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## **Tax ‘sweetheart deals’ between multinationals and EU countries at record high**

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### **Summary**

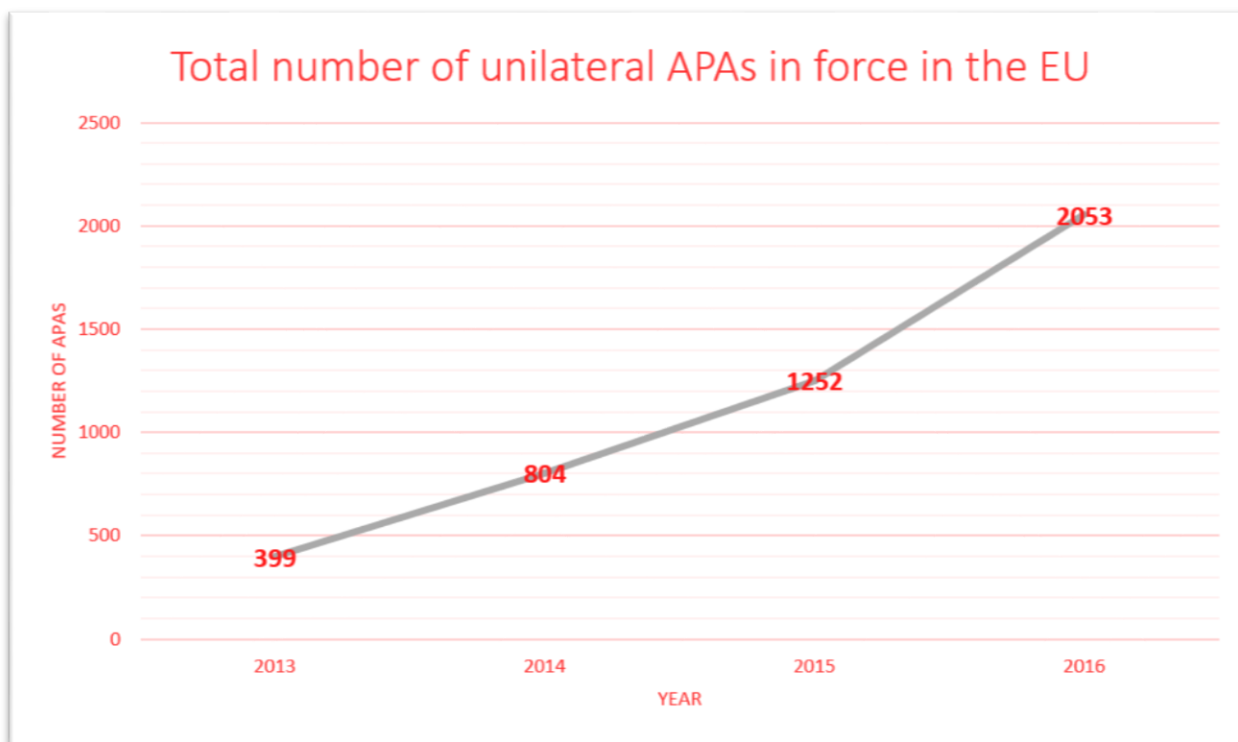
Over the last few years, advance pricing agreements (APAs) – also known as ‘comfort letters’ or ‘sweetheart deals’ – have been at the centre of several tax scandals, as well as state aid cases that the European Commission has launched against EU Member States, involving alleged loss of millions of Euros in tax income.

But according to new data, the number of APAs continues to grow, and saw a sharp increase across the European Union from 2015 to 2016. In particular, the number of unilateral agreements – which are the most problematic kind – increased dramatically in EU countries, from 1,252 at the end of 2015 to 2,053 at the end of 2016 (an increase of 64 per cent).

As part of a very harmful ‘race to the bottom’, some government engage in ‘tax competition’, to try and attract multinational corporations to their countries by offering lucrative tax arrangements. But international concern about these types of practices is growing. Earlier this week, the European Commissioner for Economic and Financial Affairs Pierre Moscovici named seven EU Member States as a cause of concern due to their aggressive tax policies. These were Belgium, Cyprus, Hungary, Ireland, Luxembourg, Malta and the Netherlands. Two of these countries – Belgium and Luxembourg – are at the absolute top of the list of countries that have the highest number of secret APAs in force. The Netherlands would also probably be very high on the list if they reported the number of APAs in force in the country.

### **Advance pricing agreements on the increase**

APAs are a special type of tax ruling that takes the form of secret agreements between multinational corporations and governments to define the future terms of taxation. While the content of APAs is secret, EU Member States (with the exception of the Netherlands) report to the European Commission on the number of APAs that are currently in force in their countries. The total number of APAs has increased sharply over the last few years. New data released by the European Commission indicates that the issuing of APAs is now happening at a faster rate than before (see Figure 1).



**Figure 1.** Source: Eurodad calculations based on data from the European Commission.<sup>1</sup>

### What are advance pricing agreements?

Advance pricing agreements are a type of ‘advance tax ruling’ that are sometimes referred to as ‘sweetheart deals’ or ‘comfort letters’. They are agreed between tax administrations and specific individual multinational corporations. In some cases, they provide opportunities for these corporations to avoid paying large amounts of tax.<sup>2</sup>

These deals usually determine how transfer pricing rules will be applied to certain transactions among subsidiaries of a multinational corporation.<sup>3</sup> Other types of advance tax rulings can address other issues in corporate taxation, such as how different types of structures will be taxed.

The European Commission releases statistics on the total number of APAs in force across the EU. Unfortunately, however, no such data is available for other types of advance tax rulings.

## What's the problem?

APAs and other types of advance tax rulings are not usually illegal.<sup>4</sup> However, their characteristics raise several concerns:

- **Advance:** the agreements concern the future, and thus the tax administration is not able to see the tax return or country by country report of the multinational corporation before entering into the agreement, since these are submitted after the tax year has ended. If the administration later discovers that the corporation is engaged in large-scale tax avoidance, the advance agreement can limit the administration's chances of intervening.
- **Binding:** the agreements are often binding for the tax administrations that enter into them, normally for a predetermined period of, for example, five years.<sup>5</sup>
- **Individual:** agreements are requested by individual corporations and issued specifically to them. This introduces the risk of special treatment for powerful and influential corporations.
- **Secret:** the agreements are secret to the public, and whistleblowers that release information about the deals risk ending up in court.

## Unilateral APAs give special cause for concern

APAs can be either 'unilateral', meaning they have been issued by one country, or bi- or multilateral, meaning that two or more countries have approved them. The concerns outlined above apply to all these types of agreements. However, bi- and multilateral agreements have the advantage over unilateral agreements in that they have been scrutinised by more than one country, and thus may be less controversial.

There is a lower risk of agreements resulting in tax avoidance when they include the country where the multinational corporation has its business activity and generates its profits (the so-called 'source country') – since the source country has no interest in such tax avoidance. However, bilateral agreements can also involve two tax havens, in which case there is a risk that both countries are willing to sign an agreement facilitating tax avoidance.

## Impact on tax payments by multinational corporations

APAs and other types of advance tax rulings can have a very significant impact on the level of corporate tax paid by a multinational corporation. This became obvious when over 500 agreements from Luxembourg were leaked to the media and resulted in the so-called 'LuxLeaks scandal', which broke in 2014.<sup>6</sup> The deals were made with more than 300 corporations, in some cases allowing them to substantially lower their tax payments, occasionally to below one per cent.<sup>7</sup> APAs and other types of

advance tax rulings have also played a very central role in several large-scale state aid cases launched by the European Commission against EU Member States (see Table 1).

**Table 1: Expensive tax deals. Examples of state aid cases launched by European Commission against EU Member States concerning APAs and other advance tax rulings**

Case	Number of 'sweetheart deals' involved	European Commission's estimate of tax avoided
Luxembourg and Amazon (2017)	1 APA <sup>8</sup>	Around €250 million <sup>9</sup>
Ireland and Apple (2016)*	2 tax rulings <sup>10</sup>	Up to €13 billion <sup>11</sup>
Belgium's "excess profit tax ruling scheme" (2016)	Tax rulings issued to 35 multinational corporations <sup>12</sup>	Around €700 million <sup>13</sup>
Netherlands and Starbucks (2015)*	2 APAs <sup>14</sup>	€20-30 million <sup>15</sup>
Luxembourg and Fiat (2015)*	1 APA <sup>16</sup>	€20-30 million <sup>17</sup>

\* The state aid cases on Ireland/Apple, Netherlands/Starbucks, Luxembourg/Fiat the Belgian excess profit scheme have all been appealed and are pending at the European Court of Justice.<sup>18</sup>

### APAs and concerns about equality before the law

APAs usually concern issues relating to transfer pricing, and are therefore of no use to companies that consist of only one entity, such as many small- and medium-sized enterprises. This, and the fact that each corporation can receive its own secret agreement, undermines the principle of equality before the law. The lack of transparency also creates a very serious absence of clarity about how corporate tax rules are being applied in practice. Because the general transfer pricing legislation and its 'arm's length principle' is in itself very unclear, APAs – which are a type of interpretation of the law – become essential information for understanding how multinational corporations are, in reality, being taxed.

### Which EU countries have unilateral APAs?

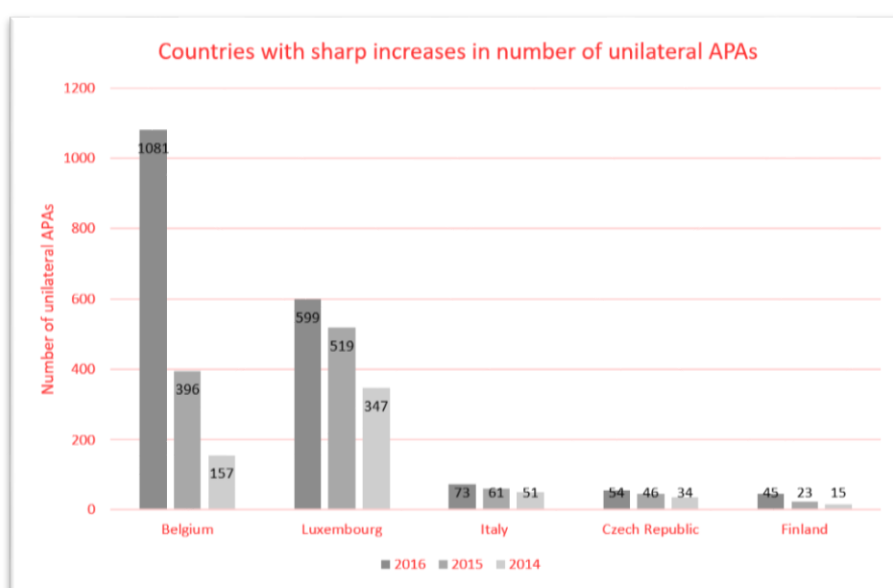
Table 2 provides an overview of the number of unilateral APAs in force in EU Member States. The data, which is provided by the European Commission, is based on reports from the Member States themselves.

Number of unilateral APAs in force				
	2013	2014	2015	2016
Belgium	No data <sup>19</sup>	157	396	<b>1,081</b>
Luxembourg	119	347	519	<b>599</b>
Italy	47	51	61	<b>73</b>
Hungary	58	79	70	<b>63</b>
Czech Republic	33	34	46	<b>54</b>
Finland	21	15	23	<b>45</b>
UK	25	35	44	<b>44</b>
Spain	44	40	45	<b>43</b>
Poland	17	13	16	<b>17</b>
France	14	16	15	<b>15</b>
Romania	4			<b>8</b>
Portugal	2	4	7	<b>5</b>
Lithuania		1	3	<b>3</b>
Slovakia	15	3	1	<b>1</b>
Greece			1	<b>1</b>
Latvia		1	1	<b>1</b>
<b>Total</b>	<b>399</b>	<b>802</b>	<b>1,252</b>	<b>2,053</b>

**Table 2. Overview of unilateral APAs in force in EU Member States.** The following EU Member States have reported that they do not have any unilateral APAs in force: Austria, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Germany, Ireland, Malta, Slovenia and Sweden. For data on the Netherlands, see Table 3.

Source: Eurodad calculations based on data from the European Commission.<sup>20</sup>

Figure 2 provides an overview of developments in some of the countries that have most recently seen sharp increases in the number of unilateral APAs in force.



**Figure 2.** Source: Eurodad calculations based on data from the European Commission.<sup>21</sup>

Table 3 focuses on the special case of the Netherlands, which does not report on the total number of agreements in force, and does not distinguish between unilateral, bilateral or multilateral APAs. The Netherlands does, however, report on the number of APAs approved each year, and since the normal duration of an APA in the Netherlands is four to five years,<sup>22</sup> the number of APAs approved since 2013 can be used to calculate a rough estimate of the number of APAs currently in force in the Netherlands.

**Table 3: Overview of APAs approved by the Netherlands between 2013 and the end of 2016**

The Netherlands	
Year	APAs approved
2013	228
2014	203
2015	236
2016	191
<b>Total</b>	<b>858</b>

*Note: The Netherlands does not report on the total number of APAs in force, but since APAs are normally valid for four to five years,<sup>23</sup> the number of APAs approved over the last few years can give a rough estimate of the number of APAs that were in force in the Netherlands at the end of 2016.*

*Source: Eurodad calculations based on data from the European Commission.<sup>24</sup>*

## Belgium

From 2015 to 2016, Belgium overtook Luxembourg as the EU country with the highest number of unilateral APAs in force.<sup>25</sup> Belgium has previously been the subject of a state aid investigation by the European Commission, due to a tax scheme known as the “excess profit scheme”. The core of the scheme was the issuance of advance tax rulings to multinational corporations. In 2016, the European Commission decided that the scheme in its entirety was a violation of EU state aid rules.<sup>26</sup> This decision has been appealed by Belgium, as well as by a number of multinational corporations, and is now pending at the European Court of Justice.<sup>27</sup>

In early March 2018, the EU Commissioner for Financial Affairs raised concerns about aggressive tax planning in seven EU member states, one of which was Belgium.<sup>28</sup>

## Luxembourg

In 2014, Luxembourg was at the centre of the LuxLeaks scandal. At the core of the scandal were leaked documents that revealed secret advance tax rulings between the Luxembourg tax administration and more than 300 multinational corporations. According to the International Consortium of Investigative Journalists (ICIJ), which published the story, these deals appear to have allowed multinational corporations to save billions of dollars in tax payments.<sup>29</sup>

Since LuxLeaks, the ruling practices of Luxembourg have also been the centre of several state aid investigations by the European Commission. In 2015, the Commission concluded that an APA issued by Luxembourg to Fiat violated state aid rules.<sup>30</sup> In 2017, the Commission reached the same conclusion

regarding and APA issued by Luxembourg to Amazon.<sup>31</sup> Both these decisions have been appealed and are pending at the European Court of Justice.<sup>32</sup>

Despite these cases, Luxembourg has continued to issue large numbers of unilateral APAs to multinational corporations, as can be seen in Table 2 and Figure 2.

## **The Netherlands**

As explained above, the Netherlands does not report on the total number of APAs it has in force, nor on whether these APAs are unilateral, bilateral or multilateral. However, as shown in Table 3, the Netherlands has reported that a total of 858 APAs have been approved between 2013 and 2016.

If these APAs were bi- or multilateral, it could be expected that other EU countries would have reported similarly high numbers of bi- or multilateral APAs (since these types of APAs require approval by minimum two countries). However, according to the European Commission's data, EU Member States reported that 212 bi- and multilateral APAs were in force at the end of 2016.<sup>33</sup> Therefore, there is reason to believe that a large part of the Dutch APAs are unilateral.

The Dutch practice for issuing APAs and other tax rulings has been an issue of debate during the last few years. During the Paradise Papers scandal in November 2017, the Dutch news media Trouw reported that the Netherlands had issued a tax ruling to the corporation Procter & Gamble (P&G), which allegedly<sup>34</sup> allowed the corporation to save US\$ 169 million in taxes.<sup>35</sup> While the Dutch government defended its use of tax rulings, it did also note that the tax ruling revealed by the Paradise Papers did not meet the official Dutch requirements, since one of the two required official signatures was missing on the APA issued to P&G.<sup>36</sup> In February 2018, the Dutch government announced that in response, a total of 4462 rulings had been reviewed, of which procedural errors were found in 78 rulings.<sup>37</sup>

The Paradise Papers was not the first time concerns were raised about the Dutch ruling practice. In 2014, the European commission concluded that two APAs issued by the Netherlands to Starbucks constituted illegal state aid.<sup>38</sup> The decision has been appealed and is pending at the European Court of Justice.<sup>39</sup> Meanwhile, at the end of 2017, the Commission initiated another state aid case to look into two Dutch tax rulings issued to IKEA.<sup>40</sup> The investigation has not yet been finalised.

## **Which countries are impacted by EU APAs?**

APAs concern taxation of multinational corporations, and the decisions made through an APA can have a significant impact on the international tax payments of the corporation in question, even when the APA is issued unilaterally by the tax administration in one country.

The data published by the European Commission includes an assessment of whether the unilateral APAs of EU Member States only affect EU countries, or whether they also affect non-EU countries. This information is summarised in Table 4.

**Table 4. Overview of whether unilateral APAs in force at the end of 2016 only concern EU countries, or also concern countries outside of the EU**

Unilateral APAs in force at the end of 2016		
	Only concern EU countries	Also concern non-EU countries
Belgium	647	434
Luxembourg	599	0
Italy	35	38
Hungary	43	20
Czech Republic	44	10
Finland	20	25
Spain	30	13
Poland	11	6
France	7	8
Romania	5	3
Portugal	4	1
Lithuania	2	1
Slovakia	1	0
Greece	1	0
Latvia	1	0
<b>Total</b>	<b>1,450</b>	<b>603</b>

*Source: Eurodad calculations based on data from the European Commission.<sup>41</sup>*

As can be seen in Table 4, the majority of the unilateral APAs in force in the EU only concern other EU Member States. However, more than 600 of the APAs (roughly 25 per cent) also concern non-EU countries. Therefore, the APA practices of EU Member States is not just a concern internally in the EU, but also for developing countries, for example.

The impacts on developing countries are a particular concern, both because these countries are desperate need of income to fight poverty and ensure development, but also because these countries are particularly dependent on income from corporate taxation.<sup>42</sup>

But corporate tax avoidance has strong negative impacts on both rich and poor countries, and conservative estimates have found that tax avoidance by multinational corporations is costing the EU alone between €50 billion and €70 billion per year.<sup>43</sup>





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### **Automatic exchange and other EU discussions about APAs and other tax rulings**

The European Parliament has called for the essential elements of corporate tax agreements to be made public,<sup>44</sup> but this has not been accepted by the European Commission or by Member States. Instead, Member States have decided that APAs and other advance tax rulings should remain secret to the public, but at the same time exchanged confidentially between tax administrators in the EU.<sup>45</sup> However, even if tax administrators are allowed to see the agreements issued by other Member States, they might have very limited possibilities for challenging deals that appear to facilitate corporate tax avoidance. In its state aid cases, the European Commission has taken several years to investigate even a small number of agreements. And even in the cases where it has concluded that state aid law has been violated, the decision has often been appealed at the European Court of Justice, as mentioned above. It is difficult to imagine that country tax administrations that already struggle with lack of resources<sup>46</sup> will have an easier time challenging the tax practices of other Member States.

The European Commission will not be fully included in the confidential exchange of information, since the EU Member States decided that the Commission should only have access to “a limited set of basic information” about APAs and other advance tax agreements issued by Member States. They also decided that the Commission should not have access to information about which multinational corporations have obtained such agreements, or any summary of the content. Member States further underlined that the Commission may not use this information for any other purpose other than to monitor and evaluate the effective application of the automatic exchange between Member States themselves.<sup>47</sup>

### **A tax administrator’s dilemma**

The secret exchange of APAs and other advance tax agreements can place EU tax administrators in a difficult situation. First, in the case where a tax administrator receives information from another EU country, which documents corporate tax avoidance by a multinational corporation, it should be kept in mind that this is often not illegal, and can therefore be difficult to stop it with regular tax compliance procedures. Second, pursuing corporate tax avoidance is often a very political issue, and the tax administrator might not have the necessary support from political decision-makers to go after a powerful multinational corporation. And last but not least, the information is strictly confidential. Therefore, the tax administrator is not allowed to tell the public or, for example, parliamentarians about the tax behaviour of corporations. This confidentiality also limits the possibility for tax administrators to discuss with other experts and tax administrations. Violating this confidentiality can put the tax administrator at risk of being fired, prosecuted or potentially of facing heavy penalties.

Worryingly, because developing country tax administrators have much less access to key information about multinational corporations, a tax administrator in a developed country can also end up looking at information that indicates that a corporation is dodging taxes in developing countries, but not be allowed to share this information with the tax administrators in the countries that are being affected.



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## What needs to happen?

Keeping in mind that corporate tax avoidance is every year costing countries around the world billions of Euros in much needed tax income, the urgent need for action on this issue cannot be overstressed. As part of this, the growing trend of secret tax deals between multinational corporations and tax administrations must be addressed.

Corporate taxation should be based on clear legislation, rather than on agreements between individual corporations and governments. The best solution would, of course, be to replace transfer pricing legislation with a system that brings clarity and consistency to the taxation of multinational corporations. But until this happens, public information about the basic content of APAs and other advance tax rulings issued to multinationals is vital information for understanding the tax system we currently have. Furthermore, although the public can never replace tax administrators, scrutiny of public information by journalists and civil society groups, for example, can help identify cases where multinational corporations are engaged in questionable tax practices. More freely available public information would also allow tax administrators to openly share thoughts, insights and experiences with other tax administrators around the world.

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<sup>1</sup> See European Commission, 'Statistics on APAs in the EU at the End of 2016', 8 March 2018, accessed 14 March 2018, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/2016\\_jptf\\_apa\\_statistics\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/2016_jptf_apa_statistics_en.pdf) ; European Commission, 'Statistics on APAs in the EU at the End of 2015', 20 October 2016, accessed 14 March 2018, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/jtpf0152016enapa.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/jtpf0152016enapa.pdf) ; European Commission, 'Statistics on APAs in the EU at the End of 2014', 22 October 2015, accessed 14 March 2018, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/jtpf0092015apastatistics2014.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf0092015apastatistics2014.pdf) ; and European Commission, 'Statistics on APAs in the EU at the End of 2013', October 2014, accessed 14 March 2018, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/docs/body/final\\_apa\\_statistics\\_2013\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/final_apa_statistics_2013_en.pdf)

<sup>2</sup> See for example Box 1.

<sup>3</sup> Elly Van De Velde, 'Tax Rulings' in the EU Member States', study for the ECON committee of the European Parliament, November 2015, accessed 14 March 2018,

[http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/563447/IPOL\\_IDA\(2015\)563447\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/563447/IPOL_IDA(2015)563447_EN.pdf)

<sup>4</sup> While the legality of advance pricing agreements and other types of advance tax rulings in general has not been disputed, some of the tax-related state aid cases initiated by the European Commission have led to the Commission concluding that specific agreements have violated EU state aid law. There are, however, several cases on this matter pending at the European Court of Justice. See also Box 1.

<sup>5</sup> Elly Van De Velde, 'Tax Rulings' in the EU Member States', study for the ECON committee of the European Parliament, November 2015, accessed 14 March 2018,

[http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/563447/IPOL\\_IDA\(2015\)563447\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/563447/IPOL_IDA(2015)563447_EN.pdf)

<sup>6</sup> ICIJ, 'Luxembourg Leaks: Global Companies' Secrets Exposed', website, accessed 14 March 2018, <https://www.icij.org/project/luxembourg-leaks>

<sup>7</sup> ICIJ, 'Luxembourg Leaks: Global Companies' Secrets Exposed', website, accessed 14 March 2018, <https://www.icij.org/project/luxembourg-leaks>

<sup>8</sup> European Commission, 'State aid SA.38944 (2014/C) – Luxembourg Alleged aid to Amazon by way of a tax ruling', 7 October 2014, accessed 14 March 2018, [http://ec.europa.eu/competition/state\\_aid/cases/254685/254685\\_1614265\\_70\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/254685/254685_1614265_70_2.pdf)

<sup>9</sup> European Commission, 'State aid: Commission finds Luxembourg gave illegal tax benefits to Amazon worth around €250 million', 4 October 2017, accessed 14 March 2018, [http://europa.eu/rapid/press-release\\_IP-17-3701\\_en.htm](http://europa.eu/rapid/press-release_IP-17-3701_en.htm)

<sup>10</sup> European Commission, 'Commission Decision of 30.8.2016 On State Aid SA.38373 (2014/C) (ex 2014/NN) (ex 2014/CP) implemented by Ireland to Apple', 30 August 2017, accessed 14 March 2018,

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[http://ec.europa.eu/competition/state\\_aid/cases/253200/253200\\_1851004\\_674\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/253200/253200_1851004_674_2.pdf) As is it noted in the decision, Ireland has referred to the agreements as ‘advance opinions’ rather than ‘tax rulings’. However, in its decision, the European Commission points out that the two notions are the same.

<sup>11</sup> European Commission, ‘State aid: Ireland gave illegal tax benefits to Apple worth up to €13 billion’, 30 August 2016, accessed 14 March 2018, [http://europa.eu/rapid/press-release\\_IP-16-2923\\_en.htm](http://europa.eu/rapid/press-release_IP-16-2923_en.htm)

<sup>12</sup> European Commission, ‘Commission decision of 11.1.2016 on the excess profit exemption state aid scheme SA.37667 (2015/C) (ex 2015/NN) implemented by Belgium’, 11 January 2016, accessed 14 March 2018, [http://ec.europa.eu/competition/state\\_aid/cases/256735/256735\\_1748545\\_185\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/256735/256735_1748545_185_2.pdf)

<sup>13</sup> European Commission, ‘State aid: Commission concludes Belgian "Excess Profit" tax scheme illegal; around €700 million to be recovered from 35 multinational companies’, 11 January 2016, accessed 14 March 2018, [http://europa.eu/rapid/press-release\\_IP-16-42\\_en.htm](http://europa.eu/rapid/press-release_IP-16-42_en.htm)

<sup>14</sup> European Commission, ‘Commission Decision of 21.10.2015 On State Aid SA.38374 (2014/C ex 2014/NN) implemented by the Netherlands to Starbucks’, 21 October 2015, accessed 14 March 2018, [http://ec.europa.eu/competition/state\\_aid/cases/253201/253201\\_1762441\\_575\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/253201/253201_1762441_575_2.pdf)

<sup>15</sup> European Commission, ‘Commission decides selective tax advantages for Fiat in Luxembourg and Starbucks in the Netherlands are illegal under EU state aid rules’, 21 October 2015, accessed 14 March 2018, [http://europa.eu/rapid/press-release\\_IP-15-5880\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5880_en.htm)

<sup>16</sup> European Commission, ‘Commission Decision of 21.10.2015 On State Aid SA.38375 (2014/C ex 2014/NN) which Luxembourg granted to Fiat’, 21 October 2015, accessed 14 March 2018, [http://ec.europa.eu/competition/state\\_aid/cases/253203/253203\\_1757564\\_318\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/253203/253203_1757564_318_2.pdf)

<sup>17</sup> European Commission, ‘Commission decides selective tax advantages for Fiat in Luxembourg and Starbucks in the Netherlands are illegal under EU state aid rules’, 21 October 2015, accessed 14 March 2018, [http://europa.eu/rapid/press-release\\_IP-15-5880\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5880_en.htm)

<sup>18</sup> See European Commission, ‘SA.38375 State aid which Luxembourg granted to Fiat’, website, accessed 14 March 2018, [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38375](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38375) (see under ‘Related court case(s)’); and European Commission, ‘SA.38374 State aid implemented by the Netherlands to Starbucks’, website, accessed 14 March 2018, [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38374](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38374) (see under ‘Related court case(s)’); European Commission, ‘SA.38373 \$ - Aid to Apple’, website, accessed 14 March 2018, [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38373](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38373) (see under ‘Related Court Case(s)’); European Commission, ‘SA.37667 Excess Profit exemption in Belgium – Art. 185§2 b) CIR92’, website, accessed 14 March 2018, [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_37667](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_37667) (see under ‘Related Court Case(s)’); and European Commission, ‘SA.38944 \$ - Aid to Amazon – Luxembourg’, website, accessed 14 March 2018, [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38944](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38944) (see under ‘Related Court Case(s)’)

<sup>19</sup> According to the European Commission, no data was available on the number of unilateral APAs in force in Belgium at the end of 2013. See European Commission, ‘Statistics on APAs in the EU at the End of 2013’, October 2014, accessed 14 March 2018, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/docs/body/final\\_apa\\_statistics\\_2013\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/final_apa_statistics_2013_en.pdf)

<sup>20</sup> See European Commission, ‘Statistics on APAs in the EU at the End of 2016’, 8 March 2018, accessed 14 March 2018, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/2016\\_jptf\\_apa\\_statistics\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/2016_jptf_apa_statistics_en.pdf); European Commission, ‘Statistics on APAs in the EU at the End of 2015’, 20 October 2016, accessed 14 March 2018, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/jtpf0152016enapa.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/jtpf0152016enapa.pdf); European Commission, ‘Statistics on APAs in the EU at the End of 2014’, 22 October 2015, accessed 14 March 2018, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/jtpf0092015apastatistics2014.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf0092015apastatistics2014.pdf); and European Commission, ‘Statistics on APAs in the EU at the End of 2013’, October 2014, accessed 14 March 2018, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/docs/body/final\\_apa\\_statistics\\_2013\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/final_apa_statistics_2013_en.pdf)

<sup>21</sup> See European Commission, ‘Statistics on APAs in the EU at the End of 2016’, 8 March 2018, accessed 14 March 2018, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/2016\\_jptf\\_apa\\_statistics\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/2016_jptf_apa_statistics_en.pdf); European Commission, ‘Statistics on APAs in the EU at the End of 2015’, 20 October 2016, accessed 14 March 2018, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/jtpf0152016enapa.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/jtpf0152016enapa.pdf); European Commission, ‘Statistics on APAs in the EU at the End of 2014’, 22 October 2015, accessed 14 March 2018, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/jtpf0092015apastatistics2014.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf0092015apastatistics2014.pdf); and European Commission, ‘Statistics on APAs in the EU at the End of 2013’, October 2014, accessed 14 March 2018, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/docs/body/final\\_apa\\_statistics\\_2013\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/final_apa_statistics_2013_en.pdf)



European network on  
debt and development

- <sup>22</sup> Belastingdienst, 'Factsheet Rulings', website, updated 19 February 2018, accessed 14 March 2018, <https://belastingdienst-in-beeld.nl/themas/belastingheffing-en-internationale-structuren/factsheet-rulings/>
- <sup>23</sup> Belastingdienst, 'Factsheet Rulings', website, updated 19 February 2018, accessed 14 March 2018, <https://belastingdienst-in-beeld.nl/themas/belastingheffing-en-internationale-structuren/factsheet-rulings/>
- <sup>24</sup> See European Commission, 'Statistics on APAs in the EU at the End of 2016', 8 March 2018, accessed 14 March 2018, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/2016\\_jptf\\_apa\\_statistics\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/2016_jptf_apa_statistics_en.pdf); European Commission, 'Statistics on APAs in the EU at the End of 2015', 20 October 2016, accessed 14 March 2018, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/jtpf0152016enapa.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/jtpf0152016enapa.pdf); European Commission, 'Statistics on APAs in the EU at the End of 2014', 22 October 2015, accessed 14 March 2018, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/jtpf0092015apastatistics2014.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf0092015apastatistics2014.pdf); and European Commission, 'Statistics on APAs in the EU at the End of 2013', October 2014, accessed 14 March 2018, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/docs/body/final\\_apa\\_statistics\\_2013\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/final_apa_statistics_2013_en.pdf)
- <sup>25</sup> See figure 2
- <sup>26</sup> European Commission, 'Commission decision of 11.1.2016 on the excess profit exemption state aid scheme SA.37667 (2015/C) (ex 2015/NN) implemented by Belgium', 11 January 2016, accessed 14 March 2018, [http://ec.europa.eu/competition/state\\_aid/cases/256735/256735\\_1748545\\_185\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/256735/256735_1748545_185_2.pdf)
- <sup>27</sup> European Commission, 'SA.37667 Excess Profit exemption in Belgium – Art. 185(2) b) CIR92', website, accessed 14 March 2018, [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_37667](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_37667) (see under 'Related Court Case(s)')
- <sup>28</sup> AFP, 'Brussels slams seven EU states for 'aggressive' tax policies', 6 March 2018, accessed 14 March 2018, <https://www.afp.com/en/news/23/brussels-slams-seven-eu-states-aggressive-tax-policies-doc-1221we3>
- <sup>29</sup> Margot Williams, Edouard Perrin, Emilia Díaz-Struck, Delphine Reuter, Frédéric Zalac, Harvey Cashore, Lars Bové, Kristof Clerix, Julia Stein, Titus Plattner, Mario Stäuble, Minna Knus-Galán, Matthew Caruana Galizia, Rigoberto Carvajal, Christoph Lütgertand Neil Chenoweth, 'Leaked Documents Expose Global Companies' Secret Tax Deals in Luxembourg', International Consortium of Investigative Journalists, November 2014, <https://www.icij.org/investigations/luxembourg-leaks/leaked-documents-expose-global-companies-secret-tax-deals-luxembourg/>
- <sup>30</sup> European Commission, 'Commission Decision of 21.10.2015 On State Aid SA.38375 (2014/C ex 2014/NN) which Luxembourg granted to Fiat', 21 October 2015, accessed 14 March 2018, [http://ec.europa.eu/competition/state\\_aid/cases/253203/253203\\_1757564\\_318\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/253203/253203_1757564_318_2.pdf)
- <sup>31</sup> European Commission, 'State aid SA.38944 (2014/C) – Luxembourg Alleged aid to Amazon by way of a tax ruling', 7 October 2014, accessed 14 March 2018, [http://ec.europa.eu/competition/state\\_aid/cases/254685/254685\\_1614265\\_70\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/254685/254685_1614265_70_2.pdf)
- <sup>32</sup> See European Commission, 'SA.38375 State aid which Luxembourg granted to Fiat', website, accessed 14 March 2018, [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38375](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38375) (see under 'Related court case(s)'); and European Commission, 'SA.38944 \$ - Aid to Amazon – Luxembourg', website, accessed 14 March 2018, [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38944](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38944) (see under 'Related Court Case(s)')
- <sup>33</sup> European Commission, 'Statistics on APAs in the EU at the End of 2016', 8 March 2018, accessed 14 March 2018, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/2016\\_jptf\\_apa\\_statistics\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/2016_jptf_apa_statistics_en.pdf) It should be noted that bi- or multilateral APAs might have been reported by more than one EU country, and thus be double-counted in the data. Therefore, the total number of bi- or multilateral APAs might be less than 212. Since unilateral APAs only involve one country, the risk of double-counting does not apply to this type of APAs.
- <sup>34</sup> Procter & Gamble involvement in any form of tax avoidance. See Toby Sterling, 'UPDATE 2-Dutch to review 4,000 "advance tax rulings" after P&G blunder', Reuters, 8 November 2017, accessed 14 March 2018, <https://es.reuters.com/article/americasRegulatoryNes/idUKL5N1NE38R>
- <sup>35</sup> Jan Kleinnijenhuis, 'Belastinginspecteur liet Procter & Gamble 676 miljoen dollar doorsluizen', Trouw, 7 November 2017, accessed 14 March 2018, <https://www.trouw.nl/home/belastinginspecteur-liet-procter-gamble-676-miljoen-dollar-doorsluizen-~a06113663/>
- <sup>36</sup> Toby Sterling, 'Dutch to review 4,000 'advance tax rulings' after P&G blunder', Reuters, 8 November 2017, accessed 14 March 2018, <https://www.reuters.com/article/us-paradise-tax-netherlands/dutch-to-review-4000-advance-tax-rulings-after-pg-blunder-idUSKBN1D8191>
- <sup>37</sup> Rijksoverheid, 'Onderzoek wijst uit dat aanpassing afgifte rulings nodig is', 19 February 2018, accessed 14 March 2018, <https://www.rijksoverheid.nl/ministeries/ministerie-van-financien/nieuws/2018/02/19/onderzoek-wijst-uit-dat-aanpassing-afgifte-rulings-nodig-is>



European network on  
debt and development

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<sup>38</sup> European Commission, 'Commission Decision of 21.10.2015 On State Aid SA.38374 (2014/C ex 2014/NN) implemented by the Netherlands to Starbucks', 21 October 2015, accessed 14 March 2018,

[http://ec.europa.eu/competition/state\\_aid/cases/253201/253201\\_1762441\\_575\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/253201/253201_1762441_575_2.pdf)

<sup>39</sup> European Commission, 'SA.38374 State aid implemented by the Netherlands to Starbucks', website, accessed 14 March 2018, [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=3\\_SA\\_38374](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_38374) (see under 'Related court case(s)')

<sup>40</sup> European Commission, 'State aid: Commission opens in-depth investigation into the Netherlands' tax treatment of Inter IKEA', press release, 18 December 2017, accessed 14 March 2018, [http://europa.eu/rapid/press-release\\_IP-17-5343\\_en.htm](http://europa.eu/rapid/press-release_IP-17-5343_en.htm)

<sup>41</sup> See European Commission, 'Statistics on APAs in the EU at the End of 2016', 8 March 2018, accessed 14 March 2018, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/2016\\_jptf\\_apa\\_statistics\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/2016_jptf_apa_statistics_en.pdf) ; European Commission, 'Statistics on APAs in the EU at the End of 2015', 20 October 2016, accessed 14 March 2018,

[https://ec.europa.eu/taxation\\_customs/sites/taxation/files/jtpf0152016enapa.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/jtpf0152016enapa.pdf) ; European Commission, 'Statistics on APAs in the EU at the End of 2014', 22 October 2015, accessed 14 March 2018,

[https://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/jtpf0092015apastatistics2014.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf0092015apastatistics2014.pdf) ; and European Commission, 'Statistics on APAs in the EU at the End of 2013', October 2014, accessed 14 March 2018,

[https://ec.europa.eu/taxation\\_customs/sites/taxation/files/docs/body/final\\_apa\\_statistics\\_2013\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/final_apa_statistics_2013_en.pdf) The UK is not included in the table since it does not record information regarding which countries are affected by the APAs issued in the UK.

<sup>42</sup> UNCTAD, 'World Investment Report 2015: Reforming international investment governance', June 2015, accessed 1 August 2017, [http://unctad.org/en/PublicationsLibrary/wir2015\\_en.pdf](http://unctad.org/en/PublicationsLibrary/wir2015_en.pdf) , p. 184

<sup>43</sup> Dr Robert Dover, Dr Benjamin Ferrett, Daniel Gravino, Professor Erik Jones and Silvia Merler, 'Bringing transparency, coordination and convergence to corporate tax policies in the European Union', study commissioned by the European Parliamentary Research Service, September 2015, accessed 14 March 2018, <http://www.eurodad.org/files/pdf/1546667-survival-of-the-richest-europe-s-role-in-supporting-an-unjust-global-tax-system-2016-1481106817.pdf>

<sup>44</sup> European Parliament, 'Report on the proposal for a directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement (COM(2014)0213 – C7 0147/2014 – 2014/0121(COD))', 12 May 2015, accessed 14 March 2018, <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A8-2015-0158&language=EN>

<sup>45</sup> Official Journal of the European Union, 'Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation', published 18 December 2015, accessed 12 October 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L2376&from=EN>

<sup>46</sup> EPSU, 'Six Reasons Why Tax Inspectors Want Public Country-by-Country Reporting', 31 May 2017, accessed 11 October 2017, <http://www.epsu.org/nl/node/10096>

<sup>47</sup> Official Journal of the European Union, 'Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation ', published 18 December 2015, accessed 12 October 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L2376&from=EN>