Thus, alongside detailing the implications of the change from quiet to noisy politics for NGOs and their role in bringing about this change, it is worthwhile to explore the side of business actors. An analysis of the role of corporations as well as

the tax advising industry (accountants, lawyers, corporate service providers) would be a relevant empirical and theoretical contribution, building upon existing work that links tax professional's behaviour to the regulatory environment (Christensen *et al.*, 2020). Another aspect, which is beyond the scope of this paper is the intergovernmental politics at play. More research is needed to assess the nature and impact of politicization at the domestic level and the resulting changes in member states' positions. Especially in small European tax havens, it would be relevant to analyse whether politicization also leads to more critical public attitudes or, on the contrary, reinforces public support for low taxation and aggressive tax practices.

In the wake of the COVID-19 crisis, the politicization of corporate taxation is unlikely to decline soon. The need for government revenues is rising dramatically. Further coordination of direct taxation could be essential for a common progressive response to this crisis. The new EU Commissioner for Taxation has already re-launched the call for digital taxation and emphasized the need to move to qualified majority voting in taxation matters (European Commission, 2019c). Likewise, NGOs have been very vocal about the possibility of taxing highly profitable corporations and offshore wealth (Shaxson, 2020), and economists have called for the introduction of excess profit taxes (Saez & Zucman, 2020) or a 20% minimum corporate tax rate (Laffitte *et al.*, 2020). NGOs and publicly engaged scholars are further exploring new political opportunity structures that emerged from the politicization of corporate taxation in the recent decade. Policy options that seemed unlikely only a few months ago are now quickly becoming reality. Supranational actors in the EU might, again, want to seize these opportunities for a more radical change towards fair taxation.

Disclosure Statement

No potential conflicts of interest were reported by the authors.

Appendix

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- 2 Interview with NGO or tax activist, Brussels, 25 October 2018
- 3 Interview with NGO or tax activist, Copenhagen, 22 March 2019
- 4 Interview with media actor, Munich, 28 March 2019
- 5 Interview with EP actor, Berlin, 17 April 2019
- 6 Interview with national government official, Berlin, 18 April 2019
- 7 Interview with EU official, Brussels, 29 April 2019
- 8 Interview with national government official, Brussels, 29 April 2019
- 9 Interview with NGO or tax activist, Brussels, 30 April 2019
- 10 Interview with EU official, Brussels, 2 May 2019
- 11 Interview with EU official, Brussels, 3 May 2019
- 12 Interview with EU official, Brussels, 6 May 2019
- 13 Interview with EU official, Brussels, 6 May 2019
- 14 Interview with NGO or tax activist, Brussels, 7 May 2019
- 15 Interview with NGO or tax activist, online, 14 May 2019
- 16 Interview with EU official, Brussels, 12 June 2019
- 17 Interview with EP actor, Paris, 18 June 2019
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