



**ECO/510**  
**Combatting tax fraud, tax avoidance and money laundering**

## **OPINION**

European Economic and Social Committee

**Effective and coordinated EU measures to combat tax fraud, tax avoidance, money laundering  
and tax havens**  
(Own-initiative opinion)

Plenary assembly decision	20/02/2020
Legal basis	Rule 32(2) of the Rules of Procedure Own-initiative opinion
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	20/07/2020
Adopted at plenary	18/09/2020
Plenary session No	554
Outcome of vote (for/against/abstentions)	216/2/2

## 1. Conclusions and recommendations

- 1.1 In spite of the efforts made by the EU and many governments and the entry into force of major European directives (Anti-money Laundering and Counter Terrorist Financing Directive – AMLD; Anti-Tax Avoidance Directive – ATAD)<sup>1</sup>, together with the OECD's base erosion and profit shifting (BEPS) programme, the volume of tax fraud, tax evasion and money laundering, as well as tax avoidance, remains very high in proportion to the public finances of the European States.
- 1.2 The EESC proposes launching a European pact to effectively combat tax fraud, evasion and avoidance and money laundering. The EESC calls on the European Commission to promote a political initiative involving national governments and the other European institutions in achieving this goal, fostering the consensus needed for this and involving civil society. Cooperation between Member States should be the main pillar of the pact.
- 1.3 The EESC urges the European institutions and the Member States to provide the financial and human resources required for the effective implementation of existing European legislation and to agree on a commitment to adopt all necessary new legislative and administrative measures to effectively combat tax offences and bad practices, money laundering and the activities of tax havens. This requires permanent evaluation of the outcome of implementing each measure.
- 1.4 The EESC considers the Member States' commitment to putting an end to unfair and damaging forms of tax competition to be essential. This is also reflected in what the earlier EESC opinion on *Taxation – qualified majority voting*<sup>2</sup> has to say on the need to press ahead with the debate on the progressive shift from unanimity to qualified majority voting on tax matters.
- 1.5 The active involvement of civil society is crucial to creating public feeling against tax crime and bad practices and in favour of fair taxation. Its cooperation will help to bring about and apply the pact. The involvement of employers and their organisations is very important for the latter's success. It must be guaranteed that the legislative measures adopted do not have an undue impact on companies that fulfil their tax obligations by burdening them with excessive red tape. Effective and urgent action against tax offences and bad practices will generate additional public financial resources needed to help fund pandemic recovery plans, the green and digital transformation of the economy and the construction of the European Pillar of Social Rights.
- 1.6 The digitalisation of the economy creates new challenges for tax authorities, as it can give rise to new methods of aggressive tax planning, financial crimes and bad practices. However, the digitalisation of the economy, through more efficient administrative cooperation and data exchange, also creates new opportunities for tax authorities to combat such practices.
- 1.7 Achieving better results in combating these crimes and bad practices requires closer political, administrative, police and judicial cooperation both directly between the Member States and

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<sup>1</sup> From here onwards the acronyms are used in English.

<sup>2</sup> [OJ C 353, 18.10.2019, p. 90.](#)

between them and the EU, a more robust legal basis for this cooperation and adequate financial and human resources for the financial intelligence units (FIU), tax authorities, European supervisory bodies and other actors in this fight.

- 1.8 The starting point to make measures more effective must be a shared vision of these offences and bad practices and how they tie in with economic and financial crime and political corruption, together with the necessary role that tax havens play in facilitating and concealing them. Eradicating criminal activity by tax havens should be a priority for the EU.
- 1.9 While such a policy is necessary under all circumstances, the EESC is convinced that in the situation created by the COVID-19 (coronavirus) pandemic, it is crucial that it become a political and ethical priority for the Union, national governments and European civil society. At a time when such sizeable public financial resources are needed to tackle the health, economic and social consequences of the pandemic, it is intolerable that a significant amount of these resources should be unlawfully channelled towards the private benefit of a small number of people, to the direct detriment of the vast majority of workers, businesses, self-employed persons, employees and pensioners who comply with their tax obligations.
- 1.10 The EESC supports the new action plan for a comprehensive Union policy on preventing money laundering and terrorist financing<sup>3</sup> presented by the European Commission on 7 May 2020. It believes that it should be implemented as a matter of urgency. The EESC backs the proposed measures to ensure effective implementation of the existing legal framework for combating money laundering and terrorism financing, the establishment of a single EU legal code, the creation of a European supervisory body and the other pillars out in the plan. The EU and Member States should maintain common positions in international forums such as the Financial Action Task Force (FATF, housed at the OECD), G20 and the UN. The EESC shares the Commission's view that the measures taken should take account of European data protection legislation and ECJ case law on the matter and ensure that they entail the smallest possible administrative and financial burden for the Member States and the obliged entities.
- 1.11 The EESC calls on the European Commission to assess the current list of non-cooperative jurisdictions and to consider the possibility of establishing additional criteria to ensure that all tax havens are included in that list. It also calls for sufficient measures to be put in place to prevent businesses or individuals from carrying out unjustified transactions with their financial institutions.
- 1.12 The EESC welcomes the introduction of tax indicators into the European Semester, appeals to the Member States to comply with the relevant provisions in the Country-Specific Recommendations (CSR) and proposes that the European Commission also include a procedure for evaluating the efficiency, equity, sufficiency and proper functioning of tax systems in the Semester.
- 1.13 The EESC calls for European directives to cover works of art and other high-value assets, in particular those placed in free ports and customs warehouses; for the progressive abolition of the

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<sup>3</sup> [C\(2020\) 2800 final](#).

schemes set up in certain Member States for citizenship or residence in exchange for investment; and for the lack of transparency involved in bearer shares to be brought to an end.

- 1.14 The EESC considers that the provisions of the fifth Anti Money Laundering Directive (AMLD) on a centralised and public register of beneficial owners of companies and trusts should be applied to tax evasion. It further calls for appropriate procedures to be put in place to make it easier for SMEs to comply with registration requirements.
- 1.15 The EESC supports a global solution on the corporate taxation of companies with a significant digital presence under the aegis of the OECD's work, but if a solution is not reached by the end of 2020, the EU should resume its initiative for taxing large digitalised companies.
- 1.16 The ATAD should be revised to include rules on tax treatment in relation to low-tax jurisdictions and on the repatriation of dividends or capital gains that have not been taxed abroad.
- 1.17 National FIUs should be supported financially and technically and close cooperation should be promoted between them and between the tax authorities, as well as between national police forces and Europol, in the prosecution of tax and financial offences.
- 1.18 The EESC calls on the Commission to carry out a study on the role of "letterbox companies" in tax fraud, evasion and avoidance as well as money laundering and, in the light of its conclusions, to amend the ATAD, the Capital Requirements Directive and the Anti Money Laundering Directive in order to prevent offences being carried out and bad practices being facilitated through these directives.
- 1.19 The EESC calls on the Commission and the Member States to explore the concept of minimum effective taxation of corporate profits, and its possible application.
- 1.20 The EESC proposes that EU trade or economic agreements include, in keeping with WTO principles and rules, a chapter containing clauses against tax offences, money laundering and aggressive tax planning and for cooperation between tax authorities.

## **2. Background**

- 2.1 The scale of tax fraud, tax evasion, tax avoidance and money laundering in Europe and across the world is very significant in macroeconomic terms. It clearly has a transnational dimension. Tax havens play a key role in enabling these practices by holding and channelling capital from large companies and personal fortunes that has evaded and avoided taxation, as well as money originating from political and economic corruption and organisations forming part of the criminal economy.
- 2.2 There is no universally accepted definition of a tax haven, but in all cases, there is no or very little taxation, and opacity regarding customers and flows is the norm. They are identified by means of lists that define an uncooperative nature as the refusal to provide information to tax

authorities and cooperate with judicial authorities. The recognised lists are that of the OECD<sup>4</sup> and the EU's two lists: relating to money laundering and terrorist financing, and on tax evasion and avoidance<sup>5</sup>. A monograph in *F&D* (IMF) estimates the private wealth hidden away in offshore financial centres at between USD 7 and 8.7 trillion<sup>6</sup> (between 8% and 10% of the world's GDP).

- 2.3 The IMF estimates that tax evasion costs governments around USD 3 trillion per year<sup>7</sup>. According to the European Parliament (EP), the figure comes to EUR 825 billion in the EU<sup>8</sup>, and the VAT gap – most of which is due to fraud – stands at around EUR 147 billion a year, EUR 50 billion of which is from cross-border "carousel fraud"<sup>9</sup>.
- 2.4 Tax avoidance does not always involve a violation of the letter of the law, but it certainly does of the spirit. Tax havens receive around USD 600 billion a year due to corporate tax avoidance<sup>10</sup>. The EU loses between EUR 160 and 190 billion per year<sup>11</sup>. Tax avoidance through six Member States results in tax revenue losses of EUR 42.8 billion for the other twenty-two<sup>12</sup>. *F&D* (IMF) claims that 40% of global foreign direct investment (FDI) – some USD 15 trillion – is channelled to letterbox companies (companies with no economic activity), frequently in the form of holdings that pool operating subsidiaries. Most of them are located in five European countries<sup>13</sup>.
- 2.5 According to the UN, money laundering accounts for between 2% and 5% of the world's GDP<sup>14</sup>. Recent cases, such as those of Danske Bank (with an initial estimate of EUR 200 billion)<sup>15</sup> and Swedbank (EUR 37 billion)<sup>16</sup> reveal the weaknesses of the anti-money laundering system, despite the directives in force and the work of supervisory authorities.
- 2.6 There are money laundering channels other than the financial sector: art, diamond and precious metal markets, free ports, customs warehouses and special economic zones, etc. Rapid

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4 [The FATF's High-Risk Jurisdictions](#) contains only two states (North Korea and Iran). [The FATF's Jurisdictions under Increased Monitoring](#) includes 18 countries. Both were updated on 21 February 2020.

5 The list set out in the [Commission Delegated Regulation of 7 May 2020](#) contains 20 high-risk territories in relation to money laundering and terrorist financing. The [revised list of non-cooperative jurisdictions](#) concerning evasion and avoidance contains 12 jurisdictions, in addition to a further 20 which are subject to surveillance.

6 Lipton, D, *Shining a Light*, p. 4; and Shaxson, N, *Tackling Tax Havens*, p.7, quoting Zucman, G. (2017). IMF, *F&D*, September 2019.

7 Bhatt, G.: *Editor's Letter*. IMF. Ibidem, p.2.

8 *European Parliament resolution of 26 March 2019 on financial crimes, tax evasion and tax avoidance*, point 24.

9 EP, Ibid, points 142 and 143.

10 Shaxson, N. *Tackling Tax Havens*. IMF, *Ibid*, p. 7.

11 EP, Ibid, point 19.

12 EP, Ibid, point.

13 Damgaard, J., Elkjaer, T. Johannesen, N. *The Rise of Phantom Investments*, pp 11-13. IMF, *F&D*, September 2019.

14 [UN: UNODC Money-Laundering and Globalization](#).

15 EP, Ibid, points 236 and 237.

16 EP, Ibid, point 235. Financial Times, 23 March 2020.

technological developments are providing new channels in the form of virtual assets and blockchain. The same applies to methods of evasion and avoidance: dividend stripping and coupon washing through *cum-ex* transactions (EUR 55.2 billion), aggressive tax planning, secret agreements between States and multinational companies that substantially reduce their tax obligations or schemes to grant citizenship or residence to foreign nationals in exchange for investment. E-commerce, the platform economy and the digital economy in general create new threats that could facilitate tax offences and avoidance, as well as providing new opportunities for tracing and supervision.

2.7 The Juncker Commission worked very hard to combat tax offences and avoidance: 26 legislative initiatives and 57 initiatives of all types. Two anti-money laundering and counter-terrorist financing directives stand out in particular: the fourth and fifth Anti Money Laundering Directive (2015 and 2018). The fifth Directive, whose implementation was completed in January 2020, improved the identification of holders and owners, exchanges of information and cooperation between FIUs, extended the scope of obliged entities and introduced monitoring of virtual currencies. The practical results are unsatisfactory: there are still many shortcomings and gaps, although the Commission is highly active within the scope of its limited powers (2019 assessment)<sup>17</sup>. Very recently, the European Court of Auditors launched an audit to assess the effectiveness of anti-money laundering measures in the banking sector<sup>18</sup> and the European Commission referred three Member States to the Court of Justice of the European Union (ECJ) for failing to fully implement the 4th Anti Money Laundering Directive<sup>19</sup>.

2.8 On 7 May 2020, the European Commission presented a new action plan for a comprehensive Union policy on preventing money laundering and terrorist financing<sup>20</sup> and a Delegated Regulation<sup>21</sup> with the list of countries and jurisdictions that are not working together to achieve these ends. Based on the assessment of the divergences in the way the existing legislative framework is applied and of the "serious weaknesses in the enforcement of the rules", and expressing a desire for "zero tolerance for illicit money within the European Union", the plan is structured around six pillars:

- *ensuring the effective implementation of the existing framework, starting with the full transposition of the AML directives;*
- *establishing a single EU rule book by means of an amended directive and a regulation;*
- *establishing procedures and creating an EU-level supervisory body by means of a legislative proposal;*
- *establishing a support and cooperation mechanism for FIUs and interconnecting national central registers of bank accounts;*
- *enforcing criminal law provisions and improving the exchange of information;*

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<sup>17</sup> COM(2019) [360 final](#), [370 final](#), [371 final](#) and [372 final](#) of 24 July 2019. Of particular interest: COM(2019) [373 final](#) – *Report on the assessment of recent alleged money laundering cases involving EU credit institutions.*

<sup>18</sup> 11 June 2020: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=53979>

<sup>19</sup> 2 July 2020: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_1228](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1228)

<sup>20</sup> [C\(2020\) 2800](#).

<sup>21</sup> [Commission Delegated Regulation \(EU\) 2020/855 of 7 May 2020](#).

– *strengthening the international dimension of the EU framework.*

Four legislative proposals will be presented in the first quarter of 2021 to develop these pillars.

- 2.9 The second main area where the European Commission has taken action is tax avoidance, in relation to initiatives on digital taxation and the corporate tax base. Its strategy has targeted "effective taxation" that would make multinationals pay the appropriate amount of tax where they generate value, in keeping with the OECD's BEPS action plan, in particular by limiting the erosion of the corporate tax base through deductions from interest, royalties and other financial benefits. The main rule for this has been the ATAD (2016), amended in 2017 to include hybrid mismatches (ATAD 2)<sup>22</sup>. Its results cannot yet be assessed. There has also been legislation to facilitate the resolution of disputes arising from double taxation<sup>23</sup>. A new Regulation on controls on cash entering or leaving the EU was enacted in 2018<sup>24</sup>.
- 2.10 The European Commission has taken account of tax avoidance in its legislative initiatives on digital taxation and on the corporate tax base. In 2018, it presented two directives: one relating to the taxation of companies with a significant digital presence and another on a tax on the revenues of large digital companies. In 2016, it proposed a further two on the common corporate tax base – CCTB – and the common consolidated corporate tax base – CCCTB. The latter is of great significance in combating tax avoidance. Parallel discussions at the OECD and opposition in some Member States have delayed the adoption of these Directives. To address this situation, the Commission presented a communication (2019), which proposes to launch a debate on adopting decisions on tax matters by qualified majority.
- 2.11 Cooperation between the tax authorities and other Member State institutions through the automatic exchange of information (AEOI<sup>25</sup>) on tax, and transparency, are key. As many as six directives on administrative cooperation (DACs) have been adopted. From the first (2011/12/EU) to the last ((EU) 2018/822), all of them have extended the obligation to disclose the names of the beneficial holders of accounts, financial assets and transactions, and all products, including insurance and dividends. Progress has been made with regard to requirements of AEOI on tax rulings and financial information relating to large companies, by country (country-by-country reporting, CBCR<sup>26</sup>). Directive 2019/1153 regulates the use of financial and other information for the criminal prosecution of offences.
- 2.12 The Juncker Commission tackled the secret agreements between some Member States and multinational companies by means of which these companies hardly pay any tax in these countries. It also introduced tax indicators into the European Semester. The latest CSR indicate that in some Member States the implementation of legislation is unsatisfactory with regard to

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<sup>22</sup> Directive (EU) 2016/1164 (ATAD) entered into force on 1 January 2020 in Member States that did not have their own legislation (in 2024 in other Member States). Directive (EU) 2017/952 (ATAD 2) will enter into force on 1 January 2022.

<sup>23</sup> Directive (EU) 2017/1852.

<sup>24</sup> Regulation (EU) 2018/1672.

<sup>25</sup> Automatic exchange of information – AEOI.

<sup>26</sup> Country by country reporting – CBCR.

aggressive tax planning or the identification of beneficial owners. There is clear room for improvement in cooperation between the Member States. Despite some progress, there is no widespread reduction in the levels of fraud, money laundering and avoidance, which in some cases – such as flows of capital to letterbox companies – are even increasing.

- 2.13 In the last five years, the EESC has adopted 25 opinions on these issues. The EESC has generally supported the measures proposed by the Commission. Sometimes, it went further in its requirements, in line with the European Parliament's position.

### **3. General observations and recommendations**

- 3.1 The COVID-19 pandemic crisis – the most serious that Europe has faced since the end of the Second World War – must be at the heart of any economic and social considerations and proposals. With regard to this opinion, it seems clear that a drastic reduction in the economic volume of tax offences and avoidance would give States, and the EU itself, some of the financial resources required to deal with the health, economic and social impact of the pandemic. The EESC believes that involving the EU institutions, national governments and civil society in the adoption of all the measures needed to take long-lasting and effective action against tax offences and avoidance is now, more than ever, an undeniable political and moral imperative. It is also urgent.
- 3.2 The main aim of the present opinion is to provide an overview and build on the views expressed in previous EESC opinions so as to formulate proposals on how to make the fight against these offences more effective. Attention needs to be paid to the links between the various tax offences and how they are connected to tax avoidance, by means of shared channels that flow towards tax havens.
- 3.3 The EESC acknowledges the intention of the Commission and the European Parliament to promote initiatives against tax crimes, tax evasion and fiscal dumping, and regrets that some of the main initiatives, such as those affecting corporate tax, VAT fraud and aggressive tax planning, are being blocked or may be pared back by some Member States and by the lack of cooperation between them.
- 3.4 The EESC proposes launching a European pact to effectively combat tax fraud, evasion and avoidance and money laundering. The EESC calls on the Commission to promote a political initiative involving national governments and the other European institutions in achieving this pact. Cooperation between the Member States must be one of the pillars of the pact.
- 3.5 The effective implementation of the pact should give the EU and its Member States additional resources to those generated by growth to fund their plans for the recovery from the pandemic, the green and digital transformation of their economies, and the construction of a sound European Pillar of Social Rights. Taking respect for the tax sovereignty of the Member States as a basis, the EESC calls on the political leaders of the EU and on national governments – while demonstrating the responsibility and generosity required by our current tragic circumstances – to reach an agreement on the details of the pact that the EESC has proposed. In the EESC's

view, the development of the consensus to achieve the European Fiscal Pact against tax crime, tax avoidance, money laundering and terrorist financing should be based on:

- a) the commitment of the Member States and the European institutions to take all necessary additional legislative and administrative measures to effectively combat these offences and bad practices;
- b) bolstering the political will for cooperation between the Member States and with EU institutions, leading to the introduction of effective administrative, police and judicial cooperation procedures to achieve the pact's objectives;
- c) the Member States' commitment to ending unfair tax competition and unblocking the relevant directives related to the pact's objectives; and
- d) the involvement of civil society organisations in the pact.

3.6 The involvement of civil society organisations in such an agreement and in creating greater social awareness of tax issues is key. EU citizens are very keen for there to be sufficient resources for certain high-quality public services – particularly those of health and research at the moment – and adequate social protection systems. Companies that meet their tax obligations – the majority – want to see an end to tax evasion and avoidance by certain companies, which creates unfair competition with them.

3.7 The EESC agrees with the European Parliament's belief that "fair taxation and the determined fight against tax fraud, tax evasion, aggressive tax planning and money laundering have a central role to play in shaping a fair society and a strong economy while defending the social contract and the rule of law"<sup>27</sup>. Therefore, it is concerned by the extent of the tax gap that these crimes and bad practices generate in tax revenues, as well as by recent tax developments that have shifted the tax incidence to labour income and from the financial sector to the real economy, where SMEs are subject to greater tax pressure than are multinationals.

3.8 The introduction of tax indicators in the European Semester country reports marked a step forward. However, the assessment of its results shows that the functioning of FIUs and AEOIs, and the cooperation between the tax authorities are unsatisfactory in some EU Member States, in terms of both money laundering and tax evasion and avoidance. The EESC suggests to the Commission that the tax indicators be given the same status as the other indicators in the European Semester and that a procedure be established to assess the efficiency, equity, sufficiency and proper functioning of tax systems.

3.9 The EESC supports the new Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing and thinks it should be implemented urgently. It supports the creation of a European supervisory body that ensures maximum cooperation between Member States' tax authorities and FIUs and that holds direct responsibility for monitoring and investigating obliged entities from all areas, and has sufficient human and technological resources to adapt to the continuous developments in crime. It calls on the Commission to consider, as the most appropriate formula for this, the creation of a European Agency to combat fiscal, economic and financial crime and money laundering and to monitor

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<sup>27</sup> EP, *Ibid*, point.

compliance with legislation and the effectiveness of administrative actions. The EESC thinks the EU needs to voice a single opinion in international forums such as the FATF (OECD), the G20 and the UN. The EESC believes that the Commission should help Member States by setting up training mechanisms such as a European tax academy, as proposed in its opinion on the *Fiscalis* programme (10/2018)<sup>28</sup>.

- 3.10 The anti-money laundering legal framework must allow access to information relating to account holders, and owners of companies and trusts, while complying with data protection rules and the relevant case-law of the ECJ. Professionals who are required to report suspected money laundering practices that they detect must be protected. The EESC is pleased that the action plan proposes a new whistle-blower protection system and requests that it be set up earlier than December 2021. The EESC shares the Commission's view on the need to ensure that the measures adopted entail the smallest possible additional administrative and financial burden for the Member States and the obliged entities.
- 3.11 The measures for supervising third countries included in the fifth Anti Money Laundering Directive will only be effective with a realistic list of high-risk countries. The EESC advocates a clear and transparent methodology and shorter evaluation periods. It believes that the new list, which only includes 20 countries and territories, should be approved as soon as possible and should include some other countries, such as those that have played a leading part in recent scandals. It regrets the obstacles put in place by some EU countries preventing access to information on transactions in tax havens.
- 3.12 The Ecofin list (2017) of tax havens with regard to tax evasion and avoidance was updated in February 2020. Unlike other lists, this one has the advantage of including both those that do not accept AEOIs and those offering companies special tax systems. The fact that the European list rules out the existence of EU tax havens on principle is open to criticism. However, in the European Semester CSRs, the Commission pointed to certain Member States as undermining the tax bases of their EU partners. Although the threat of inclusion in the blacklist acts as a deterrent by affecting reputation, the sanctions are insufficiently effective.
- 3.13 To ensure that the jurisdictions in the list undertake the required reforms, the EESC proposes that, after the next assessment, the Regulation be reformed to prohibit those that have not done so from carrying out financial transactions with the EU. The measures also need to affect companies avoiding paying tax. One effective measure would be to refuse to grant COVID-19 public aid to companies that carry out unjustified transactions with jurisdictions on the list, as has been approved by some Member States. The EESC calls for the possibility of excluding these companies from public procurement to be examined.
- 3.14 Multinationals operate globally and under common management, but tax rules are adopted at national level without taking account of how they interact with the systems of other countries, in cases when the tax competition with them is not fair. Certain jurisdictions adopt tax systems that undermine the tax bases of other territories. This, together with a widespread fall in rates, has caused countries to engage in a race to the bottom on tax in order to attract FDI, and has given

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<sup>28</sup> EESC opinion on *Fiscalis 2021-2027*, ECO/470 [OJ C 62, 15.2.2019, p. 118](#).

rise to numerous loopholes and legal imbalances. Many multinationals restructure their businesses in order to significantly reduce their tax bill. To this end, they resort to certain intra-group operations to artificially transfer a large part of expenditure to medium or high-tax territories, while profits are declared in low or zero-tax jurisdictions, where they have reached secret tax rulings with governments. The transfer of profits by large companies in the digital economy is particularly easy in this environment. The EESC hopes that applying BEPS standards and the ATAD will open the door to changing this situation. It is too early to evaluate the results. If these measures are to be effective, cooperation between all the Member States – the main objective of the European pact – is essential.

- 3.15 The EU is vulnerable to tax avoidance<sup>29</sup>. Mobility of capital, goods and people on the internal market contrasts with a lack of coordination on tax policies. Following the crisis in 2008, progress in economic governance focused on supervising expenditure. The situation has changed in the last few years, but coordination of fiscal policies remains insufficient. The introduction of tax indicators in the European Semester is a step forward that has served to highlight the harmful nature of some Member States' tax systems.
- 3.16 In 2009, the G20 launched a process of cooperation in order to tackle tax evasion and avoidance. The OECD approved a new global standard for the exchange of information – the Common Reporting Standard (CRS) – based on AEOI. Since January 2018, most jurisdictions in the international community have committed to implementing it. An overall assessment of compliance is pending.
- 3.17 In the EU, AEOI is regulated by the DAC, which has been reformed several times to bring it into line with the CRS. The DAC has extended the obligation of AEOI to natural and legal persons and to the main types of revenues, but there are gaps that need to be addressed. The issue of information on the beneficial owner of assets and funds and of opaque intermediary vehicles (certain trusts, letterbox companies, foundations, etc.) remains unresolved, as the "Panama Papers" scandal showed. The same goes for the anonymity of "bearer shares", which have no publicly-known owner, and are still permitted in certain countries. The DAC's scope should be extended to works of art and other high-value assets located in free ports and customs warehouses. The issue of citizenship or residence schemes offered by 19 Member States in exchange for investment, and which in many cases are used for tax offences, should also be resolved.
- 3.18 The OECD's BEPS Action Plan is the global initiative to combat tax base erosion and profit shifting. The progress reports for each of the 15 actions it sets out have a different legal nature. Some are best practices and others have the status of minimum standards, with the ability to oblige States to incorporate their content into company law. Some key issues, such as the taxation of the digitalised economy or the distribution of taxing rights by country, are pending resolution at global level. Some countries and civil society organisations have criticised the BEPS process and called for the reform of the international tax architecture to be transferred to the UN's Committee of Experts on International Cooperation in Tax Matters. The EESC is of

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<sup>29</sup> Cobham A. and Garcia-Bernardo J, Time for the EU to close its own tax havens, Tax Justice Network, 4 April 2020.

the view that the OECD has to complete its work and work alongside the UN Committee in order for its conclusions to be shared and rolled out.

- 3.19 The ATAD is the centrepiece of the EU's anti-avoidance tax strategy. They ensure that the Member States implement the BEPS reports in a coordinated way and strengthen their legal status by making compliance subject to CJEU oversight. In some cases, their anti-abuse rules go further than BEPS, as is the case for "exit taxes", the rules on "controlled foreign companies", anti-hybrid rules and the establishment of an anti-abuse general clause. However, investment clauses were not included due to the opposition of some countries, even though they were advocated by the Commission and a majority of Member States.
- 3.20 The European Commission's investigations into secret tax agreements signed by some large multinationals and the governments of some EU Member States highlighted the significance of the facilitated tax avoidance arrangements: tax rates ranging from 0.05% to 2% on profits transferred from other European countries. In response, the EU reformed the DAC to make mandatory the automatic communication of any cross-border tax ruling signed by a Member State.
- 3.21 A more recent reform of the DAC extended the automatic exchange of basic information on large enterprises<sup>30</sup>, on a country-by-country basis (CBCR<sup>31</sup>), following the requirements of BEPS Action 13. However, public access to this information is still not permitted. The European Commission has proposed a reform of the Accounting Directive 2013/34 to allow for the publication of the Country-By-Country Reports. In the EESC's view this should apply, at least, to companies receiving public aid.
- 3.22 One very important proposal by the Commission in the area of business taxation is its proposal to harmonise the corporate tax base. In its first phase – CCTB – the tax base would be calculated on the basis of common rules. In the second – CCCTB – the profits and losses that individual subsidiaries of a company or multinational group have in each Member State would be consolidated across the EU. The resulting net balance would be split between the different countries in which the company was active, with taxation in each one based on a predetermined formula (assets, sales and employment). There is a hope that with this consolidation, a large part of aggressive tax planning operations would cease. The EESC agrees that taxation should be based on a weighted formula that takes into account the location of sales, employment and assets. The value of intellectual property rights, data and other intangible assets must be rigorously assessed.
- 3.23 According to the Commission and the OECD, the difficulty of existing tax rules capturing revenues from new business models in the digital economy has in different situations and countries led to an under-taxation of digital companies compared to traditional businesses. The European Commission adopted two proposals (in March 2018) for directives for the taxation of

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<sup>30</sup> The locations of its employees, sales, declared profits and taxes paid.

<sup>31</sup> *Country by country reporting* – CBCR.

the digital economy<sup>32</sup>, in line with the OECD work to be completed by the end of 2020; one with an interim solution and the other with the definitive solution. The interim solution sets a 3% rate on sales of digital services by large companies (and not on profits or where value is generated). It is blocked in the Council. The Commission now supports a global solution on the corporate taxation of companies under the aegis of the OECD's work, but if a solution is not reached by the end of 2020, it will resume its initiative for taxing large digitalised companies.

- 3.24 Both the European Commission and the EESC<sup>33</sup> have expressed their position on the need to launch a debate on the necessary conditions for a progressive shift from unanimity to qualified majority voting on tax matters. The time limits for this change may be shorter or longer depending on the Member States' sensitivity to the tax area on which action is to be taken.
- 3.25 The EESC believes that the huge challenges facing the EU and all of its Member States because of the COVID-19 pandemic are incompatible with any lax approach with regard to crimes that undermine economic growth and public finances. Similarly, it argues that cooperation and solidarity between the Member States, the EU institutions and sections of European civil society need to be strengthened.

#### 4. Specific observations and recommendations

- 4.1 The EESC recommends extending the solution set out in the 5th Anti-Money Laundering Directive to the field of tax evasion, i.e. to oblige countries to establish a centralised and public register of beneficial owners of companies and trusts. A proper procedure should also be established to identify the beneficial owners who are behind companies based outside the EU. All such registers must operate properly and proportionately in order to facilitate the work of businesses that must comply with requirements. This applies in particular to SMEs, which should be offered support services.
- 4.2 The need to identify the beneficial owners of all companies and trusts should be expanded to identifying the holders of bearer shares. The EESC calls on the Commission to examine the possibility of establishing a procedure to allow this, and, if it is not possible, to ban this practice at EU level.
- 4.3 The remaining gaps in the text of the DAC must be closed in order to extend the AEOI to works of art and other high-value assets situated in free ports, customs warehouses and special economic zones.
- 4.4 The Member States should be urged to phase out citizenship or residence schemes in exchange for investment that facilitate tax crimes. This is the position of the European Parliament and of the EESC, in its opinion SOC/618<sup>34</sup>. For as long as such schemes continue to exist, the

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32 [COM\(2018\) 147 final](#), Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence; and [COM\(2018\) 148 final](#), Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services.

33 [COM\(2019\) 8 final](#), [Towards a more efficient and democratic decision making in EU tax policy](#).

34 EESC opinion on *Investor citizenship and residence schemes in the European Union*, SOC/618, [OJ C 47, 11.2.2020, p. 81](#).

necessary supervisory measures should be adopted to ensure that investors comply with their tax obligations.

- 4.5 Measures agreed within the OECD and the Integrated Framework on Trade-Related Assistance should be introduced with regard to the allocation of tax revenue to market jurisdictions such as India and China. The ATAD must be revised to include rules on the fiscal treatment of low-tax jurisdictions, in particular the repatriation of dividends or capital gains from subsidiaries abroad, if they have not been taxed at a minimum level in another country.
- 4.6 In accordance with the request included in the March 2019 European Parliament resolution<sup>35</sup>, the EESC calls on the Commission and the Member States to explore the concept of minimum effective taxation of corporate profits, and its possible application.
- 4.7 Cooperation between Member State tax authorities and supervisory bodies should be stepped up, particularly in the area of tax offences and money laundering, and more robust cooperation between Europol and national police forces should also be promoted.
- 4.8 The national FIUs should be supported financially and technically to enable them to carry out their tasks effectively.
- 4.9 The huge amount of capital flowing through letterbox companies based in the EU requires a strong response from its policy-makers. The EESC calls on the Commission to carry out a study on the role of letterbox companies in tax fraud, evasion and avoidance (following the application of ATAD 1 and 2) as well as money laundering and, in the light of its conclusions, to take all necessary measures to prevent such crimes and bad practices from being carried out through this type of company. The ATAD, the Capital Requirements Directive and the Anti Money Laundering Directive should be amended, if necessary.
- 4.10 The EESC proposes that in the forthcoming EU trade, investment or economic partnership agreements, or in the review of existing ones, a tax chapter should be envisaged, in compliance with WTO principles and rules, including the results of the BEPS/OECD programme, as well as clauses on tackling tax fraud and evasion, aggressive tax planning and money laundering, and cooperation between tax administrations.

Brussels, 18 September 2020

Luca JAHIER

The president of the European Economic and Social Committee

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<sup>35</sup> EP, *Ibid*, points 78 to 85.