

Lund University  
Department of Political Science  
European Affairs (M.Sc.)  
STVA 21 - Master's Thesis  
Spring semester 2014  
Supervisor: Ole Elgström  
  
Submitted: 23 May 2014

Supranational actors in intergovernmental policy areas

The European Commission as an agent in tax policy



Tamara Celina Lang

## Abstract

The aim of this thesis is to examine how a supranational institution acts in a policy field marked by a high degree of intergovernmental decision-making (i.e. decision-making between Member State governments). It analyses the strategies the European Commission applied in one case in the area of tax policy, namely the Common Consolidated Corporate Tax Base (CCCTB) proposal; drawing on the principal-agent approach as the theoretical underpinning. Based on documentary analysis and relevant secondary material, it finds that the Commission as the agent used seven different strategies in this case, and that they can be grouped into three types: the confrontational, cooperative and persuasive type. It moreover finds that there are strategies which are predominant in different phases of the development of the proposal, spanning from 2001-2014. In the initial phase, the Commission mainly applied strategies of the confrontational and the persuasive type; the mid-phase was dominated by cooperative strategies, while the phase after the proposal was issued was mainly characterised by persuasive strategies. By providing a comprehensive analysis of the agent's strategies, the thesis makes a valuable contribution to the strand of principal-agent literature which focuses on the agent's behaviour; as well as to the political science literature on tax policy.

**KEY WORDS:** Principal-agent approach, agent strategies, EU tax policy, direct taxation, Common Consolidated Corporate Tax Base (CCCTB)

Words: 19 884

**To my mother and grandmother**

## Contents

<b>1. Introduction</b> .....	1
1.1. Delimitations.....	2
1.2. Structure of the thesis .....	3
<b>2. Overview of the European Commission’s competences</b> .....	4
2.1. The main competences of the European Commission .....	4
2.2. Justification of the choice of the Commission as research object.....	4
<b>3. Overview of EU tax policy</b> .....	6
3.1. Legal basis, development and current status of EU tax policy .....	6
3.2. Overview of the literature on taxation .....	8
3.3. Justification of the choice of topic .....	9
<b>4. Research design, methodology and chosen method</b> .....	10
4.1. Research design and methodology.....	10
4.2. Chosen method and empirical material.....	12
4.3. Justification of the chosen approach.....	12
<b>5. Theoretical underpinning</b> .....	14
5.1. Principals and agents: overview, main assumptions and core concepts .....	14
5.2. Agent strategies .....	16
5.3. Justification of the choice of theoretical underpinning.....	21
<b>6. Application of the theory to the CCCTB case</b> .....	22
6.1. The CCCTB as a case .....	22
6.2. Application of the principal-agent approach to the CCCTB case.....	23
<b>7. Empirical analysis</b> .....	27
7.1. Initial phase: from the mandate to the CCCTB (2001-2004).....	27
7.1.1. <i>Reinterpreting the mandate</i> .....	28
7.1.2. <i>Shaming Member States</i> .....	30
7.1.3. <i>Advocating for QMV and enhanced cooperation</i> .....	31
7.1.4. <i>Threatening with the European Court of Justice</i> .....	35
7.2. The consultative phase: consulting Member States and third actors (2004-2011) .....	37
7.2.1. <i>Informative agent</i> .....	37
7.2.2. <i>Increasing permeability</i> .....	40

7.3. The “post-proposal” phase (2011-2014).....	42
7.3.1. <i>Framing</i> .....	42
7.4. Conclusion .....	45
<b>8. Results of the analysis</b> .....	46
<b>9. Conclusion, further discussions and outlook</b> .....	49
Bibliography .....	51
Annex A – List of analysed documents .....	59
Annex B – Member States’ positions on the CCCTB proposal.....	61

### Table of figures

Figure 1: Reinterpreting the mandate: Commission strategy, intention and aim.....	28
Figure 2: Shaming Member States: Commission strategy, intention and aim.....	30
Figure 3: Advocating for QMV and enhanced cooperation: Commission strategy, intention and aim.	31
Figure 4: Threatening with the ECJ: Commission strategy, intention and aim .....	35
Figure 5: Informative agent: Commission strategy, intention and aim.....	37
Figure 6: Increasing permeability: Commission strategy, intention and aim .....	40
Figure 7: Framing: Commission strategy, intention and aim .....	42

### List of tables

Table 1: Identified strategies, guiding questions and operationalisation .....	20
Table 2: Application of the framing approach to the case .....	43
Table 3: Member States' positions on the CCCTB proposal .....	61

## Abbreviations

CCCTB	Common Consolidated Corporate Tax Base
CIT	Corporate Income Tax
DG	Directorate-General
ECJ	European Court of Justice
EP	European Parliament
EU	European Union
MS	Member State(s)
PIT	Personal Income Tax
QMV	Qualified Majority Voting
TAXUD	(DG) Taxation and Customs Union
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
VAT	Value-Added-Tax

## 1. Introduction

Taxation is an important area for nation states, as the biggest share of their revenues stems from raising taxes and because it serves important social and economic functions. Each and every citizen and business is affected by tax policy; and the state's adequate collection of taxes, the righteousness of public spending, as well as legitimate ways to decide upon these issues are discussed vividly in every society. Taxation thus directly touches upon national sovereignty and European Union (EU) Member States are therefore highly reluctant to give up competences in this field (Cuenca Garcia et al. 2013: p.44). However, despite the salience of tax policy, this contested area has not received sufficient attention in political science in general (Jensen 2008: p.207) and in studies on the European Union more specifically (Genschel/Jachtenfuchs 2009a: p.7).

The area of taxation remains largely in the Member States' responsibility and the European Union only has supplementary functions (Lucian/Lucian Alexandru 2011: 649). It cannot, for example, raise its own taxes (Genschel/Jachtenfuchs 2009a: p.12). The legal basis for EU legislation in taxation are Articles 113 and 115 of the Treaty on the Functioning of the European Union (TFEU), which provide for directives to be adopted by unanimity, meaning that all Member States need to agree in order for a proposal to be adopted. Legislation in this area is, however, subject to the condition that it is necessary in order to ensure the establishment and functioning of the Internal Market<sup>1</sup> and to avoid distortion of competition.

Taxation is thus marked by a high degree of intergovernmental decision-making (Genschel/Jachtenfuchs 2009a: pp.13). Nevertheless, the European Union shapes this highly sensitive policy area to a considerable extent, by regulating Member States' tax bases, tax rates and even their entire tax systems (ibid.: p.1). Moreover, the frequency of European Union legislative acts in the tax area has increased in the past decades, especially after the introduction of the Internal Market, reaching from indirect taxation such as Value-Added-Tax (VAT) and excise duties on products such as alcohol, tobacco and energy, to direct taxation such as company and personal income taxes, more recently (Kemmerling 2010: p.1060).

It has been claimed that supranational institutions have used the mandate to ensure the functioning of the Internal Market in order to increase their influence in taxation (Genschel/Jachtenfuchs 2009a: pp.12). The *puzzle* underlying this thesis is therefore how a supranational player acts in an area shaped by intergovernmental decision-making, where there is only limited scope for EU action. A supranational actor worth analysing in this respect is the European Commission, due to its special role as the initiator of

---

<sup>1</sup> Throughout the history of the European Union, different expressions have been in place for the Internal Market in different periods of time; namely common market and single market (Chalmers et al. 2011: p.675). For the sake of simplicity, the thesis refers to all of them as "Internal Market".

European Union legislation and its function as the “guardian of the treaties” (Tallberg 2003: p.3), thereby inter alia responsible for the functioning of the Internal Market (Hix/Høyland 2011: pp.193).

The *aim* of the thesis is to show with the help of theoretical input and an empirical case study what kind of strategies the European Commission applies in the contested tax policy area. The main theoretical underpinning the thesis draws upon is the principal-agent approach. The Commission’s<sup>2</sup> strategies applied in the tax area are analysed through the lenses of a principal-agent relationship, whereas the Member States are conceptualised as the principals and the Commission as the agent. As it goes beyond the scope of this paper to scrutinise Commission strategies in the area of taxation as a whole, a case is chosen and examined in-depth. The selected case is the Commission’s proposal on the Common Consolidated Corporate Tax Base (CCCTB) issued in March 2011. Thus, the thesis aims at answering the following research question:

*What kind of strategies has the European Commission pursued to attain its preferences in the case of the proposal on the Common Consolidated Corporate Tax Base?*

Drawing on the theoretical underpinning, it is assumed that the Commission’s preferences are first, to increase EU competences in the area of taxation and second, to increase its own competences and influence within this process. The main empirical material used to analyse this case are primary documents such as Commission communications, working papers, statements and speeches. The main secondary sources this thesis draws upon are academic literature, reports and newspaper articles. The timeframe of analysis spans from 2001 to 2014.

### 1.1. Delimitations

It is important to note what kind of issues are out of the scope of the thesis. First, it is not the aim of this paper to examine the question how *successful* the Commission was in pursuing its strategies in the tax area. The sole focus is on outlining what kind of strategies the Commission applied when aiming at the attainment of its preferences. Second, *not the whole tax area* is accounted for; only a specific case in one particular sub-area of taxation (direct taxation/company taxation) is taken into consideration. Third, the thesis does not focus on *Member States and their strategies* for constraining and controlling the Commission. They are only insofar accounted for as to analyse how the latter reacts to strategies applied by them.

---

<sup>2</sup> The term “Commission” refers to the European Commission. The two expressions are used interchangeably for the purpose of this thesis. Moreover, it is not distinguished between “Commission of the European Communities”, as this institution was called earlier, and “European Commission”.



## 1.2. Structure of the thesis

The thesis is structured as follows. Following this introduction, an overview of the European Commission and its competences is given. The chapter contributes to the understanding of the Commission as an actor. Chapter 3 offers a brief overview of first, tax policy and its developments, focusing especially on direct taxation; and second, of the literature on taxation in the European Union. This serves the purpose of providing information about the policy area subject to the analysis later on in this paper. The next chapter (Chapter 4) outlines the research design, methodology and methods applied in this thesis, as well as a justification of the choices taken. In Chapter 5, the theoretical approach underlying this thesis – the principal-agent approach - is described. Moreover, Commission strategies are identified from the theory and the choice of theoretical underpinning is justified. The CCCTB case is presented and the theory applied to it in Chapter 6. The actual empirical analysis follows in Chapter 7. The findings are discussed and strategies are categorised in Chapter 8. Chapter 9 contains conclusions, further discussions, and an outlook on possible future research topics.

## 2. Overview of the European Commission's competences

In this chapter, a brief overview of the European Commission's core competences in the legislative process is offered. This is followed by a short justification of the Commission as the research object of this thesis. The chapter provides the necessary background knowledge about what kind of actor the Commission is and what competences it has.

### 2.1. The main competences of the European Commission

The Commission's main responsibilities are laid down in Article 17(1) and (2). It is in general responsible for the promotion of the general interests of the EU, to oversee the application of Union law and for proposing new legislation (Chalmers et al. 2011: p.59). The Commission enjoys *agenda setting powers*, as legal acts may only be adopted following a proposal from this actor. It can moreover withdraw a proposal at any time (ibid.: pp.61). Moreover, the Commission has *legislative and quasi-legislative powers*. While it has very few direct legislative powers, it enjoys certain quasi-legislative powers which are delegated to it from the Council<sup>3</sup> and concern the non-essential parts of a policy (ibid.: pp.59). This is laid down in Article 290 TFEU. It can furthermore, by bringing non-compliant Member States in infringement proceedings before the European Court of Justice for breaching EU law, exert *supervisory powers* (ibid. p.64). Article 258 TFEU provides the legal basis for this.

### 2.2. Justification of the choice of the Commission as research object

Taking the research aim of this thesis – analysing supranational actors' strategies – into account, the Commission is considered as the most suited research object among the other institutions at supranational level, namely the European Court of Justice (ECJ) and the European Parliament (EP). First, as outlined above, it fulfils many important functions. It initiates legislation, exerts legislative and quasi-legislative powers and brings Member States before the European Court of Justice for non-compliant behaviour. These functions are unique to the European Commission and therefore, this actor seems most suited when studying a supranational actor's strategies. It is an actor with its very own political agenda, while the ECJ can be considered as a more politically independent

---

<sup>3</sup> Whenever this thesis refers to "Council" it is the Council of the European Union that is meant.

judicial actor (Radaelli/Kramer 2008: p.317).<sup>4</sup> Studying strategies implies that the actor has own preferences and an agenda which it pursues. This makes the ECJ less appropriate for the purpose of this thesis. The EP has been discarded as a research object in this thesis, as its competences in the tax area are scarce. It only needs to be consulted by the Council in this area (Loyens&Loeff 2012: p.1) and its opinion can simply be ignored by the Member States. The Commission is therefore considered to be the most suited research object in the context of this thesis.

---

<sup>4</sup> There is a debate among legal scholars whether the ECJ is a political actor in favour of tax harmonisation. However, as noted by Radaelli/Kraemer (2008: p.317), most European legal scholars do not consider the ECJ as an actor with its own political agenda, although it has, without doubt, contributed to the field of direct taxation through its case law.

### 3. Overview of EU tax policy

This chapter provides an overview of the area of taxation. It first outlines the legal basis, the development and the current status of tax policy in the European Union, before the academic literature on taxation in the EU is briefly reviewed. At the end of this chapter, a short justification on the choice of research area is given. The chapter aims at providing an understanding of the policy area, which is a necessary pre-condition for the consequent parts of the thesis.

#### 3.1. Legal basis, development and current status of EU tax policy

A few things are important to note when writing about taxation in the European Union. It should be first of all borne in mind that the EU does not have the right to levy its own taxes, i.e. it does not have the power to tax (Genschel/Jachtenfuchs 2009a: p.12). Thus, when speaking about tax policy in the EU, it is approximation and harmonisation of national laws that is referred to. Complete harmonisation of national tax laws (i.e. that the same tax rules and rates are applicable in all Member States) is politically not possible (Chalmers et al. 2011: p.683) and not on the political agenda at the moment, given the considerable discrepancies in the tax systems and views on taxation in the different Member States.

It is furthermore important to differentiate between indirect and direct taxation. Indirect taxation refers to Value-Added-Tax (VAT) on goods and services, as well as excise duties, a tax levied on goods such as tobacco products, alcoholic beverages and energy products. They are thus taxes on consumption, collected by for example the seller of the products on behalf of the government. Direct taxes are taxes which are directly paid to the government. The most important ones are Company Income Tax (CIT)<sup>5</sup> and Personal Income Tax (PIT).

The most relevant articles for EU action in the area of taxation are Articles 113 and 115 TFEU. While Article 113 TFEU gives the European Commission a mandate to propose directives in the area of indirect taxation in order to ensure the establishment and functioning of the Internal Market, no clear corresponding mandate exists in the area of direct taxation.

However, for legislation in this area, Article 115 TFEU is used as a legal basis. This article provides for the following:

---

<sup>5</sup> For the purpose of this thesis, the terms ‘company’ and ‘corporate’ income tax are used interchangeably.

Without prejudice to Article 114, the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, issue directives for the *approximation* of such laws, regulations or administrative provisions of the Member States *as directly affect the establishment or functioning of the internal market* (Article 115 TFEU, emphasis added).

As can be seen from its wording, this article is of a more general nature and direct taxation is not explicitly mentioned. Moreover, it only allows for an ‘approximation’ of laws, which is less far reaching than ‘harmonisation’ as provided for in Article 113 TFEU. However, as the different tax systems of the Member States often clash in cross-border situations and hence distort the functioning of the Internal Market, Article 115 TFEU is considered to be a sufficient basis for EU legislation in this area (Vascega/van Thiel 2012: p.14).

On the basis of these two provisions, some significant steps have been taken in the area of taxation. Tax policy in the EU dates back to the 1960s, starting with measures to gradually harmonise indirect taxation and stretching more and more into the area of direct taxation. EU action in the area of taxation was considered as necessary, since the customs barriers to cross-border trade which had gradually been removed should not be replaced by tax barriers (Tyc 2008: p.87). In indirect taxation, the most important steps were the harmonisation of turnover taxes of the Member States by introducing a Value-Added-Tax (Aujean 2012: pp.135); and the introduction of EU legislation on excise duties on manufactured tobacco, alcohol and alcoholic beverages, as well as mineral oils (Cnossen 2002: p.33).

As regards direct taxation, the Commission as early as in the 1960s attempted to call upon harmonising corporate tax systems, bases and rates. These attempts were however rejected by the Council and therefore, relevant steps in this direction were first taken in the 1990s. The progressing of the Single Market Programme in the 1990s has subsequently led to the adoption of the first directives ever in the field of corporate taxation: the Parent-Subsidiary<sup>6</sup> and the Merger<sup>7</sup> Directives in 1990, as well as the Interests and Royalties Directive<sup>8</sup> in 2003. In 2011, the European Commission proposed the Common Consolidated Corporate Tax Base - the case study of this thesis - in order to remove remaining obstacles in the field of corporate taxation (Genschel et al. 2011: pp.595). In the area of personal income taxation, the most important legal act is the Savings Directive adopted in 2003 (Genschel/Jachtenfuchs 2009b: p.12).

---

<sup>6</sup> The Parent-Subsidiary Directive aims at preventing double-taxation on dividends distributed by European subsidiaries to their European parent company (Deloitte General Services 2013: p.1).

<sup>7</sup> The main aim of the Merger Directive is to abolish tax obstacles to cross-border business reorganisations (European Commission 2014a).

<sup>8</sup> The Interest and Royalties Directive concerns the taxation of interest (i.e. the income on loans) and royalty payments (i.e. money that is paid for the use of an artistic work such as music or books every time it is sold or performed) between associated companies situated in different Member States. Its main purpose is to remove tax obstacles in the area of cross-border payments of interests and royalties (European Commission 2014b).

Despite these developments, the number of acts is significantly lower in this field than in the area of indirect taxation. This relatively low number of acts in direct taxation can be explained by the assumption that direct taxation has less potential to distort the market than indirect taxation (Genschel/Jachtenfuchs 2009a: p.17) and therefore, EU legislation may seem less justifiable.

It can in general be noted that progress in the area of taxation has been slow, as this is a highly contentious and sensitive policy field and agreements are only reached after long and difficult negotiations, or even not at all.<sup>9</sup> Moreover, progress in the direct tax field has even been more cumbersome than in the indirect one.

### 3.2. Overview of the literature on taxation

This section provides a short overview of the literature on EU tax policy, concentrating primarily on political science contributions.

The issues literature on EU tax policy *inter alia* focuses on range from the role of the EU in constraining Member States' tax policies (e.g. Genschel/Jachtenfuchs 2009a; 2009b), to tax competition in the EU (e.g. Genschel et al. 2011; Ganghof/Genschel 2008; Holzinger 2005) and the effect of Europeanisation on the convergence of national tax policies (e.g. Kemmerling 2010).

The theoretic (political science) concepts applied to this area are governance approaches (e.g. Genschel/Jachtenfuchs 2009a; 2009b; Radaelli/Kraemer 2008), Europeanisation theory (e.g. Kemmerling 2010), rational choice approaches (e.g. Holzinger 2005), as well as the open method of coordination (e.g. Radaelli 2003). The contributions from the political science field focus on a variety of different taxes. While some deal with the most important direct and indirect ones (e.g. Genschel/Jachtenfuchs 2009a; Kemmerling 2010), others address more specific direct taxes such as business taxation (e.g. Genschel et al. 2011; Radaelli 2003).

Approaches focusing on actors and their preferences prevail in the political science literature (e.g. Genschel et al. 2011; Kemmerling 2010). Some studies also analyse the role of actor's strategies in shaping this area (e.g. Kemmerling 2010; Radaelli/Kraemer 2008). Radaelli/Kraemer (2008) for example explain tax cooperation by analysing how governance arenas emerge (p.318). They argue that political strategy pursued by the Commission has shaped two of these arenas, where different definitions of tax problems

---

<sup>9</sup> Throughout the history of tax policy in the EU, the Commission had to withdraw proposals several times due to the Council ignoring tabled proposals and a subsequent lack of progress in this area. This concerned for example a Directive on the harmonisation of systems of company taxation and of withholding taxes on dividends (European Commission 1990: p.13).

apply and where actors are empowered to differing degrees (ibid.: p.315; p.325). They furthermore outline the preferences of the most important actors in the tax area: the Member States, the Commission and the business community (ibid.: pp.319).

While the above mentioned authors have made important contributions to the field, it is nevertheless disappointing that the literature in the area of taxation is so scarce. Political science seems to have largely left this field to other disciplines such as economic and judicial science, despite the fact that it can provide valuable insights, for example by enriching the debate with the focus on actors and their preferences in explaining policy processes and outcomes and by drawing on political science theory.

Two important points can be stressed following this short overview of the literature. First, the European Union level matters in shaping EU tax policy, as contributions on the issue have found that supranational institutions and the Internal Market considerably affect Member States. Second, the literature review on contributions from political science has shown that it is important to focus on actors and their respective preferences.

### 3.3. Justification of the choice of topic

According to King et al. (1994: pp.15), a research project should fulfil several criteria. First, a research topic should be important in the real world, i.e. a topic that has an impact on many people. Second, a research project should make a contribution to the scholarly literature and it should not duplicate what has already been done.

Having these two points in mind, the choice of research topic can be justified as follows. Taxation is an area which concerns and affects each and every citizen and businesses and their daily lives and routines. EU action in this area thus has an effect on each of us and is therefore worth examining further. From a political viewpoint it is decisive to know what kind of strategies a supranational body like the Commission applies in order to influence the policy-making process, as this question touches upon the very sensitive question of democratic legitimacy. The Commission itself is not elected by the people, it is therefore not directly accountable to them and not concerned with re-election issues (Conceição-Heldt 2011: p.409). Knowing about the strategies this actor applies in pursuing its preferences and influencing the policy-making process is therefore the necessary first step of potentially controlling this institution, anticipating its next actions and holding it accountable. What is more, despite the importance of taxation as the main revenue source for nation states, it has been found that this area has not received sufficient attention in academia; and political scientists in particular have largely ignored this issue area. Further contributions to this research strand are therefore necessary.

#### 4. Research design, methodology and chosen method

This chapter provides an overview of the research design, methodology and the chosen method applied in the study. The first part presents the research design and methodology of this thesis, including the selected case and reasons for this choice. The second part outlines the chosen method and empirical material the analysis is based on. In the third section, the approach is justified and methodological challenges briefly discussed.

##### 4.1. Research design and methodology

As far as the methodology is concerned, it is at first decisive to define what is meant by this term. A *methodology* is a set of methods and principles used in a certain field of research. Perri 6 and Christine Bellamy conceptualise methodology as a means of linking empirical observations and the adequacy of a theory. Thus, a methodology shows the researcher what conclusions can be drawn from the findings produced by *methods* such as statistical analyses, interviews and in-depth analyses (6/Bellamy 2012: pp.1-3).

One kind of qualitative method are in-depth case studies, which offer a variety of advantages. First, they are sensitive to the context of a case and therefore, they allow researchers to develop an in-depth understanding of the context, as well as of the case itself (6/Bellamy 2012: p.104; George/Bennett 2005: p.19). Applied to the thesis, studying a specific case is considered useful in order to learn more about the Commission's preferences in tax policy (the context) and what strategies the Commission pursued in this case (the actual case).

Moreover, case studies are particularly suited to analyse how processes work (6/Bellamy 2012: p.104). The case study applied in this thesis should therefore be appropriate to understand how the Commission acted within a longer process, in order to find out whether differences in this actor's behaviour occur over time.

Third, insights gained through case studies may contribute to the theoretical underpinning (6/Bellamy 2012: p.104; George/Bennett 2005: p.21). Theory is not static, but rather subject to potential changes when the empirical material found suggests so. As the aim of this case study is to contribute to and expand the knowledge on the Commission's strategies from a principal-agent viewpoint, this approach is considered appropriate.

One of the biggest disadvantages of case studies is, however, that it is not possible to draw general conclusions from them, i.e. the findings of one case in one policy area might not be applicable to other areas or situations, and not even to another case within



the same area (6/Bellamy 2012: p.105; George/Bennett 2005: p.30). This point should be kept in mind and further discussed towards the end of this thesis.

Despite this drawback, highlighting one specific case is considered as a suitable way of demonstrating how the Commission acts in this area. According to George/Bennett (2005: p.17) a case can be defined as “an instance of class of events”, while class of events refers to “a phenomenon of scientific interest” (ibid.). Applied to the thesis, the class of events is tax policy, while the specific instance, thus the proposed case for this purpose, is the Commission’s proposal on a Common Consolidated Corporate Tax Base (CCCTB), which was launched on March 16, 2011. The basic idea dates back until the early 2000s. However, a decision on this proposal is still pending.

This case has been chosen for several reasons. It can be argued that it represents a crucial case, which is a “most difficult test for an argument and hence provides what is, arguably, the strongest sort of evidence possible in a nonexperimental, single-case setting” (Gerring 2007: p.232). As outlined in the theory section below, the main argument underlying this thesis is that supranational actors are agents applying strategies in order to pursue their own agendas. The case is considered as crucial for a variety of reasons.

First, the Commission (the “agent” in principal-agent terminology) has very strong preferences in this area, since the elimination of discriminatory cross-border situations and reduction of tax compliance costs<sup>10</sup> for businesses - the main aims of the proposed directive - rank high on its agenda (European Commission 2001a: pp.15). Strategies to attain its preferences are therefore expected to be particularly visible in this case.

Second, certain Member States (the “principals”) very strongly oppose this proposal, as they fear losses of tax revenues, increased costs of administering the proposed system for their respective national tax authorities, increased tax competition, as well as an infringement of the principle of subsidiarity in the EU (Van der Jagt 2012: p.2; Aujean/von Frenckell 2011; Rautenstrauch 2012: p.10). Thus, considering that some Member States’ resistance is quite tough in this case, it is expected that the Commission has had to intensify its efforts and that strategies are therefore more apparent than in other, less disputed ones.

Third, and maybe most important, this case is particularly relevant because the proposal on the CCCTB is one of the few in the area of direct taxation. Considering that the Commission does not even have a direct mandate to propose legislation in this area of taxation (the proposed directive builds upon Article 115 TFEU, which is of a more general nature and provides that measures can only be taken when the functioning of the Internal Market is distorted), this field provides a difficult setting for Commission action. It is therefore expected that it has had to ‘fight’ even harder to attain its preferences.

---

<sup>10</sup> The term “tax compliance costs” refers to the costs businesses incur when complying with tax regulations, excluding the costs of the taxes themselves (European Commission 2013a: p.3). This could for example include time spent by employees and/or material costs.

#### 4.2. Chosen method and empirical material

How were the strategies applied by the Commission identified? The thesis employs a deductive/theory-driven approach (Fägersten 2010: p.118) using documentary analysis. This means that strategies were identified from the relevant theoretic literature first, before the empirical material was screened for evidence for these strategies. A deductive approach does, however, not preclude the possibility of supplementing the theory when evidence found in the empirical world suggests so (ibid.).

The tool developed for this analysis consisted of a table containing names of the various strategies found in the relevant principal-agent literature, guiding questions for the analysis, and operationalisation of the strategies. Table 1 in Chapter 5 shows the analysis tool. The relevant documents were screened for evidence pointing to these strategies. If evidence for a strategy was found, a note was made in the analysis tool. At the end, this left the researcher with a data set of ten different documents on the CCCTB, ranging from 2001 until 2011, filled with evidence for the various strategies, which built the basis for the subsequent written analysis. A list of the analysed documents can be found in Annex A.

As noted by Diekmann (2007: p.577), it is important to employ a systematic approach when analysing documents. Applied to this case, this means that all identified relevant primary documents issued by the Commission which are open to public access and concerned with company taxation and the CCCTB have been systematically analysed. It is assumed that these documents reflect the Commission's positions and preferences. These documents were supplemented by evidence found from sources such as speeches, academic and newspaper articles, as well as reports and papers on the CCCTB. It is also accounted for the time after the last Commission document was issued in 2011. The timeframe of analysis is thus 2001-2014.

#### 4.3. Justification of the chosen approach

As outlined above, the case study approach offers a variety of advantages. It allows for in-depth analysis and identification of as many strategies as possible. According to Mark Pollack (1997: p.10), case studies are among the most suitable research approaches in principal-agent relations, as they allow to outline the actors' preferences, which is - as we shall see below - very important in principal-agent analysis. This is moreover the main reason why a single case was chosen, instead of several cases for comparison. First, comparison is not considered feasible due to practical considerations. Case studies require thorough knowledge about the issue area, and this restricts the number of cases that are manageable (Fägersten 2010: p.121). Moreover, case comparison would not

contribute much to the aim of the study, as it does not aim at explaining differences in strategies applied in various cases, but rather to analyse them in-depth.

Regarding the method, documentary analysis has been found to be the most useful method for the purpose of the thesis. Interviews with Commission officials as empirical material have been deliberately discarded for several reasons. First, the whole process of developing the CCCTB proposal reaches back until the late 1990s and potential interviewees may have difficulties remembering something in detail that happened around 15 years ago. These “lapses of memory” (Tansey 2007: p.10) are a serious disadvantage and therefore, the written word in form of documents and other written sources is considered more reliable in this respect. Second, it is also difficult to identify the responsible officials who participated in this process and who could contribute to the research with their knowledge. Some of them might not even work at the Commission anymore, or not in the tax area. Third, and maybe most important, potential interviewees might not be willing to share sensitive information with the public (Bailer 2014: p.50), including information about the Commission’s ‘real’ intentions. The researcher might therefore have ended up with material she could have found in official documents anyway. Interviews were therefore not considered suitable for the purpose of this thesis.

Arguably, there are some methodological challenges related to the chosen approach. Drawing on accessible documents only means that it is not possible to account for more informal, publicly not accessible strategies, such as potential negotiation and bargaining techniques the Commission applies when interacting with Member States. Moreover and as already outlined above, it is difficult to measure the Commission’s true preferences and intentions. For the purpose of this thesis, they are derived from principal-agent assumptions; which might not necessarily reflect the real situation.

Despite these restrictions, the chosen approach is considered to be the most appropriate given the mentioned limitations research projects like the one at hand are constrained by.

## 5. Theoretical underpinning

This chapter outlines the theoretical underpinning this thesis draws on. In the first section, the principal-agent approach, its core concepts and assumptions are described, and the core presumptions about the Commission as an agent underlying this thesis presented. The second section provides an overview of the Commission's strategies identified in the principal-agent literature. In the last section, the choice of theoretical approach is briefly justified.

### 5.1. Principals and agents: overview, main assumptions and core concepts

Theory helps us to structure and gain a deeper understanding of findings from the empirical world; an understanding we would not be able to acquire when looking at the 'facts' alone (Wiener/Diez 2009: p.4). The theory chosen for the analysis of Commission strategies in taxation is the principal-agent approach, which is a sub-area of rational choice institutionalism. In European integration theory, it aims at resolving the conflict between neofunctionalism (which claims that supranational institutions enjoy substantial autonomy) and intergovernmentalism (which claims that EU Member State governments are in control) by assuming that supranational institutions' autonomy varies over time and across issue areas (Tallberg 2000: p. 844). It does not categorically state that one of these parties is more important or influential than the other and it thus offers a more nuanced approach (Kassim/Manon 2003: p.125).

The principal-agent approach focuses on the relationship between principals and agents. A principal (mostly conceptualised as a nation state) is an actor who delegates certain tasks to an agent (most commonly international organisations). In research about the European Union, the collective principal is in most instances represented by the Member States, while the agent is conceptualised as a supranational institution such as the European Commission – a constellation which is most common in the respective literature (see for example Pollack 1994, 1997, Cini 1999; Conceição-Heldt 2010, 2011, 2013; Mügge 2011; Delreux/Kerremans 2011; Niemann/Huigens 2011; Schmidt 2000) – and/or, although to a lesser extent, the European Court of Justice (see for example Tallberg 2000, 2003). However, there are also studies which conceptualise the relationship the other way around, with the European Commission representing the principal and the Member States representing the multiple agents (see for example Barbone/Poniatowski 2013 on the Economic and Monetary Union or Blom-Hansen 2005 on European cohesion policy).

Scholars applying this approach to the European Union setting have scrutinised a variety of different policy fields, such as trade policy/trade negotiations and foreign economic policy (e.g. Conceição-Heldt 2010, 2011, 2013, Delreux/Kerremans 2010; Dür/Elsig 2011; Reichert/Jungblut 2007), cohesion policy (e.g. Blom-Hansen 2005), global financial governance (e.g. Mügge 2011) and the Economic and Monetary Union (Barbone/Poniatowski 2013). To the author's best knowledge, this approach has so far never been applied to the field of taxation.

Several main assumptions underlie the principal-agent approach. As it builds on rational choice presumptions, it is assumed that principals and agents are rational actors (Tallberg 2003: p.16) who have a certain set of preferences (ibid.; Conceição-Heldt 2011: p.404). In every principal-agent analysis it is thus important to identify the principals' and the agent's preferences in order to understand what they are aiming to achieve and what kind of strategies they apply. Another core assumption of this approach is that agents are actors having their very own preferences and that they strategically pursue their own agendas (Hawkins et al. 2006: p.5), which may differ from their principals'. It is moreover assumed that there is an informational asymmetry between the agent and the principal(s). As the agent knows more about its preferences, intentions and actions than the principals do, this informational advantage can be used for its own purposes (Tallberg 2000: pp.845).

There is a variety of core concepts which need to be defined in order to understand the approach. First, the concept of *delegation* is "a conditional grant of authority from a *principal* to an *agent* that empowers the latter to act on behalf of the former" (Hawkins et al. 2006: p.7). Thus, the principal delegates certain tasks to an agent, thereby allowing it to act on behalf of it. This grant of authority is limited in time and scope and can be revoked by the principal. Principals decide to delegate authority to their agents because they expect certain advantages from delegation, such as a specialised agent with expert knowledge, who facilitates collective decision-making, helps to resolve disputes which result from incomplete contracts, and increases the credibility of the principals' decisions (ibid.: pp.12-19).

If agents do not act in a way that is desired by principals, *agency losses* (*agency slack*) occur (ibid.: p.8). In order to account for this, principals can establish control mechanisms. Two of these mechanisms most commonly mentioned in the respective literature are monitoring and reporting requirements such as the police-patrol mechanism (direct monitoring by the principals) and fire alarm (monitoring by third parties on behalf of the principals) (ibid.: p.28). Agents are therefore not entirely free to act as they please, but they have to act within the confines placed upon them by their masters (Cini 1999: p.6; Pollack 1997: pp.5).

Third, an agent can have *autonomy*, which is seen as a necessary pre-condition for *influence* (Cini 1999: p.8). There are different ways of defining autonomy. This thesis draws on the definition of autonomy as a range of potential independent action available

to the agent (Hawkins et al. 2006: p.8) and as the agent's ability to introduce new policies or establish new agendas (Conceição-Heldt 2013: p.24).

The fourth concept is closely related to autonomy. *Discretion* means that the principals define certain goals and expectations they have towards their agent, but not exactly which measures the agent has to take to achieve these goals. The agent is hence left with a certain degree of freedom to decide what kinds of actions to take (Hawkins et al. 2006: p.8).

In the principal-agent literature, there are several different assumptions about the Commission as an agent this thesis draws on. The first one concerns the Commission's preferences. The European Commission is in general assumed to be a *pro-European actor* in favour of more integration (Bailer 2014: p.41); i.e. of increasing tasks and competences for the European Union level within a given policy field, as well as of extending EU competences to new policy areas. It is also in favour of *increasing its own competences and the influence it has on the policy process* (Pollack 1994: p.102). Moreover, it is assumed that it - as a rational actor - has an own agenda, that it *acts strategically* to attain its own preferences and that it takes into account how others may react to its own actions (Tallberg 2003: p.16).

Another assumption regarding the Commission underlying this thesis concerns the stability of Commission preferences. These are expected to be stable over time, regardless of shifting Commissioners and Commission staff. This can be assumed as the Commission has more continuity and a longer time horizon than Member State governments, as Commission staff stay in office longer than national government representatives (Conceição-Heldt 2011: p.405).

## 5.2. Agent strategies

Most scholars applying the principal-agent approach have focused on principals, why they delegate and how they control the agent (Hawkins/Jacoby 2006: p.199). Far less has been written on what kind of possibilities to act the agent has and which strategies it can apply. There are, however, a number of contributions in the relevant literature this thesis draws on in order to identify the strategies the European Commission applied in the case of the CCCTB. This section first explains what a strategy is, before outlining those found in the relevant principal-agent literature.

As outlined above, agents are actors who have their own preferences and pursue their own interests (Pollack 1997: p.5). In principal-agent terms, they aim at maximising the attainment of their preferences (Tallberg 2003: p.16). In order to achieve their preferred results, agents apply strategies (Conceição-Heldt 2011: p.404). Thus, strategies are used

by agents to *attain their preferences* in order to achieve an outcome that corresponds to those preferences, to the greatest extent possible. Principals may be aware of these strategies and they can react to them with counter-strategies (Hawkins/Jacoby 2006: p.226).

Turning to the strategies themselves, the following ones have been identified from the relevant principal-agent literature focusing on agent behaviour. *Interpretation and reinterpretation of the mandate given to it by the principals* is the first one. This is possible as no rules are as precise as they do not leave room for interpretation. While interpretation is used by the agent before delegation, reinterpretation follows delegation. Moreover, 'older', more established agents are more likely to openly reinterpret rules and mandates (ibid.: pp.206). Therefore, taking into account that the Commission is an established agent and only the time after the delegation of the mandate is considered, only reinterpreting is deemed relevant in this context. The agent uses reinterpretation in order to decide whether an issue lies within its mandate for action. It is an advantage for the agent in this respect when the mandate is rather vague (Conceição-Heldt 2011: p.413), as its autonomy increases in this case. Agents are, nonetheless, not completely free to reinterpret as they please, as they are still subject to certain limitations by the principals, and because they are concerned about their good reputation (Hawkins/Jacoby 2006: pp. 206), since they want to be considered as credible and trustworthy actors.

*Shaming* the principal is another strategy the agent can apply to attain its own preferences. From a principal-agent perspective, the agent uses shaming to embarrass principals and to create political pressure to coax them into action (Tallberg 2003: p.61).

The principal-agent approach furthermore assumes that principals may have conflicting interests and that agents can make use of these (Pollack 1997: p.7). This may increase the agents' freedom to decide what actions to take (Conceição-Heldt 2011: p.413). Applied to the European Union setting, it is expected that Qualified Majority Voting (QMV) is advantageous for the Commission, since it is easier to find coalition partners among Member States when QMV applies compared to situations requiring unanimity (Bailer 2014: p.44). In unanimity situations, all Member States need to agree to a proposal for it to be adopted and it is therefore not possible for the Commission to make use of disagreements among them. Consequently, another Commission strategy is to strive for ways to *circumvent the unanimity requirement*.

It is often argued in the literature drawing on the principal-agent approach that the European Commission can use the European Court of Justice for its own purposes (Schmidt 2000: p.37; Radaelli/Kramer 2008: p.331) and scholars point to the ECJ being a more independent agent than the Commission (Schmidt 2000: p.38; Tallberg 2000: p.846). It can thus make use of the ECJ's higher degree of autonomy and use it to attain its own preferences, by threatening Member States with the ECJ and its case law. Member States are assumed to prefer political solutions to legal interpretations, as they have the possibility of shaping the latter while they do not have a direct influence on ECJ

rulings. What is more, no Member State wishes to have its tax legislation overturned and tax base undermined by ECJ case law in direct taxation (Radaelli/Kramer 2008: p.319). ECJ jurisprudence has increased to a considerable degree in the past couple of years and the ECJ has already ruled against Member States in tax issues several times (ibid.: p.322; Genschel/Jachtenfuchs 2009b: p.15). *Threatening with the ECJ* can thus be used by the agent to create a pressure to act on them.

Due to informational asymmetries in favour of the agents, principals may set up monitoring mechanisms to reduce this informational advantage. However, the agent can also get active itself to escape from principal monitoring. One strategy applied for this purpose is the strategy of being an *informative agent*. As ‘informative actors’, agents provide the principals with information on their intentions and on the policy consequences of their actions, thereby proving to the principals that it is trustworthy (Thompson 2006: pp.234) and transparent. This is expected to increase credibility and the likelihood of the proposal being adopted in the end.

Moreover, agents may open themselves to non-principal third parties in order to achieve their aims. This strategy is referred to as *agent permeability* (Hawkins/Jacoby 2006: p.208), which means that non-principal actors are granted access to agent decision-making. While third actor participation in this process is often perceived as a control mechanism applied by principals to monitor the agent - the so-called “fire alarms” mechanism (Hawkins et al. 2006: p.28) - Hawkins and Jacoby (2006: pp.208) argue that agents can decide themselves to open up for third party participation to receive information from them and to gain their support.

The last strategy found in the literature is *framing*.<sup>11</sup> Agents can use framing in order for a proposal or a result to appeal to their principals (Tallberg 2000: p.846). A frame can be defined as a “schemata of interpretation”, which includes a problem definition, a specific course of action and a preferred problem solution (Rhinard 2010: p.2). This term sounds quite abstract, but it basically means that a frame is used in order to shape our view of a certain topic and/or problem. *Values and ideas* play an important role when framing an issue. Frames help the agent to make the link between ideas and policy choices explicit and as the agent needs the support of principals in order to attain its preferences, it is important that the ideas and values underlying the frame are considered reasonable and justified by them (ibid.: pp.58). Strategic framing can especially be facilitated when there is a *window of opportunity*, i.e. an external event which may result in pressures for change and which thereby provides an opportunity for the agent to use new policy frames (ibid.: p.60; p.79). A window of opportunity in form of an external crisis can contribute to Member States being more receptive to Commission proposals (Pollack 1994: p.128).

---

<sup>11</sup> It should be noted that framing is not usually applied in the principal-agent framework and the assumptions about framing underlying this study are based on Mark Rhinard’s (2010) contribution; which does not in itself form part of the principal-agent approach. Nevertheless, since it has also been found in principal-agent literature that agents can use this strategy (Tallberg 2000: p.846), it is still considered relevant for the purposes of this thesis and is therefore adapted to this setting.



Table 1 briefly summarises the above considerations. It outlines the identified strategies, the questions that guided the analysis of the Commission documents and other empirical material, as well as the operationalisation of concepts and how the Commission is expected to benefit from the use of the respective strategies (i.e. the Commission's intentions).

**Table 1: Identified strategies, guiding questions and operationalisation**

Identified strategy	Guiding questions for the analysis	Operationalisation	What does the Commission intend to achieve with this?
<b>Reinterpreting the mandate</b>	Did the Commission reinterpret the mandate given to it by the principals (i.e. to ensure the functioning of the Internal Market) to push for the CCCTB?	Use of the Internal Market as an argument for action in the area of direct taxation in general and for the CCCTB in particular	Draw link between Internal Market and the Commission's action in direct taxation in order to justify its own action in this area
<b>Shaming Member States</b>	Did the Commission use shaming to embarrass principals and pressure them to take action?	Blame Member States for lack of progress in (direct) tax area	Create pressure to act on Member States
<b>Advocating for QMV and enhanced cooperation</b>	Did the Commission attempt to increase the likelihood of being able to exploit differing principal preferences?	Arguments for QMV and enhanced cooperation in the case of the CCCTB	Aiming at circumventing unanimity requirement in order to exploit preference heterogeneity
<b>Threatening with the European Court of Justice</b>	Did the Commission use the ECJ as an argument when pushing for the CCCTB?	Instances of threatening with the ECJ as an argument to push for CCCTB	Convince Member States that active action is better than passive waiting
<b>Informative agent</b>	Did the Commission provide the principals with information on its intentions and policy consequences?	Provision of information in special working groups; provision of information on what it does <u>not</u> intend to do	Ensure Member States that it is a trustworthy and transparent agent
<b>Increasing permeability</b>	Did the Commission open up for non-principal actors?	Non-principal actor participation in CCCTB development process	1) Draw on external actors' information and insights 2) Secure third actors' support
<b>Framing</b>	Did the Commission use frames to render the CCCTB more attractive to principals?	Evidence for a schemata of interpretation used in this case	Clarify the link between widely accepted norms and the CCCTB proposal in order to make the proposal more attractive to the Member States

### 5.3. Justification of the choice of theoretical underpinning

There are several reasons why the principal-agent approach has been chosen as the most suitable theoretical framework for this analysis. First, the principal-agent approach does not categorically claim that one actor is more powerful than the other (Kassim/Manon 2003: p.125) and thus, it provides a more balanced framework to understand the agent's behaviour within the confines set by the principals. What is more, the principal-agent literature offers some valuable contributions on how the Commission acts as an agent.

From a theoretical point of view it is moreover important to supplement the principal-agent approach with further input on agents' behaviour. So far, the approach has very much focused on principals, their decisions to delegate and their mechanisms to control the agent. However, as noted by Hawkins/Jacoby (2006: p.226), this focus may lead to a bias in the theory, as agent strategies are decisive to understand the degree of the agents' autonomy. Therefore, analysing what kinds of strategies are applied and how they are applied by the agent may enrich the principal-agent approach. Moreover, laying out which strategies the Commission uses in the area of taxation is a necessary first step for further analysis of, for example, how successful they are (ibid.: p.227).

## 6. Application of the theory to the CCCTB case

This chapter applies the core theoretical concepts outlined above to the CCCTB case. The first section briefly sketches the development and content of the proposal, followed by the actual application of the theory to the CCCTB.<sup>12</sup> All these steps are necessary in order to provide a basic understanding of the area and the actors' positions on it.

### 6.1. The CCCTB as a case

The origins and ideas of the Common Consolidated Corporate Tax Base already date back to 1999, when the Commission was asked by the Member States in the Council to examine solutions for company tax problems businesses face when operating across EU borders in more than one Member State. On this basis, the Commission considered the CCCTB as the most appropriate solution (Curzon Price 2011). The proposal on a Council Directive for a Common Consolidated Corporate Tax Base was nevertheless first issued by the Commission in March 2011 (Rautenstrauch 2011: p.8). It has already been discussed in the Council (Loyens&Loeff 2012: pp.1), however, more than three years after it was issued, it is still pending and the Commission is expected to issue a revised proposal in 2014 (Euractiv 2013).<sup>13</sup>

This proposal primarily addresses large, multinational companies operating in more than one EU Member State (Curzon Price 2011). The problem these kinds of companies experience today is that they are taxed according to the respective national rules and rates and have to file several tax returns regardless of the fact that they actually are part of one company group. This is considered to increase compliance costs for businesses (Aujean/von Frenckell 2011).

Moreover, the parent company and the subsidiaries<sup>14</sup> of the group cannot offset their respective profits and losses against each other for tax purposes (Curzon Price 2011). In order to illustrate why this aspect is problematic, a very simplified example is given. A fictive company has its main establishment in one EU Member State and two subsidiaries in two other Member States. One of the subsidiaries is in economic troubles and as a consequence of that endures losses in a given tax year. The parent company in Member State 1 and the subsidiary in Member State 2 are however performing very well in the same tax year, which means that their taxable income is high and consequently also the

---

<sup>12</sup> It should be noted that the focus is on the political aspects and that technicalities regarding the content of the proposal are only explained when this is important for understanding the argument.

<sup>13</sup> To the author's knowledge, this has not yet been the case at the time of writing (May 2014).

<sup>14</sup> A subsidiary is a business company owned or controlled by a larger company.

amount of taxes they have to pay based on this income. Nevertheless, because of the poor performance of the second subsidiary, the group as a whole is dragged down economically. If the group was able to offset the losses from the second subsidiary against the profits of the parent company and the first subsidiary, its taxable income would be lower and hence also the taxes paid on it. In the current situation, there is no EU-wide possibility to offset losses and profits against each other.<sup>15</sup>

The proposal brought forward by the Commission intends to remedy some of the issues outlined above. It would allow companies to calculate their tax base on a common set of rules, which would be the same in all Member States. Companies would furthermore be able to offset losses and profits against each other across parts of the companies established in different Member States (Aujean/von Frenckell 2011).

The tax rates of the Member States would not be harmonised (European Commission 2011a: p.5), i.e. each Member State would still be able to set the corporate tax rates they consider most appropriate. From the single tax base which would be calculated for the whole group, a share of the tax base would be apportioned among the relevant Member States, depending on where in the European Union the parts of the group are established. The respective shares would then be taxed based on the tax rate applicable in the different Member States (Aujean/von Frenckell 2011).

## 6.2. Application of the principal-agent approach to the CCCTB case

How can the core concepts of the principal-agent approach be applied to the CCCTB case? In this thesis, the collective *principal* is conceptualised as the Member States represented by national governments, parliaments, the Council and the European Council, while the *agent* is the European Commission, represented by DG Taxation and Customs Union (DG TAXUD). The principals delegated authority to the Commission, empowering it to act on behalf of them.

The *mandate given to the European Commission* for European Union action in the case of tax policy can be derived from the task to ensure the functioning of the Internal Market. The establishment of the Internal Market has been one of the key objectives of the European Union and it dates back until its very beginning, to the Treaty establishing the European Economic Community (EEC), which entered into force in 1958 (Chalmers et al. 2011: p.12). The Commission as the “guardian of the treaties” (Tallberg 2003: p.3) is thus responsible for ensuring that this task is fulfilled. In the area of direct taxation, Article 115 TFEU provides for the Commission to propose measures and thus allows EU

---

<sup>15</sup> Only very few EU Member States (e.g. Denmark) allow cross-border loss-compensation between parent companies and their subsidiaries established in other Member States (Koerver Schmidt/Bundgaard 2011: p.43).

intervention by approximating national tax laws which create barriers to the establishment and functioning of the Internal Market (Genschel/Jachtenfuchs 2009a: p.12). In 1999, the Member States gave the Commission the *concrete mandate* to investigate the impact of different company tax levels on where companies settle in the EU, whether the current tax provisions provide obstacles to economic activity in the Internal Market and, if this was the case, potential remedies to this. On this basis, the Commission outlined its strategy for company taxation.<sup>16</sup> This mandate is quite a broad one, as the Member States did not define any concrete measures which needed to be taken, which provided the Commission with a considerable extent of *discretion* as regards the identification of solutions to possible Internal Market distortions.

*Autonomy* has earlier been defined as independent action at the disposal of the agent to attain its own preferences and/or to introduce new agendas. Out of a variety of different options to solve problems related to the functioning of the Internal Market (Home State Taxation,<sup>17</sup> a European Corporate Income Tax,<sup>18</sup> complete harmonisation of national tax rules, CCCTB), the Commission was able to advocate and work on a proposal for the solution it considered most suited, namely the CCCTB (European Commission 2001b: p.14). This autonomy was, however, confined by the Member States and the Commission can be expected to only push for solutions which have a chance of getting passed by the Council. Thus, the European Commission is not expected to propose an ‘extreme’ option which would not have a realistic chance of being adopted (Bailer 2014: p.42) by at least some of the Member States and it needs to strategically shape the proposal in order to make sure that it is acceptable to them (Tallberg 2000: pp.848).

The following assumptions can be drawn from the theoretical underpinning on the nature of the Commission as an agent and the Member States as the collective principal and their respective preferences in taxation. Despite the Member States not being the focus of this analysis, it is nevertheless important to outline their preferences as well, as this enables a more thorough understanding of how the collective principal may react to the strategies applied by the Commission and how the Commission in turn reacts to them.

In-line with the principal-agent approach, the European Commission is conceptualised as a unitary actor (Kassim/Menon 2003: p.133). This means that the actions of all of its units

---

<sup>16</sup> The 2001 study *Company Taxation in the Internal Market* (European Commission 2001b) and the supplementing Communication *Towards an Internal Market without tax obstacles* responded to this Council mandate (European Commission 2001c: p.3), outlining the Commission strategy in this policy area.

<sup>17</sup> The Home State Taxation approach was another option discussed. Under this scheme, the tax base would be computed according to the national rules applicable in the company’s home state (i.e. the state where the headquarter is located) (European Commission 2001b: p.14), regardless of where the company is active within the EU.

<sup>18</sup> This scheme was another option discussed. It would allow for a tax to be levied at the EU level and a share of the revenue could go to the EU (ibid.).

(the Directorates-General,<sup>19</sup> the Commissioner, the Cabinet<sup>20</sup>) are considered as actions on behalf of the Commission as a whole. The relevant Directorate-General (DG Taxation and Customs Union – DG TAXUD), as well as the respective Commissioner responsible for this issue area<sup>21</sup> and his cabinet represent the Commission in tax policy and are therefore subject to analysis. Regarding the Commission's preferences, it is in general assumed that it is an actor in favour of more European integration (Bailer 2014: p.41). Applied to tax policy this means that the Commission can be expected to have a preference for expanding legislation to direct taxation by proposing the CCCTB, since this is an area where EU competences<sup>22</sup> are rather weak. Moreover, it is expected to be in favour of increasing its own competences and the influence it has on the policy process (Pollack 1994: p.102); thus also in the area of direct taxation.

Drawing on the principal-agent approach, the Member States are assumed to prefer keeping sovereignty at the national level (Pollack 1994: p.103). It is therefore expected that they only very reluctantly agree to give up competences in the sensitive issue area of taxation, which means that they only consent to a transfer of competences to the European level when they can expect considerable benefits (e.g. an increase in investments, growth in jobs, easing monitoring for national tax administrations) and that they oppose the proposal when they anticipate losses (e.g. an increase in costs for administering the tax systems, a loss in tax revenue, etc.).

Contrary to the Commission, the Member States are not considered as a unitary actor; they are rather viewed as a heterogeneous, collective principal. A collective principal is an actor constituted of several different units (the Member States in this design) who collectively delegate a mandate to the agent (the Commission). This does, however, not mean that they agree on all matters. Quite on the contrary, their positions on specific policy issues can differ to a considerable degree, a fact which can be exploited by the agent (Pollack 1997: p.7). In the case of the CCCTB, the individual Member States also had very different positions on the proposal. An overview on Member States' positions can be found in Table 3 in Annex B.

The proposal met significant resistance on behalf of a considerable number of Member States after it was adopted by the European Commission. Some were in favour of the proposal, while the national parliaments of Bulgaria, Ireland, Malta, the Netherlands, Poland, Romania, Sweden and the UK objected to it by issuing reasoned opinions, which

---

<sup>19</sup> There are currently around 33 individual departments or Directorates-General (DG), which all cover a specific issue area. They all fall under the responsibility of (at least) one Commissioner and their main tasks correspond to those of national ministries (Chalmers et al. 2011: p.57).

<sup>20</sup> The Cabinets provide a link between the individual Commissioners and the corresponding DGs. Each Cabinet is the office of the Commissioner. They are mainly responsible for preparing the weekly College of Commissioners meetings and for providing information to the respective Commissioner they are working for (ibid.: p.58).

<sup>21</sup> At the point of writing (May 2014), the responsible Commissioner for Taxation, Customs, Statistics, Audit and Anti-Fraud is Algirdas Šemeta.

<sup>22</sup> In the following, EU and Community competences are used synonymously.

means that they raised doubts regarding the principles of subsidiarity and proportionality.<sup>23</sup> However, the number of reasoned opinions was not enough to initiate the so-called yellow-card procedure, which forces the Commission to re-examine the proposal in order to decide whether it should be maintained, amended or withdrawn (Vascega/van Thiel 2012: p.15). Apart from these concerns, some Member States feared a decrease in tax revenues, a loss of national sovereignty, as well as increased costs of administering the tax system (Pearse Trust 2011).

---

<sup>23</sup> The principle of subsidiarity means that the EU can only legislate when the aims of a measure cannot be reached by the Member States unilaterally and when they can better be reached by EU action (Chalmers et al. 2011: p.129). The principle of proportionality lays down that EU action shall not go beyond what is necessary in order to achieve the objectives of the Treaties (ibid.: p.367).



## 7. Empirical analysis

This chapter presents the results of the analysis, drawing together the assumptions from the theoretical underpinning with the findings from the empirical world.

As outlined in the previous chapters, taxation is an important issue area as it directly touches upon the nation states' sovereignty and therefore, it is important to examine what kind of strategies the supranational actor European Commission – an actor who initiates legislation and holds considerable powers - applies in this highly sensitive area. In order to examine this question, a case study approach has been chosen, as this allows for an in-depth analysis of the strategies. The Common Consolidated Corporate Tax Base (CCCTB) proposal has been selected as a suitable case to illustrate what kind of strategies the European Commission applies in the area of taxation, since it represents a crucial case where Commission strategies should be particularly evident. The strategies have been identified from the relevant theoretic literature on the principal-agent approach and this chapter provides empirical evidence for them.

During the course of the analysis, three phases in the development of the CCCTB proposal have been identified: an initial phase, a mid-phase where consultations between the Commission, Member States and relevant stakeholders took place, as well as a phase after the proposal was issued. The strategies are presented along the lines of these three phases. The analysis has moreover found that the Commission predominately used some of the strategies in each of these phases. It should, however, be noted that it is not possible to strictly divide them from each other, as they overlap and the Commission to a certain extent applied some of these strategies in more than one phase. In order to facilitate the understanding, each Commission strategy below is introduced by a figure outlining its main intention and aim.

### 7.1. Initial phase: from the mandate to the CCCTB (2001-2004)

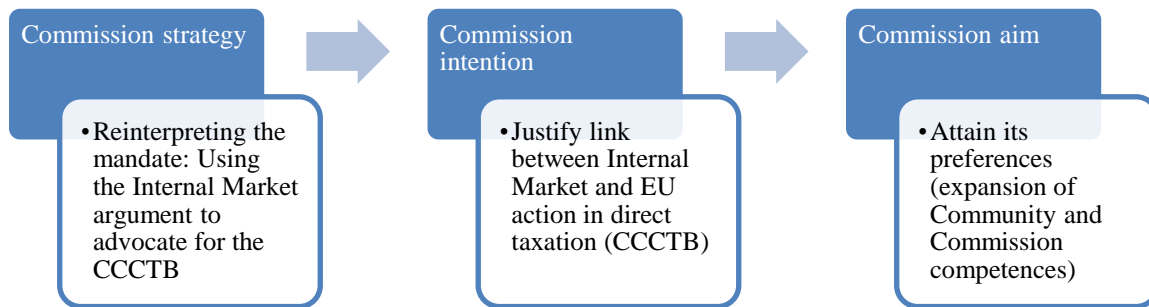
The initial phase of the proposal reaches from the Commission's 2001 communication "Tax policy in the European Union – Priorities for the years ahead", in which it inter alia outlines its priorities in the field of company taxation, to the establishment of the first CCCTB Working Group<sup>24</sup> in the end of 2004. The strategies applied in this phase are *reinterpretation of the mandate, shaming Member States, advocating for QMV and enhanced cooperation and threatening with the European Court of Justice.*

---

<sup>24</sup> As outlined further below, the CCCTB Working Group was a forum where Member State representatives and Commission representatives met to discuss about technical questions regarding the CCCTB.

### 7.1.1. Reinterpreting the mandate

Figure 1: Reinterpreting the mandate: Commission strategy, intention and aim



According to Hawkins/Jacoby (2006: pp.206), no delegation is as precise as it does not leave room for interpretation. This can be used by agents, since they themselves can decide to a certain extent whether issues fall within their mandate or not. As outlined in previous sections, Member States have been reluctant to delegate authority to a supranational institution in the sensitive area of taxation in general and in direct taxation in particular and there is no direct legal basis for the Commission to legislate in this field. The mandate to propose legislation in direct taxation is derived from the Commission's mandate to ensure the establishment and functioning of the Internal Market. More specifically and applied to the CCCTB case, the mandate given to the Commission by the Member States represented in the Council was to show what kind of obstacles there are in the area of direct taxation and to present some solutions to these. However, there was no direct mandate to propose the CCCTB as such. It is therefore argued that the European Commission used reinterpretation to attain its own preferences, namely the expansion of Community and Commission competences, when pushing for the CCCTB.

The European Commission used the broad mandate to ensure the functioning of the Internal Market in order to draft legislation in the area of direct taxation. In the explanatory memorandum preceding the actual proposal, the Commission outlines that:

The Common Consolidated Corporate Tax Base aims to tackle some major fiscal impediments to growth in the Single Market. In the absence of common corporate tax rules, the interaction of national systems often leads to over-taxation and double-taxation, businesses are facing heavy administrative burdens and high tax compliance costs. [...] The CCCTB is an important initiative on the path towards removing obstacles to the completion of the Single Market [...] (European Commission 2011a: p.4).

How did the Commission use the Internal Market argument to justify the CCCTB, a rather wide-reaching proposal for which it had not received a direct mandate from the Member States? Three steps of using the Internal Market argument have been identified in the course of the analysis. First, the Commission aimed at showing the link between

the Internal Market and tax policy, and direct taxation in particular. The Commission did this in order to justify its action in an area where it only has a rather vague mandate for action. It did so *inter alia* by declaring that “the contribution of tax policy to Community objectives has increasingly been linked to the development of the Internal Market” (European Commission 2001a: p.3). It furthermore stated very clearly that it found it “unacceptable” (*ibid.*: p.9) that there were still obstacles to the completion and functioning of the Internal Market, one of the main objectives of the EU. According to the Commission, this especially applies to the field of direct taxation, since some achievements have been made in indirect taxation so far, while there is still no coherent policy in direct taxation (*ibid.*: p.3).

Second, having justified the link between EU action in direct taxation and the Internal Market, the Commission aimed at outlining how the variety of tax systems in the EU hamper its functioning and what effects this has on EU businesses and national administrations. As the Commission argued, the current corporate tax arrangements provide for a number of obstacles to cross-border activities, which in turn impede the functioning of the Internal Market and its potentials (European Commission 2001b: p.9). This has a negative effect on companies involved in cross-border activities, as well as on the Member States’ national authorities. Since the establishment of the Internal Market, European businesses trading cross-border have considered themselves more European than national and they increasingly operate in more than one Member State (European Commission 2001a: p.6; 2001c: p.5). However, this perception of the whole EU as their home market is, according to the Commission, not reflected by the current tax arrangements they meet in the Internal Market (European Commission 2001b: p.2), as they are confronted with currently 28<sup>25</sup> different tax systems. Among the negative consequences connected to this are for example a risk of double taxation of these companies, high compliance costs and discrimination due to overly complicated administrative procedures and delays in tax refunds (European Commission 2001a: p.16). All these, as argued by this actor, are factors which may discourage companies to engage in cross-border activities and thus significantly limit the potentials of the Internal Market as originally intended (European Commission 2005a: p.4). However, it is not only European businesses who suffer from hassles associated with the current arrangements, also the costs incurred by national tax administrations of administering the current system are considerable (European Commission 2001b: p.16; 2001c: p.17).

In a third step of reinterpretation, it was described how the CCCTB fits into this picture. As argued by the Commission, a comprehensive approach such as the CCCTB would provide a remedy to many of the problems outlined above and thus contribute to the success of the Internal Market as a whole (European Commission 2001b: p.14). It would furthermore help to reduce compliance costs for businesses, allow for offsetting losses and profits within the EU, help to avoid double taxation and reduce discriminatory

---

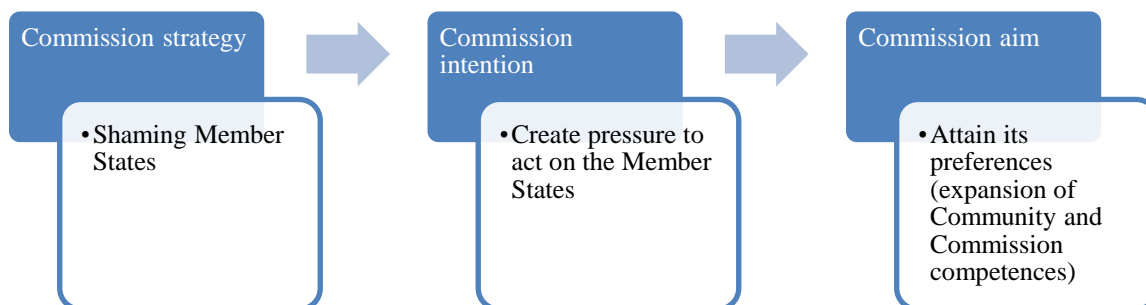
<sup>25</sup> The number of Member States has gradually increased during the time frame of the analysis. While there were 15 Member States in 2001, this number increased to 25 in 2004, 27 in 2007, and 28 in 2013.

situations businesses face when operating within the EU (European Commission 2001c: p.16). Moreover, the CCCTB would, according to the Commission, also solve some of the problems national tax administrations encounter by rendering tax audits and controls more efficient through improved cooperation between Member States (European Commission 2001c: pp.17). This would lead to fewer possibilities for companies to exploit inconsistencies between the different company tax systems in the EU (European Commission 2011a: p.6).

As outlined above, when arguing for the CCCTB, the Commission aimed at drawing a clear link between the Internal Market and its own actions in the direct tax area. It furthermore outlined how the system of currently 28 different corporate tax provisions provides obstacles for the Internal Market and disadvantages for businesses and Member States and how these problems could be remedied by introducing the CCCTB. The original mandate of the principals ('Ensure the establishment and functioning of the Internal Market') and the rather broad mandate to outline current obstacles and potential remedies in the field of direct taxation have thus been reinterpreted by the Commission to advocate for the CCCTB.

### 7.1.2. *Shaming Member States*

**Figure 2: Shaming Member States: Commission strategy, intention and aim**



As outlined in the theory section, agents can use shaming to embarrass principals and pressure them to action (Tallberg 2003: p.61). Applied to the CCCTB case, the Commission used this strategy to inform the public and interested stakeholders of whom it blamed for the minimal progress made in the area of company taxation. In the Commission's view, too little has happened in this area, "and Member States essentially operate the same company tax systems as they did before the set-up of the Internal Market" (European Commission 2001c: p.3). It furthermore noted that there was a mismatch between the status quo in taxation and the economic development, which urgently needed to be addressed, especially in light of the looming enlargement (ibid.).

The Commission considered the Member States and their lack of political will responsible for the slow progress in company taxation (European Commission 2004: p.1).

Faced with this slow development, there have been discussions to set up a new body in the framework of the Council to co-ordinate tax issues (European Commission 2001a: pp.20). From a principal-agent perspective, this can be seen as a severe threat, since principals would take competences in the area of taxation back to themselves and away from the agent. As a consequence, the Commission vehemently protested against this threat by stating that:

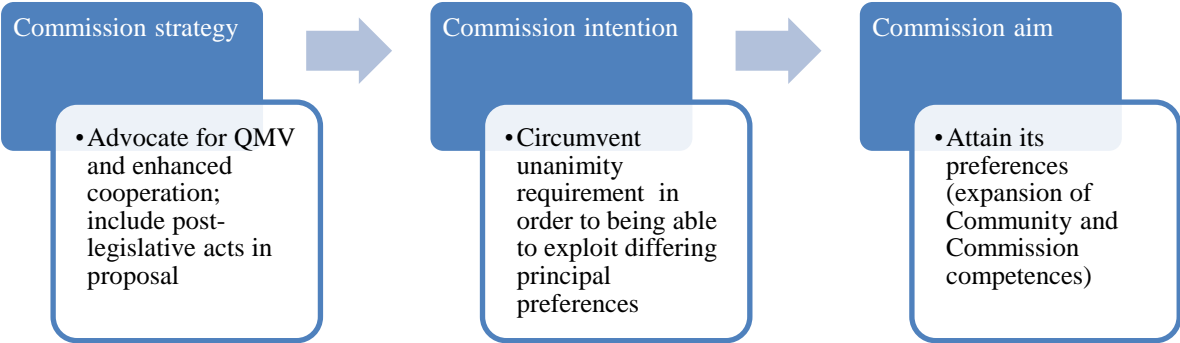
[I]t is the insufficient political will combined with the unanimity requirement rather than the existence of one body or another that are the main obstacles to progress. Any proposal of this nature [to set up a new body in the framework of the Council, T.L.] should therefore respect the institutional structure and methods of the Community. (European Commission 2001a: p.21).

As can be seen from the above statement, the European Commission reacted to the threat of withdrawing competences in the area of taxation by shaming Member States in return; claiming that it did not matter whether there was a new body or not, as long as the political will to implement reforms was missing.

The Commission thus used shaming as a strategy to embarrass Member States and pressure them into action and as a counter-strategy following the plan to create a new body dealing with tax issues in the framework of the Council.

7.1.3. *Advocating for QMV and enhanced cooperation*

Figure 3: Advocating for QMV and enhanced cooperation: Commission strategy, intention and aim



As outlined in the theory chapter, it is advantageous for the Commission when it is able to make use of differing preferences among the principals. Qualified Majority Voting (QMV) in the area of company taxation and enhanced cooperation in the CCCTB

proposal would open the possibility for exploiting differing preferences. The unanimity requirement in place today makes decision-making extremely cumbersome and leaves little possibility for the Commission to push for proposals, as reaching consensus among at present 28 Member States in a sensitive area such as corporate taxation is very difficult. It is argued in the following section that the Commission tried to advocate for QMV in the area of corporate taxation and to propose enhanced cooperation for the CCCTB proposal in order to ensure that not all Member States need to reach an agreement, thus facilitating the adoption of the proposal.

The Commission has been trying to lobby for *extending QMV* to decision-making in taxation in general and in direct taxation in particular for some time. Already at the Intergovernmental Conference on the Constitutional Treaty from 2003 to 2004, the European Commission strongly advocated for introducing QMV in taxation (European Commission 2014c). In the Commission's view, Qualified Majority Voting in the direct tax area is necessary in order to ensure the modernisation and simplification of Community measures, inter alia relating to the tax base for companies (European Commission n.d.a: p.4). Moreover, it would be easier to reduce tax barriers preventing the proper functioning of the Internal Market, as unanimity could lead to political standstill in this area (European Commission n.d.b: p.1), taking especially the (at that point in time) upcoming enlargement of 2004 into account. Thus, the CCCTB should ideally be decided upon by QMV (European Commission 2003: p.5). However, unanimity still seems to be more realistic in the future, as, in the Commission's own words, "[a] handful of Member States dug their heels in, ensuring that unanimity remains the rule for tax-related issues [...]" (European Commission n.d.b: p.1).

Faced with Member States' unwillingness to give up unanimity in the tax field, the Commission had to find another way of ensuring that not all Member States have to agree in order for a proposal to be passed. The instrument of *enhanced cooperation* was considered to be a last resort approach to solve this problem (European Commission 2004: p.4). Article 20 of the Treaty on European Union provides for enhanced cooperation, if at least nine Member States are willing to participate and the measure is unlikely to be adopted in the Union as a whole within a reasonable time period. As stated by the Commission, the CCCTB could be designed in a way that not all Member States would have to adopt it (European Commission 2001b: p.15; 2001c: p.17; 2003: p.26). Since support for the CCCTB proposal is far from assured (Rautenstrauch 2012: p.9), enhanced cooperation could be a way to overcome the unanimity requirement and thus a way of circumventing resistant Member States. The Commission could thereby exploit differing Member State preferences and still have the CCCTB proposal adopted, albeit only in a limited number of Member States.

The inclusion of *delegated and implementing acts* (so-called post-legislative acts) in the CCCTB proposal represents another Commission attempt to circumvent the unanimity requirement for at least some elements of legislation and at the same time to increase its own competences in the area of direct taxation. In the following, both aspects are

described, it is outlined why they are quite controversial in this policy area and how the Commission as an agent could make use of them for its own purposes.

Delegated acts have been introduced by the Treaty of Lisbon (Vascega/van Thiel 2012: p.18). Article 290 TFEU provides for the delegation of quasi-legislative powers to the Commission, which enables it to adopt or amend certain ‘non-essential’ elements of the legislative act. The Council may revoke the delegation or object to the act by qualified majority (ibid.). In the CCCTB proposal, delegated acts are referred to in several articles<sup>26</sup> and they can be used by the Commission for amending Annexes I, II and III of the Directive,<sup>27</sup> for the establishment of rules on aspects related to depreciation<sup>28</sup> and for deciding upon more precise categories of fixed assets<sup>29</sup> (ibid.).

Implementing acts under comitology refer to the delegation of implementing powers to the European Commission. Comitology is the procedure allowing it to adopt legally binding measures under supervision of a committee consisting of representatives of national governments (Chalmers et al. 2011: p.117). Article 131 (2) of the CCCTB proposal refers to the examination procedure.<sup>30</sup> This procedure provides for that an implementing act can only be adopted by the Commission when the committee supports it by qualified majority. In the CCCTB proposal, this refers to four Articles on the establishment of company forms of third countries,<sup>31</sup> rules on the calculation of factors in the formula for apportionment of the tax base to the various Member States,<sup>32</sup> the standard form of the notice to opt into the CCCTB system<sup>33</sup>, as well as rules on electronic filing, tax return and supporting documentation<sup>34</sup> (Vascega/van Thiel 2012: p.17). As provided for by the Commission in the CCCTB proposal, it would be able to adopt measures on all these elements, under scrutiny of the examination procedure.

These two procedures are controversial in the area of direct taxation, as they circumvent the unanimity requirement by replacing it with qualified majority for certain aspects of the proposed directive (Vascega/van Thiel 2011: 154). In the case of delegated acts, Member States can only object to the act by qualified majority, while an implementing act can be adopted when the committee supports it by qualified majority. In both cases, the unanimity requirement which is normally applicable in taxation is undermined, thereby removing veto power from the Member States (Vascega/van Thiel 2012: p.18).

---

<sup>26</sup> Articles 127-129 CCCTB Directive proposal.

<sup>27</sup> Articles 2 (3) and 14 (3) CCCTB Directive proposal.

<sup>28</sup> Article 34(5) CCCTB Directive proposal.

<sup>29</sup> Article 42 CCCTB Directive proposal.

<sup>30</sup> This Article refers to Article 5 of the new Regulation laying down the comitology procedure (Regulation 182/2011), which outlines the examination procedure.

<sup>31</sup> Article 3 of the CCCTB Directive proposal.

<sup>32</sup> Article 97 CCCTB Directive proposal.

<sup>33</sup> Article 106 CCCTB Directive proposal.

<sup>34</sup> Article 113 CCCTB Directive proposal.

Consequently, Member States have been very reluctant to accept these two procedures in direct taxation. Indeed, comitology has rarely been used in this area so far<sup>35</sup> and some Member States have made it very clear that even a very limited use of comitology should be exceptional.<sup>36</sup> Member State representatives have also expressed concern regarding comitology and its compatibility with national constitutions in the CCCTB Working Group (European Commission 2007b: para. 2).

From a principal-agent perspective it can be argued that the Commission deliberately decided to include delegated and implementing acts in order to attain its preferences in the field of direct taxation. Both acts would provide the Commission with quasi-legislative and implementing powers in a field where its competences in general, and especially compared to other policy areas, are rather limited. Second, as it is also assumed that the Commission would like to stretch and increase Community powers to areas where the EU-level is rather weak, both delegated and implementing acts would help it to do so. The qualified majority requirement applicable to both acts would render it possible to circumvent Member States' veto power and resulting political deadlock, and it would be easier to adopt measures in this area.

To summarise, the European Commission as an agent aimed at circumventing the requirement of unanimity by advocating for QMV and enhanced cooperation. Moreover, it included implementing and delegated acts in the proposal, despite the fact that many Member States oppose these procedures in direct taxation.

---

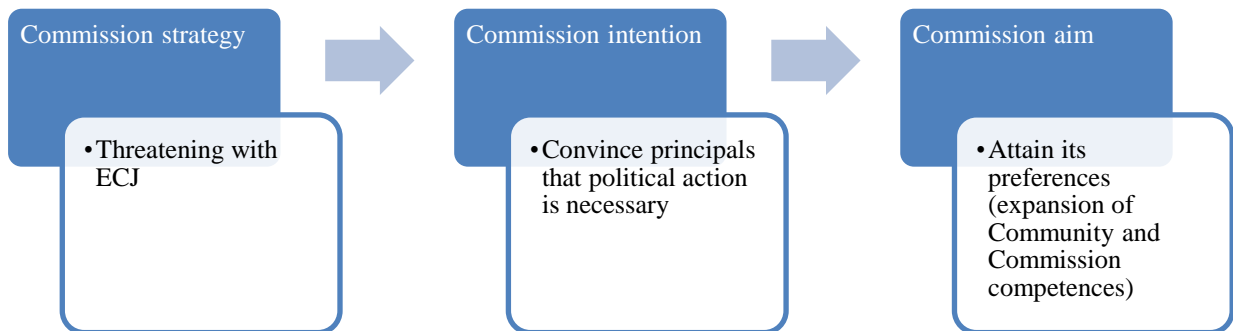
<sup>35</sup> Directives 2010/24/EU (Recovery Directive) and Directive 2011/16/EU (Directive on Administrative Cooperation in the field of Taxation and repealing Directive 77/799/EEC) also provided for a very limited use of the comitology procedure (Vascega/van Thiel 2011: p.154).

<sup>36</sup> Bulgaria, Cyprus, Ireland, Luxembourg, Malta, Portugal and the United Kingdom attached a statement to the Minutes of the Council regarding the inclusion of the comitology procedure in Directive 2011/16/EU on Administrative Cooperation in the field of Taxation stating that their "agreement to the limited use of comitology in this instance is an exceptional measure and should in no way be seen as setting a precedent for the use of comitology in the field of Taxation" (Council Document 5846/11 ADD 1 FISC 9, p.1).



#### 7.1.4. Threatening with the European Court of Justice

Figure 4: Threatening with the ECJ: Commission strategy, intention and aim



Threatening with the European Court of Justice (ECJ) is another strategy identified in the literature. In the case of the CCCTB, the Commission used the European Court of Justice in three ways. First, it threatened Member States with interpretation by the ECJ through its rulings and resulting case law; second, it threatened them with the prospect that interpretation by the ECJ is insufficient for solving the problems the currently 28 different tax systems pose to the functioning of the Internal Market; and third, it threatened to initiate and pursue more infringement proceedings against Member States who violate EU law in the area of direct taxation.

As regards the first point, the Commission openly *warned the Member States of the consequences of ECJ interpretation* in the absence of political action:

[I]t is important to note that in the absence of political solutions taxpayers have been compelled to have recourse to the legal process to overcome discriminatory rules and other obstacles. In consequence, the European Court of Justice (ECJ) has developed a large body of case law on the compatibility of national tax rules with the Treaty (European Commission 2001b: p.11).

The European Commission called on the Member States to actively decide on political actions by introducing the CCCTB instead of passively waiting and risking that their tax laws are declared unlawful by the European Court of Justice (European Commission 2004: p.1).

It moreover warned the Member States that *ECJ rulings may not be sufficient* to solve the problems that are created by the inconsistencies of so many different tax systems within the European Union:

While the ECJ has made a significant contribution to the removal of tax obstacles for companies, it is unlikely that the interpretation of the Treaty is sufficient to address all tax obstacles to cross-border activity. Moreover, ECJ rulings are confined to the particular case put to it and may

therefore relate solely to individual aspects of a more general issue [...] (European Commission 2001b: pp.11).

Therefore, the Commission considered a comprehensive political approach at EU level more appropriate in the area of direct taxation than mere legal interpretation alone. According to this actor, case law has some obvious limitations, as it is very time-consuming and expensive, based on individual cases only, and as it does not provide generally applicable solutions; which results in legal uncertainty regarding its interpretation. Consequently, it advocated for legislative solutions (European Commission 2011b: p.61).

The third identified way how the Commission made use of the Court of Justice is *threatening with more infringement proceedings* in the area of company taxation if no political action is taken by the Member States. The European Commission drew on its role as the guardian of the Treaty in this respect (European Commission 2001a: p.21). In this function, it can bring Member States before the Court of Justice in infringement proceedings (Blom-Hansen 2005: p.636). Indeed, the Commission clearly stated that it was not willing to accept that Member States infringe EU law in the tax field (European Commission 2001a: p.21). In the Commission's own words:

[T]he Commission now intends to adopt a more pro-active strategy generally in the field of tax infringements and be more ready to initiate action where it believes that Community law is being broken. [...] There is a particular imperative in the direct tax field: the current approach of leaving the development of case law in the area of direct taxation to chance by simply reacting to cases taken by taxpayers to the ECJ is not a proper basis for progress towards agreed Community objectives (European Commission 2001a: p.22).

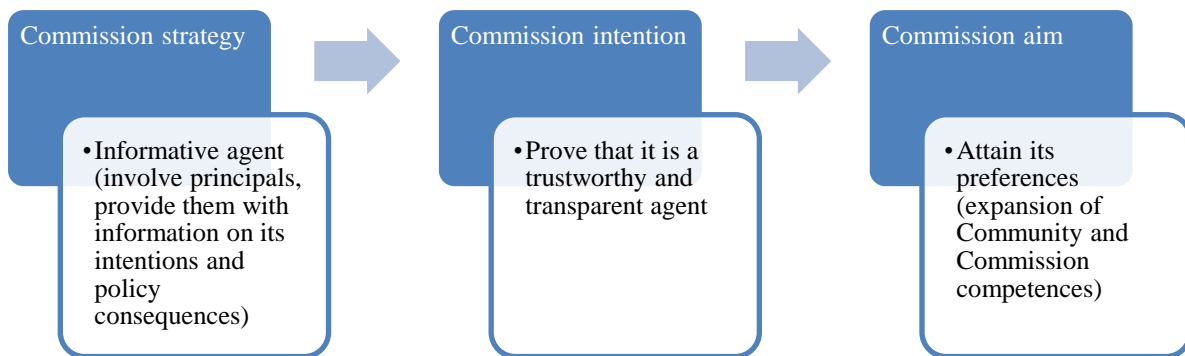
As outlined above, the Commission actively pursued the strategy of threatening with case law out of direct control and influence by the Member States. Moreover, it pointed to the insufficiency of ECJ rulings in direct taxation and the Commission's own more active role in pursuing proceedings against Member States' infringements of Internal Market provisions in the direct tax field in order to convince the principals that the proposed CCCTB would provide a more comprehensive solution.

## 7.2. The consultative phase: consulting Member States and third actors (2004-2011)

This phase encompasses the time from the first CCCTB Working Group in the end of 2004 until the proposal was issued in 2011. However, as can be seen from the analysis, parts of the strategies outlined below have been applied throughout the whole process. The strategies predominately used are the *informative agent* and the *increasing permeability* strategy.

### 7.2.1. Informative agent

Figure 5: Informative agent: Commission strategy, intention and aim



As an informative agent, the Commission provides its principals with information on its intentions and on the policy consequences of its actions. This decreases the informational asymmetry between them, and thus the Commission can prove that its intentions are honest and that it can be trusted. Applied to the CCCTB, the Commission informed the principals about its intentions by including them in the decision-making process when drafting the CCCTB proposal and by stressing what it did not intend to do. As regards the second point (information about the policy consequences of its actions), the Commission mainly used reports and impact assessments to inform the principals about the consequences of the CCCTB.

From a principal-agent perspective, the agent *involves principals in the decision-making process* in order to decrease the principals' incentives to control it (Delreux/Kerremans 2010: p.364), to reduce its own informational advantage by giving Member States the possibility to get an insight into the policy formulation process, and to ensure that they can express their own preferences towards the Commission (Tallberg 2000: p.847). Applied to the CCCTB case, the Commission actively involved the principals by initiating the so-called CCCTB Working Group, where representatives of the Member States and the Commission participated in. The main official purpose of the CCCTB

Working Group was, according to the Commission, to provide it with technical assistance and advice. Meetings were held around four times a year, from the end of 2004 to 2008 (European Commission 2014d). Faced with political standstill and lack of progress on some important proposals in the area of company taxation which had been pending since the 1970s/1980s, the Commission aimed at changing its approach in the case of the CCCTB, by acknowledged that “all initiatives [in the area of company taxation, T.L.] should be defined through a consultative process with the Member States” (European Commission 2001c: p.4). Including them in the decision-making process thus became one of the most important principles of the Commission’s approach in company taxation (European Commission 2001b: p.17; 2001c: p.4). The alternative to this – an independent expert group not including Member States – was, according to the Commission, “unlikely to be successful and would risk resulting in a report outlining a possible common base which would simply be ignored” (European Commission 2004: p.4). Taking this risk into account, the Commission decided that it would be better to include the Member States.

Throughout the whole process of consulting on and drafting the CCCTB, the Commission also informed the principals about *what it did not intend to achieve* with the proposed directive. It did neither intend to undermine the principles of subsidiarity and proportionality, nor did it intend to impair the Member States’ rights to set the company tax rate they consider appropriate. Regarding subsidiarity, the Commission stated in the Exploratory Memorandum of the CCCTB proposal that the proposal complied with this principle, as a non-coordinated approach would not provide a relief to the tax-related problems companies currently face when trading cross-border within the EU. As individual Member State action would not achieve the appropriate results and a common approach is required on this issue, Community action was justified and the principle of subsidiarity respected (European Commission 2011a: pp.9; 2011b: pp.15). As far as the principle of proportionality is concerned, the Commission also argued that the CCCTB proposal provided both necessary and suitable means for achieving the desired objectives, i.e. that it is proportionate, as it would not force companies which do not engage in cross-border transactions to participate in it and because the advantages of the CCCTB are expected to outweigh the initial additional costs Member State administrations are expected to bear when implementing the proposal (European Commission 2011a: p.10).

Apart from stressing that the CCCTB proposal respected the principles of subsidiarity and proportionality, the Commission was also eager to emphasise that the proposal did not intend to harmonise the company tax rates and that each Member State would be able to set the tax rate it considered appropriate, even after the implementation of the CCCTB. Indeed, in almost every communication and paper the Commission has published on the CCCTB it is stressed several times that it does not intend to harmonise corporate tax rates (European Commission 2001a: pp.8; 2001b: p.15; 2004: pp.3; 2005a: p.5; 2006: p.4; 2007a: pp.6-8; 2011a: pp.4, p.10; 2011b: p.17). As emphasised by Commissioner Šemeta in a speech given at a press conference in Brussels at the launch of the proposal,

[t]he CCCTB is not about harmonising corporate tax rates. Nor is it even a first step in that direction. I firmly believe that corporate tax rates are an issue of national sovereignty and – so long as it is done in a fair manner – something for each Member State to decide for itself, in line with national needs (Šemeta 2011: p.3).

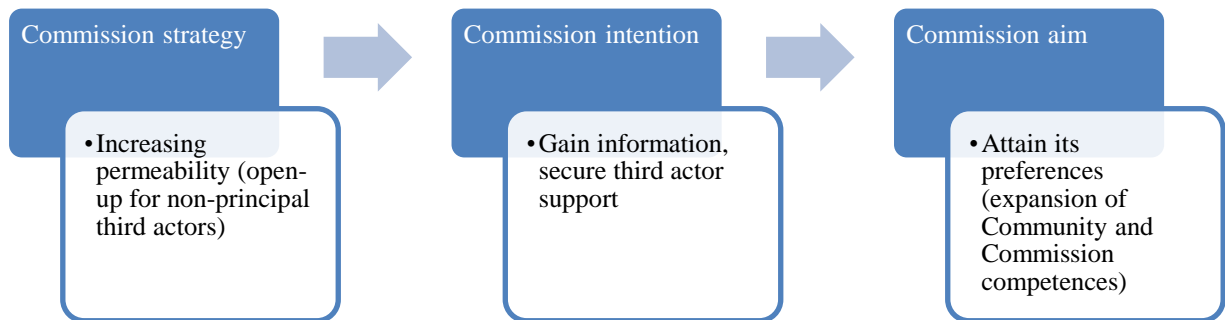
The Commission's efforts to stress its intentions of respecting Member States' right to set their own corporate tax rates reflects that the Commission must have been well aware of that this issue is their biggest concern and the main reason why they may reject the proposal. By clarifying its intentions, the Commission as an agent therefore aimed at convincing the principals of its trustworthiness and at stressing that the proposal would not infringe their core rights.

Concerning the second aspect of how agents provide information to their principals – by *informing them about the expected consequences* of the proposal - the Commission used reports and an Impact Assessment on the impacts of the proposed CCCTB. The Commission's 2001 study on company taxation in the European Union intended to show the differences in corporate taxation in the European Union and identify those provisions which were most likely to impede the functioning of the Internal Market (European Commission 2001c: p.1); as well as to suggest some remedies to potential distortions. In this study, the Commission proposed solutions (inter alia the CCCTB) and evaluated them with regard to their ability to overcome the obstacles that impede the Internal Market and their effects on businesses and tax administrations. In the Impact Assessment accompanying the proposal for the CCCTB Directive, the Commission analysed the expected impacts of the proposal on the distribution of the tax bases between Member States (i.e. if some Member States would suffer from losses in tax revenues), the impact on the tax administrations' and businesses' costs, economy-wide impacts, as well as social and environmental impacts (European Commission 2011b: pp.2). Thereby, the Commission provided the Member States with information on the potential consequences of the CCCTB on their administrations, tax revenues and their economies as a whole.

As can be seen from the above, the European Commission actively used the strategy of informing the principals about its intention and the consequences of the proposed directive in order to be perceived as a transparent and trustworthy agent by its principals.

## 7.2.2. Increasing permeability

Figure 6: Increasing permeability: Commission strategy, intention and aim



Agents can open up for third actors' participation in the legislative process (i.e. increase their permeability) in order to gain information and secure their support (Hawkins/Jacoby 2006: p.209). In this section it is argued that the Commission as the agent actively opened up for third parties and tried to include them as much as possible in the decision-making process. Applied to the CCCTB case, third actors are companies (mainly represented by business organisations such as BusinessEurope) and experts such as academics and professionals working in the corporate tax area. In the following, it is outlined how the Commission included them in the decision-making process and how it benefitted from this.

In the case of the CCCTB, the Commission included relevant stakeholders at several instances in order to *gain important insights* for drafting the proposal from them. The Commission conducted informal consultations with business and professional associations to draw on their technical expertise and their viewpoints (European Commission 2011a: p.7). The Commission also received and published around 40 written contributions<sup>37</sup> from eleven major business organisations in the European Union, including inter alia BusinessEurope, Eurochambres and the European Business Initiative on Taxation (European Commission 2014e). Apart from contributions made by business representatives and representatives of the professions, academic scholars were also invited to provide the Commission with their views and insights on several features of the proposed system (European Commission 2011a: p.7). Further to these contributions, conferences on the CCCTB were held in 2002, 2003, 2008 and 2010, where Member State representatives as well as third actors from business, think tanks and academia were able to participate and provide their views (ibid.). Through all these consultations with third actors, the Commission gained information for drafting a thorough proposal taking the business and expert perspective into account.

<sup>37</sup> This figure exclusively entails those publications which are accessible to the public online at [http://ec.europa.eu/taxation\\_customs/taxation/company\\_tax/common\\_tax\\_base/article\\_3130\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/company_tax/common_tax_base/article_3130_en.htm), retrieved 2014-04-14.

For the Commission, participation of third actors in the Working Group on the CCCTB consisting of national experts was moreover considered as crucial, as “excluding them would mean losing their valuable technical and practical experience and it would be more difficult to maintain business interest if they were not directly involved” (European Commission 2004: p.4). However, representatives of the Member States were considerably more reluctant regarding this issue. As it is stated in the first CCCTB Working Group Summary Record:

Some participants [Member State representatives; T.L.] were afraid that if non governmental experts are invited to join the Group permanently, tax administrations will be put under pressure and the discussion will not be open and clear. [...] [N]on governmental experts may be consulted if need be for specific information or analyses and that such consultations should be launched on a separate basis (not within the regular meetings of the Group) (European Commission 2005b: p.4).

Business representatives and other external experts were thus not allowed to participate in the CCCTB Working Group on a regular basis. They were, however, invited to take part in extended formats of the working group, which took place in 2005, 2006 and 2007 and to provide their input within this framework (European Commission 2007a: p.4; 2011a: p.7).

From a principal-agent point of view this is especially interesting, taking into consideration that involving third actors is usually conceptualised as a monitoring mechanism applied by the principals. Considering the Commission’s wish to include relevant stakeholders in the CCCTB Working Group and the Member States’ resistance to this, this view does not hold in this case. It can rather be argued that the Commission and the business community’s interests regarding the issue overlapped to a high degree, as tax-related problems and costs were also perceived as problematic by businesses (Radaelli/Kraemer 2008: p.320). The Commission therefore stressed that its proposal was backed-up by the business community:

[T]hese discussions and consultations [discussions and meetings with business federations and professional organisations, T.L.] have shown a firm support from the business community to the initiative of simplifying the current operation of corporate tax systems in the EU and to the prospect of removing tax obstacles for businesses that operate in a cross-border environment [...] (European Commission 2011b: p.6; emphasised in original).

*Securing the support of the business community* helped the Commission to advocate for the CCCTB, as Member States should be interested in creating a favourable business environment, in order to secure growth, jobs and tax revenue. The fact that businesses back-up the proposal can therefore be viewed as an incentive for them to consider its adoption.

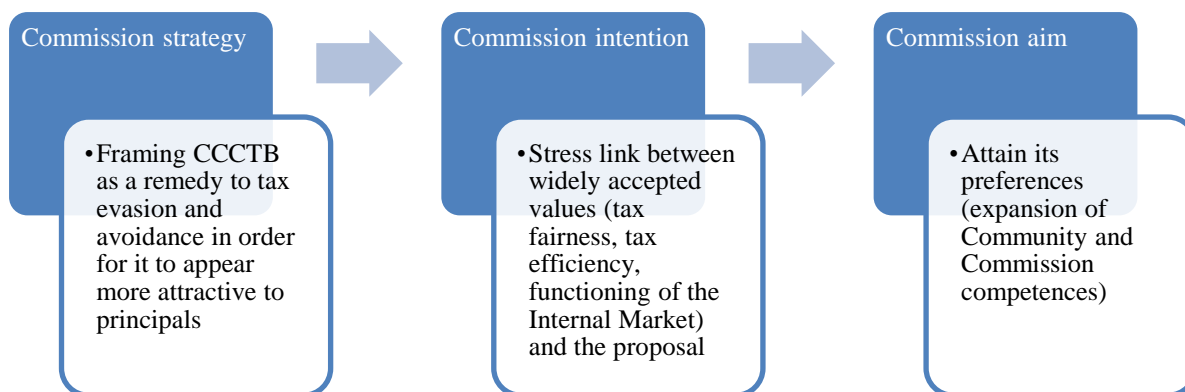
It can thus be concluded, that the Commission actively opened up for third actors and their participation in the process of drafting the CCCTB proposal, within the confines set by the Member States. The Commission used third actor participation to gain information on the topic in order to be able to draft a thorough and well-informed proposal; and to secure the support of the business community in order to convince Member States about the advantages of the CCCTB.

### 7.3. The “post-proposal” phase (2011-2014)

This phase covers the period following the launch of the proposal, when the Commission particularly used *framing* in order to render the CCCTB more attractive to the Member States.

#### 7.3.1. Framing

**Figure 7: Framing: Commission strategy, intention and aim**



A strategy most recently applied by the Commission in advocating for its CCCTB proposal is framing. As outlined in the theory chapter, there are two important factors when framing an issue:

- *Values and ideas:* frames help the agent to make the link between ideas and policy choices explicit (Rhinard 2010: pp.58).
- *Window of opportunity:* Strategic framing can be facilitated when there is an external event which may result in pressures for change and which thereby provides an opportunity for using new policy frames (ibid.: p.60; p.79). A window



of opportunity in form of an external crisis can moreover contribute to Member States being more receptive to Commission proposals (Pollack 1994: p.128).

In the following, this theoretical concept is applied to the CCCTB proposal. The section outlines the identified frame used by the Commission, the values and ideas underlying this frame; as well as the window of opportunity.

**Table 2: Application of the framing approach to the case**

Identified frame	CCCTB as a way to fight tax evasion and avoidance
Values/ideas	Tax fairness, securing Member States' tax revenues, functioning the Internal Market
Window of opportunity	Financial crisis

The CCCTB proposal was issued by the Commission in 2011, at a time when political leaders in the EU were still struggling with the consequences of the financial crisis, which started in 2008. Therefore, solving the crisis was considered more important (Van der Jagt 2012: p.2) and the proposal was not one of their immediate priorities. However, two years later, a public discussion emerged about tax avoidance and evasion<sup>38</sup> and their negative implications on public revenues in the light of the financial crisis. Taxpayers faced with severe cuts in public expenditures were simply not able to understand how large multinational companies were allegedly able to evade paying taxes (Euractiv 2013; Frey 2013). From a principal-agent perspective it can be argued that the European Commission as the agent exploited this situation by framing the CCCTB proposal as a remedy to tax evasion and avoidance.

According to the Commission, the main reasons why tax evasion and avoidance occur in the EU are that Member States do not cooperate closely enough (European Commission 2013b: p.1) and because companies can exploit inconsistencies in the different tax systems (European Commission 2012: p.6). Moreover, the complicated transfer pricing system currently in place has contributed to more tax evasion and avoidance. Transfer pricing refers to the principle that prices charged for transactions (e.g. goods and services) within multinational companies have to reflect market prices. This rule has been introduced in order to prevent multinational companies from reducing their taxable income by moving profits from a high-tax country to a low-tax country with the sole purpose of avoiding to pay taxes (European Commission 2014f; Frey 2013). This system is, however, very difficult to control for national tax authorities and can thus be easily abused by multinational companies (Frey 2013).

<sup>38</sup> The difference between these two concepts is a matter of legality. While tax avoidance is legal and used in order to save taxes by stretching the tax law to the legal extent possible, evasion designates the illegal form of noncompliance with the law in order to reduce the tax burden. In practice, however, there is a grey zone between these two (Slemrod/Yitzhaki 2002: p.1428).

The Commission argued that introducing the CCCTB would be an important element to prevent tax evasion and avoidance. It would increase transparency and solve transfer pricing issues. Companies would be allowed to consolidate their tax base across the whole EU and consequently, the incentive to move profits from a high-tax to a low-tax country in order to avoid paying taxes in the high-tax country would be removed, as this would no longer be necessary. Moreover, there would be fewer mismatches in the tax systems of the Member States which could be abused by multinational companies (European Commission 2011a: p.6; 2013b: p.3).

This tax evasion and avoidance frame has been used by the Commission to promote the CCCTB as a solution to these problems. As a Commission source put it:

The CCCTB has been raised again and again amongst ministers recently [in 2013; T.L.], because originally it was considered as a measure designed to make life easier for business within the EU, but now the attractions of the transparency that it would encourage have given it more legs (quoted in Euractiv 2013).

The *core values* underlying this frame are fairness and securing the efficiency of the tax systems of the Member States. According to the Commission, tax evasion and avoidance result in considerable losses in revenues for Member States. Moreover, they contribute to a competitive disadvantage for honest companies compared to those companies who engage in tax avoidance and evasion, thereby distorting the functioning of the Internal Market (European Commission 2013b: p.1). As Member States are assumed to share the values of fairness and efficiency, it seems reasonable for the Commission as the agent to draw on them when promoting the CCCTB.

The *window of opportunity* in this case is the financial crisis and the consequences the EU is still suffering from. This external event may pressure Member States to action and make them more receptive to the Commission's proposal due to the prospect of remedying the massive loss of tax revenue because of tax evasion and avoidance.

As can be concluded from the above, the European Commission used the tax evasion and avoidance frame to bring the CCCTB proposal back on the agenda. The values and ideas underlying this frame are in principle expected to be shared by Member States and therefore facilitate the likelihood that at least some of them may be receptive to the Commission proposal.

#### 7.4. Conclusion

The analysis above has shown that the Commission used seven different strategies in the case of the CCCTB proposal. Moreover, there is a tendency that some strategies were predominately used in certain phases. The Commission applied the *reinterpreting the mandate* strategy in order to show the link between the Internal Market and tax policy, to show how the Internal Market is distorted by the current tax arrangements, and to demonstrate how the CCCTB could provide a remedy to this. *Shaming* was used to embarrass Member States and create pressure on them. *Advocating for QMV and enhanced cooperation* and the inclusion of delegated and implementing acts was applied in order to circumvent the unanimity requirement, as well as to create pressure on principals by warning of political standstill due to this decision-making procedure. This strategy would help the Commission as the agent to exploit differing principal preferences and moreover increase Community and its own competences. *Threatening with the ECJ* was done in a variety of ways: by warning Member States that the ECJ may overrule their tax legislation, that ECJ case law was not enough to ensure a comprehensive approach, and by threatening with more infringement proceedings. The analysis has found that these four strategies have predominately been applied in the initial phase of the proposal.

Being an *informative agent* by providing the Commission with information about its intentions and the policy consequences of its actions has been found to be another strategy the Commission applied in this case. This strategy was used in order to appear trustworthy. The *increasing permeability* strategy consisted of securing the participation of third actors in the decision-making process, which served the purpose of gaining information and securing their support. Both strategies have been mostly applied in the second identified phase. A part of the informative agent strategy (providing the principals with information on its intentions) has been applied throughout the whole process.

*Framing* was the strategy mainly applied in the last identified phase. By claiming that the CCCTB was a solution to tax avoidance and evasion, the Commission used it in order to show the link between accepted ideas and values.

## 8. Results of the analysis

What kind of conclusions can be drawn from the analysis above? The seven strategies identified from relevant principal-agent literature (reinterpretation, shaming, advocating for QMV and enhanced cooperation to circumvent the unanimity requirement, threatening with the ECJ, being an informative agent, increasing permeability, framing) can, according to the author's own categorisation, be grouped in three overarching types of strategies: first, the confrontational type; second, the cooperative type and third, the persuasive type. This categorisation is based on the finding that some strategies applied by the Commission followed a similar logic. In the following, these types are outlined and conclusions are drawn. After this, instances of Member State counter-strategies found in the course of the analysis and the Commission's reactions to these are discussed.

Shaming, threatening with the ECJ and the judicial consequences of a failure to act by the Member States, as well as trying to advocate for QMV and enhanced cooperation in order to be able to exploit principals' differing preferences can be counted to strategies of the *confrontational* type. The logic underlying these three strategies is to create pressure to act on Member States. In the case of shaming, the principals were embarrassed in order to push them to action, threatening with the ECJ was supposed to create pressure too; and by advocating for QMV and enhanced cooperation, the Commission warned the Member States of political standstill due to the unanimity requirement, thereby pressuring them to act as well.

The second identified type of strategy is the *cooperative* type. This type includes the 'informative agent' strategy as well as a part of the increasing permeability strategy, namely the part about receiving information from third actors. The underlying logic is to be transparent about the information it possesses, about its intentions and policy consequences of the proposal; in order to appear trustworthy. It can be argued that the strategy of increasing permeability forms part of both the confrontational and the cooperative type. On the one hand, by getting information from third actors and by making this information available to the principals the Commission shares information with the Member States and proves that it can be trusted. On the other hand, by securing third parties' support, the Commission applies a strategy of the more confrontational type, as this creates pressure on the Member States to act.

Framing and reinterpreting are strategies of the *persuasive* type. Their inherent logic is to convince Member States of the legitimacy of Commission action in this area and of the link between accepted values and the proposal.

It can furthermore be concluded from the analysis that the Commission used different types of strategies in the distinct phases identified above. The strategies of the confrontational type have been predominantly applied in the initial phase of the process; cooperative strategies in the mid-phase (consultation phase), while persuasive strategies

can be found in the initial and the ‘post-proposal’ phase after the proposal was issued. A part of the ‘informative agent’ strategy, namely informing the agent about its intentions, has been found to be used throughout the whole process.

It can be argued that the Commission used confrontational strategies in the beginning in order to stress the seriousness of the situation and to create enough pressure on them to act; also having the enlargement of 2004 in mind. Cooperative strategies have been used in the mid-phase, i.e. the phase in which the policy was formulated and information and insights gathered, in order to prove to the principals that it is a trustworthy agent and honest about its intentions. Moreover, it needed to be ensured that Member States got the possibility to take part in the process and that their interests were respected, in order to increase the likelihood of the proposal being adopted by at least by some of them in the end.

Strategies of the persuasive type were applied in the initial phase, as well as in the phase after the proposal was issued. Reinterpretation was mainly used in the initial phase in order to stress the legitimacy of Commission action in a field where no direct mandate to act exists and in order to make the link between the Internal Market and Commission action in this area clear. However, it was also used in the actual proposal itself in order to justify action in this field. Framing as a persuasive strategy was used in order to connect widely accepted values with the Commission proposal, to make it more appealing to the Member States. It was moreover used in order to get the proposal back on the agenda.

The analysis has furthermore shown that the agent can only operate within the limits set by the Member States. Three instances of Member State strategies to constrain the agent have been identified in the course of the analysis. The first was the Member States’ threat to create a new body within the framework of the Council to handle tax issues. As outlined in section 7.1.2, the Commission reacted with shaming the Member States in return, claiming that the lack of progress was their fault, a problem which according to its view would not be solved by the creation of a new body. The second instance was the Member States’ outright “no” to including third party actors in the CCCTB Working Group on a regular basis. The Commission had to accept this, but it was able to secure third party participation through extended formats of the CCCTB Working Group, through formal and informal consultations. Contrary to the widespread principal-agent assumption that third party actors serve as a monitoring mechanism on behalf of the Member States, the analysis has shown that the Commission actively tried to include relevant stakeholders in order to secure their support. The third instance of Member States’ counter-strategies was when several of them issued a reasoned opinion about whether the principles of subsidiarity and proportionality were respected in the case of the CCCTB. It can be discussed in how far the Commission expected this resistance. According to principal-agent assumptions, the agent can anticipate the reaction of its principals and adapt its strategies accordingly (Tallberg 2003: p.9). Throughout the whole policy-formulation process it became clear that there are some Member States which are

strongly opposed to the proposed directive.<sup>39</sup> The Commission may have anticipated their resistance by proposing to introduce it in the framework of enhanced cooperation, thereby circumventing those Member States which are against the proposal.

To summarise, the analysis found that the Commission applied confrontational strategies, cooperative and persuasive strategies. Confrontational strategies were mainly applied in the initial phase of the CCCTB proposal, cooperative strategies in the mid-phase, while persuasive strategies were applied in the beginning and in the phase after the proposal was adopted. In-line with principal-agent assumptions, the Commission was not able to act entirely autonomously and it was shown that its actions were constrained by the Member States. The Commission reacted to the identified counter-strategies applied by the Member States by shaming them, by securing third actor participation through other channels than the CCCTB Working Group and by proposing the enhanced cooperation framework, well knowing that some Member States would oppose the proposal.

---

<sup>39</sup> As the Commission noted in its 2004 Non-Paper, “[m]any Member States have initially been very cautious, if not hostile in some cases” (European Commission 2004: p.1).

## 9. Conclusion, further discussions and outlook

In this concluding section, the research question is answered; followed by a short discussion of the approach of this thesis and its findings, before an outlook on further possible areas of research is given.

It has been found that the Commission applied three different overarching types of strategies in the case analysed in this thesis. The first type is *confrontational* strategies consisting of shaming, threatening with the European Court of Justice and the judicial consequences of non-action in the area of direct taxation, to circumvent the unanimity requirement by advocating for QMV and enhanced cooperation in taxation; as well as a part of the increasing permeability strategy (more specifically, to secure support from third actors). The second type encompasses *cooperative* strategies, namely being an informative agent; and a part of the increasing permeability towards third actors strategy, namely to gain information from third actors. Framing and reinterpretation strategies have been identified as the third type, *persuasive* strategies. It was furthermore found that the strategies used varied depending on the phase of the policy formulation process reaching from 2001 to 2014. In the initial phase, the Commission mainly applied strategies of the confrontational and the persuasive type; the mid-phase was dominated by cooperative strategies, while the phase after the proposal was issued was characterised by persuasive strategies. Informing the principals about its intentions – an aspect of the ‘informative agent’ strategy – has been applied throughout the whole process. The Commission is not completely independent from the Member State principals; it rather has to act within the limits set by them. In three identified instances the Commission had to find ways to react to Member States and their strategies for constraining it.

There are three main contributions this thesis makes to the current state of the research. From a theoretical point of view, it offers a comprehensive analysis of the agent and its strategies when pursuing its preferences. By focusing on the agent part of the principal-agent approach, it sheds light on an aspect which has so far been paid less attention to in the relevant literature. Moreover, the thesis contributes in general to the scarce political science literature on EU tax policy. Considering the fact that not many political scientists have conducted research on this topic, it provides the field with some interesting insights and thus contributes with important knowledge on the behaviour of a supranational institution in the politically sensitive intergovernmental area of taxation. Combining tax policy and the principal-agent approach is quite unique, as this has – to the author’s best knowledge – never been done before.

Nevertheless, this kind of research is subject to a number of constraints. First, the principal-agent approach has its limitations. By conceptualising the agent as a unitary actor it does for example not allow to ‘look inside’ this actor and identify internal drivers and conflicts. It might be that the different parts of the Commission responsible for

taxation (e.g. the Commissioner and DG TAXUD) pursue different strategies. The principal-agent approach does not capture these nuances.

Second, there are certain methodological challenges research projects like this are constrained by. It is in the nature of a case-study approach that only a part of the whole picture can be analysed and it is therefore difficult to draw general conclusions from this singular case. Moreover, there are certain measurement issues. Measuring actors' real preferences and intentions is difficult, as we cannot read the actors' minds and - even if we asked them - they might not be willing to share their true thoughts with the public. Therefore, researchers can only assume that theoretical presumptions capture reality. This is not unproblematic, taking into account that the principal-agent approach has been criticised for several of its core assumptions, e.g. that the Commission in general is in favour of more integration (Pollack 2009: p.134). Moreover, the chosen approach does not allow for analysing informal channels such as negotiation and bargaining between the Commission and Member States, which might be another important strategy used by the agent. The deductive approach applied in this thesis poses another methodological challenge, as strategies not based on theoretical assumptions were not captured. There might therefore be other strategies the researcher is not aware of.

Despite these drawbacks, the study nevertheless offers valuable insights and the principal-agent approach has proven useful in analysing the Commission as an agent in tax policy. It might serve as a point of departure for examining further research questions. Could we expect *different Commission behaviour in areas where it has a bigger scope for action* than in taxation, for example in 'classic' Community areas such as trade or competition policy? One might expect that this is the case, considering that the Commission does not have to prove the legitimacy of its actions in the same way; and because the unanimity requirement does not apply. Moreover, the current literature on the principal-agent approach does not offer explanations of the *factors determining what kind of strategies* the Commission uses. Scholars take strategies to explain why principals delegate (e.g. Hawkins/Jacoby 2006), why there are differences in agents' autonomy (e.g. Tallberg 2000), or the legislative success of the Commission's proposals (e.g. Bailer 2014); rather than outlining factors that trigger the strategies themselves. Is it external factors (such as EU enlargement), internal factors (such as the Commissioner's commitment to an issue), or a combination of both? Future research might examine these questions. Furthermore, the Commission's *success* of applying the strategies could be measured in further projects. Are there any strategies which are more successful than others? If yes, which factors determine success in this case?

As outlined earlier, the CCCTB proposal is still pending; it has not yet been revised by the Commission and its final fate is still unclear. In the meantime it should be stressed that EU tax policy is everything but "dry, technical and boring" (Genschel/Jachtenfuchs 2009a: p.7); but rather a highly politically sensitive issue area that deserves much more attention from political scientists than it has received so far.



## Bibliography

6, Perri/Bellamy, Christine (2012): Principles of Methodology. Research Design in Social Science. London: Sage Publications.

Aujean, Michel (2012): Harmonization of VAT in the EU: Back to the Future, in: EC Tax review 2012-3, pp.134-143.

Aujean, Michel/von Frenckell, Eric (2011): CCCTB - The Essentials and the Path ahead, Deloitte Belgium Tax Quarterly, Issue 44 - June 2011, [http://www.deloitte.com/view/en\\_BE/be/insights/newsletters/tax-quarterly/issue44-june-2011/64eb16a6167b0310VgnVCM3000001c56f00aRCRD.htm](http://www.deloitte.com/view/en_BE/be/insights/newsletters/tax-quarterly/issue44-june-2011/64eb16a6167b0310VgnVCM3000001c56f00aRCRD.htm), retrieved 2014-03-03.

Bailer, Stephanie (2014): An Agent dependent on the EU Member States? The Determinants of the European Commission's Legislative Success in the European Union, in: Journal of European Integration, 36 (1), pp. 37-53.

Barbone, Luca/Poniatowski, Grzegorz (2013): Post-crisis Lesson for EMU. Governance from the Principal-Agent Approach. Case Network Studies & Analyses, No.457/2013.

Blom-Hansen, Jens (2005): Principals, Agents and the Implementation of EU Cohesion Policy, in: Journal of European Public Policy, 12 (4), pp. 624-648.

Chalmers, Damian/Davies, Gareth/Monti, Giorgio (2011): European Union Law. Second Edition. Cambridge: Cambridge University Press.

Cini, Michelle (1999): Framing the European Commission's role: From Autonomy to Influence, Paper to be presented at the Fifth Biennial Conference of the European Communities Studies Association, Pittsburg, 2-5 June, [http://aei.pitt.edu/2243/1/002216\\_1.PDF](http://aei.pitt.edu/2243/1/002216_1.PDF), retrieved 2014-04-21.

CMS (2012): Tax Connect. The Increasing Budget Requirements of European countries and their Implications for Taxpayers, [http://www.cms-cmck.com/Hubbard.FileSystem/files/Publication/4084b5fd-8168-457a-a579-2f9a721fb97a/Presentation/PublicationAttachment/497ad7c7-f88f-49f6-94fd-387fbad1f9ac/CMS\\_Tax\\_Connect\\_VE\\_1207.pdf](http://www.cms-cmck.com/Hubbard.FileSystem/files/Publication/4084b5fd-8168-457a-a579-2f9a721fb97a/Presentation/PublicationAttachment/497ad7c7-f88f-49f6-94fd-387fbad1f9ac/CMS_Tax_Connect_VE_1207.pdf), retrieved 2014-04-26.

Cnossen, Sijbren (2002): Tax Policy in the European Union: A Review of Issues and Options. CESifo Working Paper No.758, Category 1: Public Finance.

Conceição-Heldt, Eugénia da (2010): Who controls Whom? Dynamics of Power Delegation and Agency Losses in EU Trade Politics, in: Journal of Common Market Studies, 48 (4), pp. 1107-1126.

Conceição-Heldt, Eugénia da (2011): Variation in EU Member States' Preferences and the Commission's Discretion in the Doha Round, in: *Journal of European Public Policy*, 18 (3), pp. 403-419.

Conceição-Heldt, Eugénia da (2013): Do Agents "run amok"? A Comparison of Agency Slack in the EU and the US Trade Policy in the Doha Round, in: *Journal of Comparative Policy Analysis: Research and Practice*, 15 (1), pp. 21-36.

Cuenca Garcia, Eduardo/Navarro Pabsdorff, Margarita/Mihi Ramirez, Antonio (2013): Fiscal Harmonization and Economic Integration in the European Union, in: *Inzinerine Ekonomika-Engineering Economics*, 24 (1), pp. 44-51.

Curzon Price, Victoria (2011): The CCCTB: An instance of the EU's Icarus Complex? <http://www.taxcompetition.org/articles/ccctb>, retrieved 2014-03-09.

Delreux, Tom/Kerremans, Bart (2010): How Agents weaken their Principals' Incentives to control: The case of the EU Negotiators and EU Member States in Multilateral Negotiations, in: *Journal of European Integration*, 32 (4), pp. 357-374.

Deloitte General Services (2013): Luxembourg Tax Alert. European Commission proposes new Provisions to the Parent-Subsidiaries Directive to limit Double Non Taxation Situations in Europe, [http://www.deloitte.com/assets/Dcom-Luxembourg/Local%20Assets/Documents/Newsletters/Tax%20Alert/2013/lu\\_taxalert\\_parent-subsidiaries\\_28112013.pdf](http://www.deloitte.com/assets/Dcom-Luxembourg/Local%20Assets/Documents/Newsletters/Tax%20Alert/2013/lu_taxalert_parent-subsidiaries_28112013.pdf), retrieved 2014-05-17.

Diekmann, Andreas (2007): *Empirische Sozialforschung. Grundlagen, Methoden, Anwendungen*. Hamburg: Rowohlt Taschenbuch Verlag.

Dür, Andreas/Elsig, Manfred (2011): Principals, Agents and the European Union's Foreign Economic Policies, in: *Journal of European Public Policy*, 18 (3), pp. 323-383.

Euractiv (2013): Furore over Tax Evasion opens Door to new EU proposal on Corporate Tax, published 19 November 2013, <http://www.euractiv.com/specialreport-european-corporate/furore-tax-evasion-opens-door-ne-news-531777>, retrieved 2014-04-10.

European Commission (n.d.a): Qualified Majority Voting on Tax Issues. Detailed Arguments and specific examples by sector, [http://ec.europa.eu/taxation\\_customs/resources/documents/egs\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/egs_en.pdf), retrieved 2014-05-05.

European Commission (n.d.b): Frequently Asked Questions on the Commission's positions, [http://ec.europa.eu/taxation\\_customs/resources/documents/faq\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/faq_en.pdf), retrieved 2014-05-05.

European Commission (1990): Guidelines on Company Taxation. Communication from the Commission to the Council and to the European Parliament, SEC (90) 601 final, 20.04.1990.

European Commission (2001a): Tax Policy in the European Union. Priorities for the years ahead. Communication from the Commission to the Council, the Parliament and the Economic and Social Committee, COM (2001) 260 final, 23.05.2001.

European Commission (2001b): Commission Staff Working Paper. Company Taxation in the Internal Market, COM (2001) 582 final, 23.10.2001.

European Commission (2001c): Towards an Internal Market without Tax Obstacles. A strategy for providing companies with a Consolidated Corporate Tax Base for their EU-wide activities. Communication from the Commission to the Council, the Parliament and the Economic and Social Committee, COM (2001) 582 final, 23.10.2001.

European Commission (2003): An Internal Market without Company Tax Obstacles. Achievements, ongoing Initiatives and remaining Challenges. Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, COM (2003) 726 final, 24.10.2003.

European Commission (2004): A Common Consolidated EU Corporate Tax Base. Commission Non-Paper to informal Ecofin Council, 10 and 11 September 2004, 07.07.2004,  
[http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/company\\_tax/common\\_tax\\_base/cctbwppnon\\_paper.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/common_tax_base/cctbwppnon_paper.pdf), retrieved 2014-04-14.

European Commission (2005a): Implementation of the Community Lisbon Programme. The Contribution of Taxation and Customs Policies to the Lisbon Strategy. Communication from the Commission to the Council and the European Parliament, COM (2005) 532 final, 25.10.2005.

European Commission (2005b): Summary Record of the Meeting of the Common Consolidated Corporate Tax Base Working Group, CCCTB/WP\005\doc\en.

European Commission (2006): Implementing the Community Lisbon Programme: Progress to date and Next Steps towards a Common Consolidated Corporate Tax Base (CCCTB). Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, COM (2006) 157 final, 05.04.2006.

European Commission (2007a): Implementing the Community Programme for improved Growth and Employment and the enhanced Competitiveness of EU Business: Further Progress during 2006 and next steps towards a proposal on the Common Consolidated Corporate Tax Base (CCCTB). Communication from the Commission to the European

Parliament, to the Council and the European Economic and Social Committee, COM (2007) 223 final, 02.05.2007.

European Commission (2007b): Common Consolidated Corporate Tax Base Working Group (CCCTB WG). Explanatory note on the Comitology Procedure, Meeting to be held 10, 11, 12 December 2007, CCCTB WPO62/doc/en.

European Commission (2011a): Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), COM (2011) 121/4, 16.03.2011.

European Commission (2011b): Impact Assessment accompanying the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base. Commission Staff Working Document, SEC (2011) 215 final, 16.03.2011.

European Commission (2012): An Action Plan to strengthen the Fight against Tax Fraud and Tax evasion. Communication from the Commission to the European Parliament and the Council, COM (2012) 722 final.

European Commission (2013a): A review and evaluation of methodologies to calculate tax compliance costs,  
[http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/gen\\_info/economic\\_analysis/tax\\_papers/taxation\\_paper\\_40.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/tax_papers/taxation_paper_40.pdf), retrieved 2014-05-08.

European Commission (2013b): Fighting Tax Evasion and Avoidance. A year of Progress, [http://europa.eu/rapid/press-release\\_MEMO-13-1096\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-1096_en.htm), retrieved 2013-05-06.

European Commission (2014a): Merger Directive,  
[http://ec.europa.eu/taxation\\_customs/taxation/company\\_tax/mergers\\_directive/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/company_tax/mergers_directive/index_en.htm), retrieved 2014-05-17.

European Commission (2014b): Taxation of cross-border interest and royalty payments in the European Union,  
[http://ec.europa.eu/taxation\\_customs/taxation/company\\_tax/interests\\_royalties/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/company_tax/interests_royalties/index_en.htm), retrieved 2014-05-17.

European Commission (2014c): Taxation and Qualified Majority Voting,  
[http://ec.europa.eu/taxation\\_customs/taxation/gen\\_info/conference/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/gen_info/conference/index_en.htm), retrieved 2014-05-05.

European Commission (2014d): Common Tax Base,  
[http://ec.europa.eu/taxation\\_customs/taxation/company\\_tax/common\\_tax\\_base/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/company_tax/common_tax_base/index_en.htm), retrieved 2014-04-14.

European Commission (2014e): Written contributions have been received from, [http://ec.europa.eu/taxation\\_customs/taxation/company\\_tax/common\\_tax\\_base/article\\_3130\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/company_tax/common_tax_base/article_3130_en.htm), retrieved 2014-04-14.

European Commission (2014f): Transfer pricing in the EU context, [http://ec.europa.eu/taxation\\_customs/taxation/company\\_tax/transfer\\_pricing/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/company_tax/transfer_pricing/index_en.htm), retrieved 2014-05-06.

Fägersten, Björn (2010): Sharing Secrets. Explaining International Intelligence Cooperation, Lund University Studies: Media-Tryck, Lund Political Studies 161.

Frey, Eric (2013): Katz-und-Maus Spiel mit Konzernsteuern, published 03 December 2013, <http://derstandard.at/1385169714539/Katz-und-Maus-Spiel-mit-Konzernsteuern>, last retrieved 2014-03-06.

Ganghof, Steffen/Genschel, Philipp (2008): Taxation and Democracy in the EU, in: Journal of European Public Policy, 15 (1), pp. 58-77.

Genschel, Philipp/Jachtenfuchs, Markus (2009a): The Fiscal Anatomy of Multilevel Governance: The EU and the Regulation of Taxation, [http://aei.pitt.edu/33059/1/genschel.\\_philipp.pdf](http://aei.pitt.edu/33059/1/genschel._philipp.pdf), retrieved 2013-12-14.

Genschel, Philipp/Jachtenfuchs, Markus (2009b): The Fiscal Anatomy of a Regulatory Polity: Tax Policy and Multilevel Governance in the EU. Hertie School of Governance Working Papers No. 43, October 2009.

Genschel, Philipp/Kemmerling, Achim/Seils, Erich (2011): Accelerating downhill: How the EU Shapes Corporate Tax Competition in the Single Market, Journal of Common Market Studies, 49 (3), pp. 585-606.

George, Alexander L./Bennett, Andrew (2005): Case Studies and Theory Development in the Social Sciences. Cambridge: MIT Press.

Gerring, John (2007): Is there a (Viable) Crucial-Case Method? In: Comparative Political Studies, 40 (3), pp. 231-253.

Gnaedinger, Chuck/Nadal, Lisa M. (2007): Kovács optimistic about CCCTB despite opposition, Tax Notes International, published March 12, 2007, <http://www.taxanalysts.com/www/features.nsf/Articles/FAD34BD668AAC636852572D80069B29A?OpenDocument>, retrieved 2014-04-12.

Hawkins, Darren/Jacoby, Wade (2006): How Agents matter, in: Hawkins, Darren G./Lake, David A./Nielsen, Daniel L./Tierney, Michael J. [eds.]: Delegation and Agency in International Organizations, Cambridge: Cambridge University Press, pp. 199-228.

Hawkins, Darren G./Lake, David A./Nielsen, Daniel L./Tierney, Michael J. (2006): Delegation under Anarchy: States, International Organizations and Principal-Agent

Theory, in: Hawkins, Darren G./Lake, David A./Nielson, Daniel L./Tierney, Michael J. [eds.]: Delegation and Agency in International Organizations, Cambridge: Cambridge University Press, pp. 3-38

Hix, Simon/Høyland, Bjørn (2011): The Political System of the European Union. London: Palgrave Macmillan.

Holzinger, Katharina (2005): Tax Competition and Tax Co-Operation in the EU: The Case of Savings Taxation, in: Rationality and Society, 17, pp. 475-510.

Jensen, Carsten (2008): Steffen Ganghof: The Politics of Income Taxation. A comparative Analysis. Book review, in: Journal of European Social Policy, 18 (2007), pp. 207-208.

Kassim, Hussein/Manon, Anand (2003): The Principal-Agent Approach and the Study of the European Union: promise unfulfilled? In: Journal of European Public Policy, 10 (1), pp. 121-139.

Kemmerling, Achim (2010): Does Europeanization lead to Policy Convergence? The Role of the Single Market in shaping National Policies, in: Journal of European Public Policy, 17 (7), pp. 1058-1073.

King, Gary/Keohane, Robert/Verba, Sidney (1994): Designing Social Inquiry. Scientific Inference in Qualitative Research, Princeton: Princeton University Press.

Koerver Schmidt, Peter/Bundgaard, Jakob (2011): CCCTB – Europa Kommissionens direktivforslag om en konsolideret selskabsskattebase, in: Revision & Regnskabsvæsen Nr 7, pp. 40-49.

Loyens&Loeff (2012): European Parliament issues Report for the Proposal for a CCCTB, [http://www.loyensloeff.com/nl-NL/Practice/Documents/CCCTB/Update\\_EP\\_report.pdf](http://www.loyensloeff.com/nl-NL/Practice/Documents/CCCTB/Update_EP_report.pdf), retrieved 2014-05-10.

Lucian, Paul/Lucian Alexandru, Danciu (2011): Harmonization of National Fiscal Policies of the EU Member States. Global Conference on Business and Finance Proceedings, Vol. 6 (2), pp. 649-652.

Mügge, Daniel (2011): The European Presence in Global Financial Governance: a Principal-Agent Perspective, in: Journal of European Public Policy, 18 (3), pp. 383-402.

Niemann, Arne/Huigens, Judith (2011): The European Union's role in the G8: a principal-agent perspective, in: Journal of European Public Policy, 18 (3), pp. 420-442.

Overy, Patrick (2008): European Union: A Guide to Tracing Working Documents, [http://www.nyulawglobal.org/globalex/European\\_Union\\_Travaux\\_Preparatoires.htm#\\_4.1\\_Commission\\_Working](http://www.nyulawglobal.org/globalex/European_Union_Travaux_Preparatoires.htm#_4.1_Commission_Working), retrieved 2014-05-20.

- Pearse Trust (2011): CCCTB gets Yellow Card from 8 Member States, <http://www.pearse-trust.ie/blog/bid/62728/CCCTB-Gets-Yellow-Card-From-8-Member-States>, retrieved 2014-03-06.
- Pollack, Mark (1994): Creeping Competence: The Expanding Agenda of the European Community, in: *Journal of Public Policy*, 14 (2), pp. 95-145.
- Pollack, Mark (1997): The Engines of Integration. Supranational Autonomy and Influence in the European Union. Paper presented at the Fifth Biennial International Conference of the European Communities Studies Association, May 29-June 1, Seattle, Washington.
- Pollack, Mark (2009): The New Institutionalisms and European Integration, in: Wiener, Antje/Diez, Thomas [eds.]: *European Integration Theory*. Oxford University Press: New York, pp. 125-143.
- PricewaterhouseCoopers (2011): EU Direct Tax Group, Part of PwC's International Tax Services Network: CCCTB, Issue Nr. 005, pp.16-19.
- Radaelli, Claudio (2003): The Code of Conduct against Harmful Tax Competition: Open Method of Coordination in Disguise? In: *Public Administration*, 81 (3), pp. 513-531.
- Radaelli, Claudio M./Kraemer, Ulrike (2008): Governance Areas in EU Direct Tax Policy, in: *JCMS* 46 (2), pp. 315-336.
- Rautenstrauch, Gabriele (2012): CCCTB: Past, Present and Future, in: *The KPMG Guide to CCCTB Part 1*, pp.7-12.
- Reichert, M. Shawn/Jungblut, Bernadette M.E. (2007): European Union External Trade Policy: Multilevel Principal Agent Relationships, in: *The Policy Studies Journal*, 35 (3), pp. 395-418.
- Rhinard, Mark (2010): *Framing Europe: The Policy Shaping Strategies of the European Commission*. Dordrecht, Leiden, Boston: Martinus Nijhoff Publishers.
- Schmidt, Susanne (2000): Only an Agenda Setter? The European Commission's Power over the Council of Ministers, in: *European Union Politics*, 1 (1), pp. 37-61.
- Šemeta, Algirdas (2011): European Corporate Tax Base: making it easier and cheaper to do business in the EU. Speech given at a press conference in Brussels, March 16, 2011, [http://europa.eu/rapid/press-release\\_SPEECH-11-185\\_en.pdf](http://europa.eu/rapid/press-release_SPEECH-11-185_en.pdf), retrieved 2014-05-21.
- Slemrod, Joel/Yitzhaki, Shlomo (2002): Tax Avoidance, Evasion, and Administration, in: Auerbach A.J./Feldstein, M [eds.]: *Handbook of Public Economics*, Amsterdam: Elsevier Science B.V., pp. 1425-1470.

Tallberg, Jonas (2000): The Anatomy of Autonomy. An Institutional Account of Variation in Supranational Influence, in: *Journal of Common Market Studies*, 38 (5), pp. 43-864.

Tallberg, Jonas (2003): *European Governance and supranational institutions. Making states comply.* Routledge: London.

Tansey, Oisín (2007): Process-Tracing and Elite Interviewing: A Case for Non-probability Sampling, in: *PS: Political Science and Politics*, 40(4), pp. 1-23.

Thompson, Alexander (2006): Screening Power: International Organizations as Informative Agents, in: Hawkins, Darren G./Lake, David A./Nielson, Daniel L./Tierney, Michael J. [eds.]: *Delegation and Agency in International Organizations*, Cambridge: Cambridge University Press, pp. 229-254.

Tyc, Vladimir (2008): Harmonization of Indirect Taxes in the European Union, in: *International Journal of Law and Management*, 50 (2), pp. 87-92.

Van der Jagt, Robert (2012): Foreword, in: *The KPMG Guide to CCCTB Part 1*, p.2.

Vascega, Marius/van Thiel, Servaas (2011): Assessment of Taxes in cross-border Situations. The New EU Directive on Administrative Cooperation in the field of taxation, *EC Tax review 2011-3*, pp. 148-154.

Vascega, Marius/van Thiel, Servaas (2012): Selected EU Law and Procedural Issues, in: *The KPMG Guide to the CCCTB Part 1*, pp. 13-18.

Wiener, Antje/Diez, Thomas (2009): Introducing the Mosaic of Integration Theory, in: Wiener, Antje/Diez, Thomas [eds]: *European Integration Theory. Second Edition*, New York: Oxford University Press, pp. 1-22.



## Annex A – List of analysed documents

- European Commission (2001a): Tax policy in the European Union – Priorities for the years ahead. Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee, COM (2001) 260 final, 23.05.2001.<sup>40</sup>
- European Commission (2001b): Company Taxation in the Internal Market. Commission Staff Working Paper, SEC (2001) 1681, 23.10.2001.<sup>41</sup>
- European Commission (2001c): Towards an Internal Market without Tax Obstacles. A Strategy for providing Companies with a Consolidated Corporate Tax Base for their EU-wide activities. Communication from the Commission to the Council, the Parliament and the Economic and Social Committee, COM (2001) 582 final, 23.10.2001.
- European Commission (2003): An Internal Market without company tax obstacles. Achievements, ongoing initiatives and remaining challenges. Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, COM (2003) 726 final, 24.11.2003.
- European Commission (2004): A Common Consolidated EU Corporate Tax Base. Commission Non-Paper to informal Ecofin Council, 10 and 11 September 2004, 07.07.2004.<sup>42</sup>
- European Commission (2005a): Implementation of the Community Lisbon Programme. The Contribution of Taxation and Customs Policies to the Lisbon Strategy, Communication from the Commission to the Council and the European Parliament, COM (2005) 532 final, 25.10.2005.
- European Commission (2006): Implementing the Community Lisbon Programme: Progress to date and Next Steps towards a Common Consolidated Corporate Tax Base (CCCTB). Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, COM (2006) 157 final, 05.04.2006.
- European Commission (2007a): Implementing the Community Programme for improved Growth and Employment and the Enhanced Competitiveness of EU Business: Further Progress during 2006 and Next Steps towards a Proposal on the Common Consolidated Corporate Tax Base (CCCTB). Communication from the Commission to the European Parliament, to the Council and the European Economic and Social Committee, COM (2007) 223 final, 02.05.2007.
- European Commission (2011a): Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB). COM (2011) 121/4, 16.03.2011.

---

<sup>40</sup> A Commission Communication is a statement on a specific subject (Overy 2008).

<sup>41</sup> A Commission Staff Working Paper is an internal document, which is not always made available to the public (ibid.).

<sup>42</sup> A non-paper is an unofficial document without binding character in legal and political terms.

- European Commission (2011b): Impact Assessment. Accompanying document to the proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), Commission Staff Working Document, SEC (2011) 315 final, 16.03.2011.

## Annex B – Member States’ positions on the CCCTB proposal

Table 3 below summarises those Member States who in general tend to be supportive of the proposal, those who are opposed to the proposal and those whose position is unknown.<sup>43</sup>

**Table 3: Member States' positions on the CCCTB proposal**

Supportive (to some extent)	Opposed	Unknown position
Austria <sup>44</sup>	Bulgaria (reasoned opinion) <sup>45</sup>	Croatia <sup>46</sup>
Belgium <sup>47</sup>	Cyprus <sup>48</sup>	Greece <sup>49</sup>
Czech Republic <sup>50</sup>	Estonia <sup>51</sup>	Hungary <sup>52</sup>
Denmark <sup>53</sup>	Germany <sup>54</sup>	Portugal <sup>55</sup>
Finland (supports idea in principle, h doubts about certain aspects) <sup>56</sup>	Ireland (reasoned opinion) <sup>57</sup>	
France <sup>58</sup>	Latvia <sup>59</sup>	
Italy <sup>60</sup>	Malta (reasoned opinion) <sup>61</sup>	
Lithuania <sup>62</sup>	Netherlands (reasoned opinion) <sup>63</sup>	
Luxembourg <sup>64</sup>	Poland (reasoned opinion) <sup>65</sup>	

<sup>43</sup> As it was not possible to identify official government positions on the CCCTB proposal for all Member States (at least not in English), this categorisation mainly relies on secondary sources.

<sup>44</sup> In 2007, Austria was for the proposal (Gnaedinger/Nadal 2007); however, later on no clear position can be identified (CMS 2012: p.11).

<sup>45</sup> Pearse Trust 2011, CMS 2012: p.11.

<sup>46</sup> No position was identified.

<sup>47</sup> Gnaedinger/Nadal 2007; CMS 2012, p.11.

<sup>48</sup> PricewaterhouseCoopers (2011): p.16; CMS (2012):p.11

<sup>49</sup> CMS (2012): p.11.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Koerver Schmidt/Bundgaard (2011): p.48.

<sup>54</sup> Aujean/von Frenckell (2011)

<sup>55</sup> CMS (2012): p.11.

<sup>56</sup> PricewaterhouseCoopers (2011): p.18.

<sup>57</sup> Pearse Trust 2011, CMS (2012): p.11.

<sup>58</sup> Pearse Trust 2011; CMS (2012): p.11.

<sup>59</sup> CMS (2012): p.11.

<sup>60</sup> Pearse Trust 2011; CMS (2012): p.11.

<sup>61</sup> Pearse Trust 2011, CMS (2012): p.11.

<sup>62</sup> PricewaterhouseCoopers (2011): p.16.

<sup>63</sup> Pearse Trust 2011, CMS (2012): p.11.

<sup>64</sup> CMS (2012): p.11.

<sup>65</sup> Pearse Trust 2011, CMS (2012): p.11.

Supportive (to some extent)	Opposed	Unknown position
Spain <sup>66</sup>	Romania (reasoned opinion) <sup>67</sup>	
	Slovakia <sup>68</sup>	
	Slovenia <sup>69</sup>	
	Sweden (reasoned opinion) <sup>70</sup>	
	United Kingdom (reasoned opinion) <sup>71</sup>	

---

<sup>66</sup> Gnaedinger/Nadal 2007; CMS (2012): p.11.

<sup>67</sup> Pearse Trust 2011.

<sup>68</sup> Gnaedinger/Nadal 2007; CMS (2012): p.11.

<sup>69</sup> CMS (2012): p.11.

<sup>70</sup> Pearse Trust 2011.

<sup>71</sup> Ibid.