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TEXTS ADOPTED

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**P8\_TA-PROV(2019)0240**

**Report on financial crimes, tax evasion and tax avoidance**

**European Parliament resolution of 26 March 2019 on financial crimes, tax evasion and tax avoidance (2018/2121(INI))**

*The European Parliament,*

- having regard to Articles 4 and 13 of the Treaty on European Union (TEU),
- having regard to Articles 107, 108, 113, 115 and 116 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to its decision of 1 March 2018 on setting up a special committee on financial crimes, tax evasion and tax avoidance (TAX3), and defining its responsibilities, numerical strength and term of office<sup>1</sup>,
- having regard to its TAXE committee resolution of 25 November 2015<sup>2</sup> and its TAX2 committee resolution of 6 July 2016<sup>3</sup> on tax rulings and other measures similar in nature or effect,
- having regard to its resolution of 16 December 2015 with recommendations to the Commission on bringing transparency, coordination and convergence to corporate tax policies in the Union<sup>4</sup>,
- having regard to the results of the Committee of Inquiry into money laundering, tax avoidance and tax evasion, which were submitted to the Council and the Commission on 13 December 2017<sup>5</sup>,

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<sup>1</sup> Decision of 1 March 2018 on setting up a special committee on financial crimes, tax evasion and tax avoidance (TAX3), and defining its responsibilities, numerical strength and term of office, Texts adopted, P8\_TA(2018)0048.

<sup>2</sup> Resolution of 25 November 2015 on tax rulings and other measures similar in nature or effect, OJ C 366, 27.10.2017, p. 51.

<sup>3</sup> Resolution of 6 July 2016 on tax rulings and other measures similar in nature or effect, OJ C 101, 16.3.2018, p. 79.

<sup>4</sup> OJ C 399, 24.11.2017, p. 74.

<sup>5</sup> Recommendation of 13 December 2017 to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion, OJ C 369, 11.10.2018, p. 132.

- having regard to the Commission’s follow-up to each of the above-mentioned Parliament resolutions,<sup>1</sup>
- having regard to the numerous revelations by investigative journalists, such as the LuxLeaks, the Panama Papers, the Paradise Papers and, more recently, the cum-ex scandals, as well as the money laundering cases involving, in particular, banks in Denmark, Estonia, Germany, Latvia, the Netherlands and the United Kingdom,
- having regard to its resolution of 29 November 2018 on the cum-ex scandal: financial crime and loopholes in the current legal framework<sup>2</sup>,
- having regard to its resolution of 19 April 2018 on protection of investigative journalists in Europe: the case of Slovak journalist Ján Kuciak and Martina Kušnírová<sup>3</sup>,
- having regard to the studies prepared by the European Parliamentary Research Service on ‘Citizenship by investment (CBI) and residency by investment (RBI) schemes in the EU: state of play, issues and impacts’, ‘Money laundering and tax evasion risks in free ports and customs warehouses’ and ‘An overview of shell companies in the European Union’<sup>4</sup>,
- having regard to the study on ‘VAT fraud: economic impact, challenges and policy issues’<sup>5</sup>, the study on ‘Cryptocurrencies and blockchain – Legal context and implications for financial crime, money laundering and tax evasion’ and the study on the ‘Impact of Digitalisation on International Tax Matters’<sup>6</sup>,
- having regard to the Commission studies on ‘aggressive tax planning indicators’<sup>7</sup>,

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<sup>1</sup> The joint follow-up of 16 March 2016 on bringing transparency, coordination and convergence to corporate tax policies in the Union and TAXE 1 resolutions, the follow-up of 16 November 2016 to the TAXE 2 resolution and the follow-up to the PANA resolution of April 2018.

<sup>2</sup> Texts adopted, P8\_TA(2018)0475.

<sup>3</sup> Texts adopted, P8\_TA(2018)0183.

<sup>4</sup> Scherrer A. and Thirion E., Citizenship by Investment (CBI) and Residency by Investment (RBI) schemes in the EU, EPRS, PE 627.128, European Parliament, October 2018; Korver R., Money laundering and tax evasion risks in free ports, EPRS, PE 627.114, European Parliament, October 2018 and Kiendl Kristo I. and Thirion E., An overview of shell companies in the European Union, EPRS, PE 627.129, European Parliament, October 2018.

<sup>5</sup> Lamensch M. and Ceci, E., VAT fraud: Economic impact, challenges and policy issues, European Parliament, Directorate-General for Internal Policies, Policy Department A – Economic, Scientific and Quality of Life Policies, 15 October 2018.

<sup>6</sup> Houben R. and Snyers A., Cryptocurrencies and blockchain, European Parliament, Directorate-General for Internal Policies, Policy Department A – Economic, Scientific and Quality of Life Policies, 5 July 2018 and Hadzhieva E., Impact of Digitalisation on International Tax Matters, European Parliament, Directorate-General for Internal Policies, Policy Department A – Economic, Scientific and Quality of Life Policies, 15 February 2019.

<sup>7</sup> ‘Study on Structures of Aggressive Tax Planning and Indicators – Final Report’ (Taxation paper No 61, 27 January 2016), ‘The Impact of Tax Planning on Forward-Looking Effective Tax Rates’ (Taxation paper No 64, 25 October 2016) and

- having regard to the evidence collected by the TAX3 committee in its 34 hearings with experts or exchanges of views with Commissioners and Ministers and during the missions to Washington, Riga, the Isle of Man, Estonia and Denmark,
- having regard to the modernised and more robust corporate tax framework introduced during this legislative term, notably the Anti-Tax Avoidance Directives (ATAD I<sup>1</sup> and ATAD II<sup>2</sup>) and the reviews of the Directive on Administrative Cooperation in taxation (DAC)<sup>3</sup>,
- having regard to the Commission proposals pending for adoption, in particular on the CC(C)TB<sup>4</sup>, the digital taxation package<sup>5</sup> and public country-by-country reporting (CBCR)<sup>6</sup>, as well as Parliament’s position on these proposals,
- having regard to the resolution of the Council and the Representatives of the Governments of the Member States of 1 December 1997 on a Code of Conduct Group on Business Taxation (CoC Group), and to this Group’s regular reports to the ECOFIN Council,
- having regard to the Council list of non-cooperative jurisdictions for tax purposes adopted on 5 December 2017 and amended on the basis of the ongoing monitoring of third country commitments,

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‘Aggressive tax planning indicators – Final Report’ (Taxation paper No 71, 7 March 2018).

- <sup>1</sup> Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, OJ L 193, 19.7.2016, p. 1.
- <sup>2</sup> Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries, OJ L 144, 7.6.2017, p. 1.
- <sup>3</sup> Relating respectively to the automatic exchange of tax rulings (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, OJ L 332, 18.12.2015, p. 1, DAC3), exchange of country-by-country reports between tax authorities (Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, OJ L 146, 3.6.2016, p. 8, DAC4), access to anti-money-laundering information by tax authorities, beneficial ownership and other customer due diligence (Council Directive 2016/2258 of 6 December 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, OJ L 342, 16.12.2016, p. 1, DAC5), mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, OJ L 139, 5.6.2018, p. 1, DAC6).
- <sup>4</sup> Proposal of 25 October 2016 for a Council Directive on a Common Corporate Tax Base (CCTB), COM(2016)0685 and of 25 October 2016 on a Common Consolidated Corporate Tax Base (CCCTB), COM(2016)0683.
- <sup>5</sup> The package consists of the Commission communication of 21 March 2018 entitled ‘Time to establish a modern, fair and efficient taxation standard for the digital economy’ (COM(2018)0146), the proposal of 21 March 2018 for a Council directive laying down rules relating to the corporate taxation of a significant digital presence (COM(2018)0147, the proposal of 21 March 2018 for a Council directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services (COM(2018)0148, and the Commission recommendation of 21

- having regard to the Commission communication of 21 March 2018 on new requirements against tax avoidance in EU legislation governing in particular financing and investment operations (C(2018)1756),
- having regard to the ongoing modernisation of the VAT framework, in particular the VAT definitive regime,
- having regard to its resolution of 24 November 2016 on towards a definitive VAT system and fighting VAT fraud<sup>1</sup>,
- having regard to the recently adopted new EU anti-money laundering framework, in particular after the adoption of the fourth (AMLD4)<sup>2</sup> and fifth (AMLD5)<sup>3</sup> reviews of the Anti-Money Laundering Directive,
- having regard to the infringement procedures initiated by the Commission against 28 Member States for having failed to properly transpose AMLD4 into national law,
- having regard to the Commission Action Plan of 2 February 2016 on strengthening the fight against terrorist financing (COM(2016)0050)<sup>4</sup>,
- having regard to the Commission communication of 12 September 2018 on strengthening the Union framework for prudential and anti-money laundering supervision (COM(2018)0645),
- having regard to its resolution of 14 March 2019 on the urgency for an EU blacklist of third countries in line with the Anti-Money Laundering Directive<sup>5</sup>,
- having regard to the Platform of the Financial Intelligence Units of the European Union (EU FIUs' Platform) mapping exercise and gap analysis of 15 December 2016 on EU FIUs' powers and obstacles in obtaining and exchanging information, and to the

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March 2018 relating to the corporate taxation of a significant digital presence (C(2018)1650).

<sup>6</sup> Proposal for a directive of the European Parliament and of the Council of 12 April 2016 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches (COM(2016)0198).

<sup>1</sup> OJ C 224, 27.6.2018, p. 107.

<sup>2</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, OJ L 141, 5.6.2015, p. 73.

<sup>3</sup> Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, OJ L 156, 19.6.2018, p. 43.

<sup>4</sup> Communication of 2 February 2016 from the Commission to the European Parliament and the Council on an Action Plan for strengthening the fight against terrorist financing, COM(2016)0050.

<sup>5</sup> Texts adopted, P8\_TA(2019)0216.

Commission Staff Working Document of 26 June 2017 on improving cooperation between EU Financial Intelligence units (SWD(2017)0275),

- having regard to the Recommendation of the European Banking Authority (EBA) and the Commission of 11 July 2018 to the Maltese Financial Intelligence Analysis Unit (FIAU) on action necessary to comply with the Anti-Money Laundering and Countering Terrorism Financing Directive,
- having regard to the letter of 7 December 2018 sent by the TAX3 Committee Chair to the Permanent Representative of Malta to the EU, HE Daniel Azzopardi, seeking explanations about the company ‘17 Black’,
- having regard to the state aid investigations and decisions of the Commission<sup>1</sup>,
- having regard to the proposal for a directive of the European Parliament and of the Council of 23 April 2018 on protection of persons reporting on breaches of Union law (COM(2018)0218),
- having regard to the Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community;
- having regard to the Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom;
- having regard to the outcomes of the various G7, G8 and G20 summits held on international tax issues,
- having regard to the resolution adopted by the United Nations General Assembly on 27 July 2015 on the Addis Ababa Action Agenda,
- having regard to the report by the High Level Panel on Illicit Financial Flows from Africa, jointly commissioned by the African Union Commission(AUC)/UN Economic Commission for Africa (ECA) Conference of African Ministers of Finance, Planning and Economic Development,
- having regard to the Commission communication of 28 January 2016 on an External Strategy for Effective Taxation (COM(2016)0024), in which the Commission also called for the EU to ‘lead by example’,
- having regard to its resolutions of 8 July 2015 on tax avoidance and tax evasion as challenges for governance, social protection and development in developing countries<sup>2</sup>, and of 15 January 2019 on gender equality and taxation policies in the EU<sup>3</sup>,
- having regard to the obligation under Article 8(2) of the European Convention on Human Rights (ECHR) to observe privacy laws at all times,

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<sup>1</sup> Relating to Fiat, Starbucks and the Belgian excess-profit ruling, and decisions to open state aid investigations on McDonald’s, Apple and Amazon.

<sup>2</sup> OJ C 265, 11.8.2017, p. 59.

<sup>3</sup> Texts adopted, P8\_TA(2019)0014.

- having regard to the Commission report of 23 January 2019 on Investor Citizenship and Residence Schemes in the European Union (COM(2019)0012),
- having regard to the Commission communication of 15 January 2019 entitled ‘Towards a more efficient and democratic decision making in EU tax policy’ (COM(2019)0008),
- having regard to the European Economic and Social Committee opinion of 18 October 2017 entitled ‘EU development partnerships and the challenge posed by international tax agreements’,
- having regard to Rule 52 of its Rules of Procedure,
- having regard to the report of the Special Committee on financial crimes, tax evasion and tax avoidance (A8-0170/2019),

## **1. General introduction setting the scene**

### **1.1. Changes**

1. Asserts that existing tax rules are often unable to keep up with the increasing speed of the economy; recalls that current international and national tax rules were mostly conceived in the early 20<sup>th</sup> century; asserts that there is an urgent and continuous need for reform of the rules, so that international, EU and national tax systems are fit for the new economic, social and technological challenges of the 21<sup>st</sup> century; notes the broad understanding that current tax systems and accounting methods are not equipped to keep up with these developments and ensure that all market participants pay their fair share of taxes;
2. Highlights that the European Parliament has made a substantial contribution to the fight against financial crimes, tax evasion and tax avoidance as uncovered inter alia in the LuxLeaks, Panama Papers, Paradise Papers, Football Leaks, Bahamas Leaks, and cum-ex cases, notably with the work of the TAXE, TAX2<sup>1</sup> and TAX3 special committees, the PANA inquiry committee and the Committee on Economic and Monetary Affairs (ECON);
3. Welcomes the fact that during its current term the Commission has put forward 26 legislative proposals aimed at closing some of the loopholes, improving the fight against financial crimes and aggressive tax planning, and enhancing tax collection efficiency and tax fairness; deeply regrets the lack of progress in the Council on major initiatives in relation to corporate tax reform that have not yet been finalised due to the lack of genuine political will; calls for the swift adoption of the EU initiatives that have not yet been finalised and for careful monitoring of the implementation to ensure efficiency and proper enforcement, in order to keep pace with the versatility of tax fraud, tax evasion and aggressive tax planning;

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<sup>1</sup> According to Parliament’s internal rules, Committee names can be abbreviated by a maximum of four letters, hence the former temporary Committees on taxation are referred to as TAXE, TAX2, PANA and TAX3. It should be noted, however, that the mandate ‘Setting-up of a special committee on tax rulings and other measures similar in nature or effect’ refers exclusively to TAXE2.

4. Recalls that a tax jurisdiction has control only over tax matters related to its territory, whereas economic flows and some taxpayers such as multinational enterprises (MNEs) and high net worth individuals (HNWIs) operate globally;
5. Emphasises that defining tax bases requires being in possession of a full picture of a taxpayer's situation, including the components that are outside of the given tax jurisdiction, and determining which component refers to which jurisdiction; notes that it also requires that such tax bases are allocated between tax jurisdictions to avoid double-taxation and double non-taxation; affirms that priority should be given to eliminating double non-taxation, as well as ensuring that the issue of double taxation is tackled;
6. Considers that efforts need to be made by all EU institutions, as well as Member States, to explain to citizens the work being done in the field of taxation and the actions taken to remedy existing problems and loopholes; considers that the EU needs to adopt a broad strategy whereby the EU supports, with relevant policies, Member States in moving from their current detrimental tax systems to a tax system compatible with the EU's legal framework and the spirit of the EU Treaties;
7. Notes that economic flows<sup>1</sup> and opportunities to change tax residence have substantially increased; warns that some new phenomena<sup>2</sup> are inherently opaque or facilitate opaqueness, allowing for tax fraud, tax evasion, aggressive tax planning, and money laundering;
8. Deplores the fact that some Member States confiscate the tax base of other Member States by attracting profits generated elsewhere, thereby allowing companies to artificially lower their tax base; points out that this practice not only harms the principle of EU solidarity, but also gives rise to a redistribution of wealth towards MNEs and their shareholders at the expense of EU citizens; supports the important work by academics and journalists who are helping to shed light on these practices;

**1.2. *Purpose of taxation and the impact of tax fraud, tax evasion, harmful tax practices and money laundering on European societies***

9. Considers 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; notes that a fair and efficient taxation system is key to addressing inequality, not only by financing public spending to support social mobility, but also by reducing income inequalities; highlights that tax policy can have a major influence on employment decisions, investment levels and the willingness of companies to expand;
10. Underlines that the most urgent priority is to reduce the tax gap resulting from tax fraud, tax evasion, aggressive tax planning and money laundering and their impact on national and EU budgets to ensure a level playing field and tax fairness between and among all taxpayers, to fight the rise in inequality and to strengthen trust in democratic

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<sup>1</sup> Such as financialisation

<sup>2</sup> For example, the use of software programs to automatically skim cash from electronic cash registers or point-of-sale systems ('zapping'), the growing usage of third-party payroll processors enabling fraudsters to channel off legitimate taxes.

policymaking by ensuring that fraudsters do not have a competitive tax advantage over honest taxpayers;

- 11 Stresses that joint efforts at EU and national level are crucial to defend the EU and national budgets from losses due to unpaid taxes; notes that only with fully and efficiently collected tax revenues, can states provide for, among other things, quality public services, including affordable education, healthcare and housing, security, crime control and emergency response, social security and care, enforcement of occupational and environmental standards, the fight against climate change, promotion of gender equality, public transport, and essential infrastructure in order to foster and, if necessary, to stabilise socially balanced development, to move towards the Sustainable Development Goals;
12. Considers that recent developments in taxation and tax collection, which have shifted the tax incidence from wealth to income, from capital income to labour income and consumption, from MNEs to small and medium-sized enterprises (SMEs), and from the financial sector to the real economy, has had a disproportionate impact on women and low-income people, who typically rely more on labour income and spend a higher proportion of their income on consumption<sup>1</sup>; notes that higher rates of tax evasion exist among the wealthiest<sup>2</sup>; calls on the Commission to consider the impact on social development, including gender equality and the other aforementioned policies, in its legislative proposals in the areas of tax and anti-money laundering;

### **1.3. Risk and benefits linked to cash transactions**

13. Stresses that cash transactions remain a very high risk in terms of money laundering and tax evasion, including VAT fraud, despite its benefits, such as accessibility and speed; notes that a number of Member States already have restrictions on cash payments in place; also notes that while rules on cash controls at the EU external borders have been harmonised, rules among Member states concerning cash movements within the EU's borders vary;
14. Notes that fragmentation and the divergent nature of these measures have the potential to disrupt the proper functioning of the internal market; calls on the Commission, therefore, to prepare a proposal on European restrictions on payments in cash, while maintaining cash as a means of payment; notes, furthermore, that high-denomination euro notes present a higher risk in terms of money laundering; welcomes the fact that the European Central Bank (ECB) announced in 2016 that it would no longer issue new EUR 500 notes (even though the outstanding stock remains legal tender); calls on the ECB to draw up a timetable to phase out the ability to use EUR 500 notes;

### **1.4. Quantitative assessment**

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<sup>1</sup> Gunnarsson A., Schratzenstaller M. and Spangenberg U., Gender equality and taxation in the European Union, European Parliament, Directorate-General for Internal Policies, Policy Department C – Citizens' Rights and Constitutional Affairs, 15 March 2017; Grown C. and Valodia I (editors), *Taxation and Gender Equity: A Comparative Analysis of Direct and Indirect Taxes in Developing and Developed Countries*, Routledge, 2010, pp. 32 – 74, pp. 309 – 310, and p. 315; Action Aid, *Value-Added Tax (VAT)*, Progressive taxation policy briefing, 2018; and Stotsky J. G., *Gender and Its Relevance to Macroeconomic Policy: A Survey*, IMF Working Paper, WP/06/233, p. 42.

<sup>2</sup> TAX3 hearing of 24 January 2018 on the EU Tax Gap: see [Figure 4](#).



15. Stresses that tax fraud, tax evasion and aggressive tax planning result in lost resources for national and European Union budgets<sup>1</sup>; acknowledges that quantification of these losses is not straightforward; notes, however, that increased transparency requirements would not only provide better data, but also would contribute to reducing opaqueness;
16. Notes that several assessments have attempted to quantify the magnitude of losses from tax fraud, tax evasion and aggressive tax planning; recalls that none of these provide a large enough picture on their own due to the nature of the data or the lack thereof; notes that some of the recent assessments supplement each other, based on different but complementary methodologies;
17. Notes that, to date, while the Commission performs a VAT tax gap estimate for the EU, only fifteen Member States prepare their own national tax gap estimates; calls on each Member State, under the guidance of the Commission, to prepare a comprehensive tax gap estimate, not limited to VAT and including an assessment of the cost of all tax incentives;
18. Deplores, once again, ‘the lack of reliable and unbiased statistics on the magnitude of tax avoidance and tax evasion’ and stresses ‘the importance of developing appropriate and transparent methodologies to quantify the scale of these phenomena, as well as their impact on countries’ public finances, economic activities and public investments’<sup>2</sup>; points out the importance of the political and financial independence of statistical institutes to ensure the reliability of statistical data; calls for technical assistance to be requested from Eurostat for the collection of comprehensive and accurate statistics, so that they are provided in a comparable, easily coordinated digital format;
19. Recalls in particular the empirical assessment of the magnitude of annual revenue losses caused by aggressive corporate tax planning in the EU which was drawn up in 2015; notes that the assessment ranges from EUR 50-70 billion (sum lost to profit-shifting only, equivalent to at least 17 % of corporate income tax (CIT) revenue in 2013 and 0,4 % of GDP) to EUR 160-190 billion (adding individualised tax arrangements of major MNEs and inefficiencies in collection);
20. Calls on the Council and Member States to prioritise projects, notably with the support of the Fiscalis programme, aimed at quantifying the magnitude of tax avoidance in order to better address the current tax gap; stresses that the European Parliament has adopted<sup>3</sup> an increase in the Fiscalis programme; urges Member States, under the coordination of the Commission, to estimate their tax gaps and publish the results annually;

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<sup>1</sup> Paragraph 49 of its position of 14 November 2018 on the Multiannual Financial Framework 2021-2027, Texts adopted, P8\_TA(2018)0449.

<sup>2</sup> See paragraph 63 of the European Parliament’s recommendation of 13 December 2017 to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion, OJ C 369, 11.10.2018, p. 132.

<sup>3</sup> In the Multiannual Financial Framework 2021-2027 – Parliament’s position with a view to an agreement and the amendments adopted by the European Parliament on 17 January 2019 on the proposal for a regulation of the European Parliament and of the Council establishing the ‘Fiscalis’ programme for cooperation in the field of taxation (Texts adopted, P8\_TA(2019)0039).

21. Notes that the IMF working paper<sup>1</sup> estimates worldwide losses due to base erosion and profit shifting (BEPS) and relating to tax havens to be approximately USD 600 billion per year; notes that the IMF long-run approximate estimates are USD 400 billion for OECD countries (1 % of their GDP) and USD 200 billion for developing countries (1,3 % of their GDP);
22. Welcomes the recent estimates of the non-observed economy (NOE) – often called the shadow economy – in the 2017 Survey of Tax Policies in the European Union<sup>2</sup>, which provides a broader indication of tax evasion; stresses that the value of the NOE measures economic activities which may not be captured in the basic data sources used for compiling national accounts;
23. Highlights that close to 40 % of MNEs' profits are shifted to tax havens globally each year with some European Union countries appearing to be the prime losers of profit shifting, as 35 % of shifted profits come from EU countries, followed by developing countries (30 %)<sup>3</sup>; points out that about 80 % of the profits shifted from many EU Member States are channelled to or through a few other EU Member States; points out that MNEs can pay up to 30 % less tax than domestic competitors, and that aggressive tax planning distorts competition for domestic firms, in particular SMEs;
24. Notes that the latest estimates of tax evasion within the EU point to a figure of approximately EUR 825 billion per year<sup>4</sup>;
25. Notes that the MNEs heard by the TAX3 committee produce their own estimates of Effective Tax Rates (ETR)<sup>5</sup>; points out that these estimates are questioned by some experts;
26. Calls for statistics to be collected on large transactions at free ports, customs warehouses and special economic zones, as well as disclosures made by intermediaries and whistle-blowers;

#### **1.5. Tax fraud, tax evasion, tax avoidance and aggressive tax planning (ATP)**

27. Recalls that the fight against tax evasion and fraud tackles illegal acts, whereas the fight against tax avoidance addresses situations that exploit loopholes in the law or are *a priori* within the limits of the law – unless deemed illegal by the tax or, ultimately, the judicial authorities – but against its spirit; calls, therefore, for simplification of the tax framework;
28. Recalls that improving tax collection in EU countries is likely to reduce crime associated with tax evasion and the money laundering that follows it;

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<sup>1</sup> Crivelli E., De Mooij R. A., and Keen M., *Base Erosion, Profit Shifting and Developing Countries*, 2015.

<sup>2</sup> Tax Policies in the European Union 2017 Survey, ISBN 978-92-79-72282-0.

<sup>3</sup> Tørsløv T. R., Wier L. S. and Zucman G., *The missing profits of nations*, National Bureau of Economic Research, Working Paper No 24701, 2018.

<sup>4</sup> Richard Murphy, 'The European Tax Gap', 2019 - <http://www.taxresearch.org.uk/Documents/EUTaxGapJan19.pdf>

<sup>5</sup> Mission Report of the Delegation to Washington D.C.  
Verbatim report of the TAX3 public hearing of 27 November 2018

29. Recalls that ATP describes the setting of a tax design aimed at reducing tax liability by using the technicalities of a tax system or arbitrating between two or more tax systems that go against the spirit of the law;
30. Welcomes the Commission's reply to the calls made in its TAXE, TAX2 and PANA resolutions to better identify ATP and harmful tax practices;
31. Calls on the Commission and the Council to propose and adopt a comprehensive and specific definition of ATP indicators, building on both the hallmarks identified in the fifth review of the Directive on administrative cooperation (DAC6)<sup>1</sup> and the Commission's relevant studies and recommendations<sup>2</sup>; stresses that these clear indicators may be based, where necessary, on internationally agreed standards; calls on Member States to use these indicators as a basis to repeal all harmful tax practices deriving from existing tax loopholes; calls on the Commission and the Council to regularly update these indicators if new ATP arrangements or practices emerge;
32. Stresses the similarity between corporate taxpayers and HNWIs in the use of corporate structures and similar structures such as trusts and offshore locations for the purpose of ATP; points out the role of intermediaries<sup>3</sup> in setting up such schemes; recalls, in this context, that most of the HNWIs' income arrives in the form of capital gains rather than earnings;
33. Welcomes the Commission's assessment and inclusion of ATP indicators in its 2018 European Semester country reports; calls for such an assessment to become a regular feature in order to ensure a level playing field in the EU internal market, as well as the greater stability of public revenue in the long run; invites the Commission to ensure clear follow-up to end ATP practices, if appropriate in the form of formal recommendations;
34. Reiterates its call on companies, as taxpayers, to fully comply with their tax obligations and refrain from ATP leading to BEPS, and to consider fair taxation strategy, as well as abstaining from harmful tax practices, as an important part of their corporate social responsibility, taking into account the United Nations Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises in order to secure taxpayers' trust in tax frameworks;
35. Urges Member States taking part in the enhanced cooperation procedure to agree as quickly as possible on the adoption of a Financial Transaction Tax (FTT), while acknowledging that a global solution would be the most appropriate;

## **2. Corporate taxation**

36. Recalls that opportunities for choosing a business or residence location on the basis of the regulatory framework have increased with globalisation and digitalisation;

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<sup>1</sup> Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements, OJ L 139, 5.6.2018, p. 1.

<sup>2</sup> Study on Structures of Aggressive Tax Planning and Indicators – Final Report (Taxation paper No 61, 27 January 2016) and Tax policies in the EU – 2017 Survey

<sup>3</sup> Sometimes also referred to as enablers or promoters of tax evasion.

37. Recalls that taxes must be paid in the jurisdictions where the actual substantive and genuine economic activity and value creation take place or, in the case of indirect taxation, where consumption takes place; highlights that this can be achieved by adopting the Common Consolidated Corporate Tax Base (CCCTB) in the EU with an appropriate and fair distribution, incorporating among other things all tangible assets;
38. Notes that an exit tax was adopted by the EU in ATAD I, allowing Member States to tax the economic value of capital gain created on its territory even when that gain has not yet been realised at the time of exit; considers that the principle of taxing profits made in Member States before they leave the Union should be strengthened, for example through coordinated withholding taxes on interests and royalties, so as to close existing loopholes and avoid profits leaving the EU untaxed; calls on the Council to resume negotiations on the interest and royalties proposal<sup>1</sup>; notes that tax treaties often reduce the withholding tax rate with a view to avoiding double taxation<sup>2</sup>;
39. Reaffirms that the adaptation of international tax rules needs to respond to avoidance deriving from the possible exploitation of the interplay between national tax provisions, and networks of tax treaties, resulting in an erosion of the tax base and double non-taxation while ensuring that there is no double-taxation;

#### **2.1. BEPS action plan and its implementation in the EU: ATAD**

40. Acknowledges that the G20/OECD-led BEPS project was meant to tackle in a coordinated manner the causes and circumstances creating BEPS practices, by improving the coherence of tax rules across borders, reinforcing substance requirements and enhancing transparency and certainty; states, however, that the degree of willingness and commitment to cooperate on the OECD BEPS action plan varies among countries and the particular actions concerned;
41. Notes that the G20/OECD 15-point BEPS action plan, intended to tackle in a coordinated manner the causes and circumstances creating BEPS practices, is being implemented and monitored and further discussions are taking place, in a broader context than just the initial participating countries, through the Inclusive Framework; calls, therefore, on Member States to support a reform of both the mandate and the functioning of the Inclusive Framework to ensure that remaining tax loopholes and unsolved tax questions are covered by the current international framework; welcomes the initiative of the Inclusive Framework to discuss and find a global consensus on a better allocation of taxing rights among countries;
42. Takes note of the fact that the actions require implementation; takes note of the policy note<sup>3</sup> of the Inclusive Framework on BEPS, which aims to devise possible solutions to the identified challenges relating to the taxation of the digital economy;

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<sup>1</sup> Proposal for a Council directive of 11 November 2011 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (COM(2011)0714).

<sup>2</sup> Hearson M., *The European Union's Tax Treaties with Developing Countries: leading By Example?*, 27 September 2018.

<sup>3</sup> Policy note as approved by the Inclusive Framework on BEPS entitled 'Addressing the Tax Challenges of the Digitalisation of the Economy', released on 29 January 2019.

43. Points out that some countries have recently adopted unilateral countermeasures against harmful tax practices (such as the UK's Diverted Profits Tax and the Global Intangible Low-Taxed Income (GILTI) provisions of the US tax reform) to ensure that the foreign income of MNEs is duly taxed at a minimum effective tax rate in the parent's country of residence; calls for an EU assessment of these measures; notes that, in contrast to these unilateral measures, the EU generally promotes multilateral and consensual solutions to deal with a fair allocation of taxing rights; stresses that, for example, the EU prioritises a global solution for taxing the digital sector, but is nevertheless proposing an EU Digital Services Tax (DST) as global discussions have been progressing slowly;
44. Recalls that the 2016 EU 'anti-tax-avoidance package' supplements existing provisions so as to implement the 15 BEPS actions in a coordinated manner across the EU in the single market;
45. Welcomes the adoption by the EU of ATAD I and ATAD II; notes that these directives provide fairer taxation by establishing a minimum level of protection against corporate tax avoidance throughout the EU and ensuring a fairer and more stable environment for businesses, from both demand and supply perspectives; welcomes the provisions on hybrid mismatches to prevent double non-taxation in order to eliminate existing mismatches and refrain from creating further mismatches, between Member States and with third countries;
46. Welcomes the provisions on Controlled Foreign Corporation (CFC) included in ATAD I to ensure that profits made by related companies parked in low or no-tax countries are effectively taxed; acknowledges that they prevent the absence or diversity of national CFC rules within the Union from distorting the functioning of the internal market beyond situations of wholly artificial arrangements as called for repeatedly by Parliament; deplores the coexistence of two approaches to implement CFC rules in ATAD I and calls on Member States to implement only the simpler and most efficient CFC rules as in ATAD I Article 7(2)(a);
47. Welcomes the general anti-abuse rule for the purposes of calculating corporate tax liability included in ATAD I, allowing Member States to ignore arrangements that are not genuine and having regard to all relevant facts and circumstances aimed solely at obtaining a tax advantage; reiterates its repeated call for the adoption of a general and common, stringent anti-abuse rule, namely in existing legislation and in particular in the parent-subsidiary directive, the merger directive and the interest and royalties directive;
48. Reiterates its call for a clear definition of permanent establishment and significant economic presence so that companies cannot artificially avoid having a taxable presence in a Member State in which they have economic activity;
49. Calls for the finalisation of the work being done within the EU Joint Transfer Pricing Forum (JTPF) on the development of good practices and monitoring of Member States' implementation by the Commission;
50. Recalls its concerns relating to the use of transfer prices in ATP and consequently recalls the need for adequate action and improvement of the transfer pricing framework to address the issue; stresses the need to ensure that they reflect the economic reality, provide certainty, clarity and fairness for Member States and for companies operating within the Union, and reduce the risk of misuse of the rules for profit-shifting purposes,

taking into account the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration 2010<sup>1</sup>; notes, however, that, as has been highlighted by experts and publications, the use of the ‘independent entity concept’ or ‘arm’s length principle’ constitutes one of the main factors enabling harmful tax practices<sup>2</sup>;

51. Emphasises that the EU actions aimed at addressing BEPS and ATP have equipped tax authorities with an updated toolbox to ensure fair tax collection while maintaining the competitiveness of EU businesses; stresses that tax authorities should be responsible for making effective use of the tools without imposing an additional burden on responsible taxpayers, particularly SMEs;
52. Recognises that the new flow of information to tax authorities following the adoption of ATAD I and DAC4 creates the need for adequate resources to ensure the most efficient use of such information and to effectively reduce the current tax gap; calls on all Member States to make sure that the tools used by the authorities are sufficient and adequate to use this information and to combine and cross-check information from different sources and data sets;

## **2.2. Strengthening EU actions to fight against ATP and supplementing BEPS action plan**

### **2.2.1. Scrutinising Member States’ tax systems and overall tax environment – ATP within the EU (European Semester)**

53. Welcomes the fact that Member States’ tax systems and overall tax environment have become part of the European Semester in line with Parliament’s call to that effect<sup>3</sup>; welcomes the studies and data drawn up by the Commission<sup>4</sup> that allow situations that provide economic ATP indicators to be better addressed, and give a clear indication of the exposure to tax planning as well as furnishing a rich data base for all Member States on the phenomenon; points out that Member States, in the spirit of loyal cooperation, must not facilitate the creation of ATP schemes incompatible with the EU legal framework and the spirit of the EU Treaties;
54. Calls for these new tax indicators for the European Semester to be given the same status as the indicators relating to expenditure control; underlines the benefit of providing the European Semester with this tax dimension, as it will make it possible to tackle certain harmful tax practices that had not thus far been tackled through the ATAD Directive and other existing European regulations;
55. Welcomes the fact that DAC6 sets out the hallmarks of reportable cross-border arrangements that intermediaries must report to tax authorities to allow them to be

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<sup>1</sup> See OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017 from 10 July 2017.

<sup>2</sup> Public hearing of 24 January 2019 on the evaluation of the tax gap and ‘Addressing the Tax Challenges of the Digitalisation of the Economy’, OECD Policy Note, published 29 January 2019.

<sup>3</sup> European Parliament resolution of 25 November 2015 on tax rulings and other measures similar in nature or effect, OJ C 366, 27.10.2017, p. 51, paragraph 96.

<sup>4</sup> Referred to above. The studies provide an overview of Member States’ exposure to ATP structures affecting their tax base (erosion or increase), although there is no stand-alone indicator of the phenomenon, a set of indicators seen as a ‘body of evidence’ nevertheless exists.

assessed by the latter; welcomes the fact that these features of ATP schemes can be updated if new arrangements or practices emerge; points out that the deadline for the implementation of the directive has not yet elapsed and that the provisions will need to be monitored to ensure their efficiency;

56. Calls on the CoC Group to report yearly to the Council and Parliament on the main arrangements reported in Member States to allow decision makers to keep up with the new tax schemes which are being elaborated, and to take the necessary countermeasures that might potentially be needed;
57. Calls for both the EU institutions and the Member States to ensure that public procurement contracts do not facilitate tax avoidance by suppliers; points out that Member States should monitor and ensure that companies or other legal entities involved in tenders and procurement contracts do not participate in tax fraud, tax evasion and ATP; calls on the Commission to clarify existing procurement practice under the EU Procurement Directive, and if necessary, propose an update of the directive that does not prohibit the application of tax-related considerations as criteria for exclusion or even as selection criteria in public procurement;
58. Calls on the Commission to publish a proposal that would oblige the Member States to ensure that economic operators participating in public procurement procedures comply with a minimum level of transparency regarding tax, in particular public country-by-country reporting and transparent ownership structures;
59. Calls on the Commission to issue as soon as possible a proposal aimed at repealing patent boxes, and calls on Member States to favour non-harmful and, if appropriate, direct support for R&D on their territory; stresses that tax reliefs for companies need to be carefully constructed and implemented only where there is a positive impact on jobs and growth and any risk of creating new loopholes in the taxation system is excluded;
60. Reiterates, in the meantime, its call to ensure that current patent boxes establish a genuine link to economic activity, such as expenditure tests, and that they do not distort competition; notes the growing role of intangible assets in the MNE value chain; notes the improved definition of R&D costs in the common corporate tax base (CCTB) proposal; upholds Parliament's position on tax credit for genuine R&D expenses instead of R&D deduction;

### ***2.2.2. Better cooperation in the area of taxation, including the CCCTB***

61. Stresses that taxation policy in the European Union should focus both on fighting tax avoidance and ATP and on facilitating cross-border economic activity through cooperation between tax authorities and smart tax policy design;
62. Underlines that there is a multitude of tax-related obstacles that hamper cross-border economic activity; notes, in this regard, its resolution of 25 October 2012 on the 20 main concerns of European citizens and business with the functioning of the Single Market<sup>1</sup>; urges the Commission to adopt an action plan addressing these obstacles as a matter of priority;

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<sup>1</sup> OJ C 72 E, 11.3.2014, p. 1.

63. Welcomes the re-launch of the CCCTB project with the Commission's adoption of interconnected proposals on CCTB and CCCTB; stresses that once implemented fully, the CCCTB will eliminate loopholes between national tax systems, in particular transfer pricing;
64. Calls on the Council to swiftly adopt and implement the two proposals simultaneously taking into consideration Parliament's opinion that already includes the concept of virtual permanent establishment and apportionment formulas that would close the remaining loopholes allowing tax avoidance to take place and level the playing field in light of digitalisation; regrets the continued refusal of certain Member States to find a solution, and calls on the Member States to bridge their diverging positions;
65. Recalls that the application of the C(C)CTB should be accompanied by the implementation of common accounting rules and appropriate harmonisation of administrative practices;
66. Recalls that in order to end the practice of profit shifting and introduce the principle that tax is paid where profit is generated, the CCTB and CCCTB should be introduced simultaneously in all Member States; calls on the Commission to issue a new proposal based on Article 116 of the TFEU, whereby the European Parliament and the Council act in accordance with the ordinary legislative procedure to issue the necessary legislation, should the Council fail to adopt a unanimous decision on the proposal to establish a CCCTB;

### ***2.2.3. Corporate digital taxation***

67. Notes that the phenomenon of digitalisation has created a new situation in the market, whereby digital and digitalised companies are able to take advantage of local markets without having a physical, and therefore taxable, presence in that market, creating a non-level playing field and putting traditional companies at a disadvantage; notes that digital businesses models in the EU face a lower effective average tax burden than traditional business models<sup>1</sup>;
68. Points out, in this context, the gradual shift from tangible production to intangible assets in the value chains of MNEs, as reflected in the relative rates of growth over the last five years of royalties and licensing fee receipts (almost 5 % annually) compared with trade in goods and foreign direct investment (FDI) (less than 1 % annually)<sup>2</sup>; deplores the fact that digital businesses pay almost no taxes in some Member States despite their significant digital presence and large revenues in those Member States;
69. Believes that the EU should allow for an attractive business environment in order to achieve a smoothly functioning digital single market while ensuring fair taxation of the digital economy; recalls that, when it comes to the digitalisation of the economy as a whole, the location of the value creation should take users' input into account, as well as information collected on consumers' behaviour online;

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<sup>1</sup> As evidenced in the impact assessment of 21 March 2018 accompanying the digital tax package (SWD(2018)0081), according to which on average, digitalised businesses face an effective tax rate of only 9.5 %, compared to 23.2 % for traditional business models.

<sup>2</sup> UNCTAD, World Investment Report, 2018.



70. Underlines that a lack of a common Union approach to addressing the taxation of the digital economy will lead – and indeed already has led – Member States to adopt unilateral solutions, which will lead to regulatory arbitrage and the fracturing of the single market, and might become a burden for companies operating on a cross-border basis, as well as for tax authorities;
71. Notes the leading role played by the Commission and some Member States in the global debate on the taxation of the digitalised economy; encourages the Member States to continue their proactive work at OECD and UN level, especially via the process introduced by the Inclusive Framework on BEPS in its Policy Note<sup>1</sup>; recalls, however, that the EU should not wait for a global solution and must act immediately;
72. Welcomes the digital tax package adopted by the Commission on 21 March 2018; regrets, however, that Denmark, Finland, Ireland and Sweden maintained their reservations or their fundamental opposition to the DST package during the ECOFIN meeting on 12 March 2019<sup>2</sup>;
73. Emphasises that the agreement on what constitutes digital permanent establishment, the only one to have been reached hitherto, is a step in the right direction, but does not resolve the issue of tax base allocation;
74. Calls on the Member States willing to consider the introduction of a digital tax to do so within the framework of enhanced cooperation in order to avoid further fragmentation of the single market, as is already happening with individual Member States considering the introduction of national solutions;
75. Understands that the so-called interim solution is not optimal; believes that it will help speed up the search for a better solution at global level, while levelling the playing field in local markets to some extent; calls on the EU Member States to discuss, adopt and implement the long-term solution concerning the taxation of the digital economy (on significant digital presence) as soon as possible in order for the EU to remain a trendsetter at global level; stresses that the long-term solution proposed by the Commission should serve as a basis for further work at international level;
76. Notes the strong demand for the DST by the EU citizens; recalls that surveys show that 80 % of citizens from Germany, France, Austria, the Netherlands, Sweden and Denmark are supportive of a DST, and think that the EU should pioneer international efforts; underlines, furthermore, that a majority of the surveyed citizens would like a broad scope for a DST<sup>3</sup>;
77. Calls on the Member States to ensure that the DST remains a temporary measure by including a ‘sunset clause’ to the proposal for a Council Directive of 21 March 2018 on the common system of a digital services tax on revenues resulting from the provision of certain digital services<sup>4</sup> (COM(2018)0148), and by speeding up the discussion on a significant digital presence;

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<sup>1</sup> Addressing the Tax Challenges of the Digitalisation of the Economy – Policy Note, published on 29 January 2019.

<sup>2</sup> Conclusions of the Economic and Financial Affairs Council, 12 March 2019.

<sup>3</sup> KiesKompas, Public Perception towards taxing digital companies in six countries, December 2018.

<sup>4</sup> COM(2018)0148.

#### 2.2.4. *Effective Taxation*

78. Notes that nominal corporate tax rates have decreased at EU level from an average of 32 % in 2000 to 21,9 % in 2018<sup>1</sup>, which represents a decrease of 32 % ; is concerned about the implications of this competition on the sustainability of tax systems and its potential spillover effects on other countries; observes that the first G20/OECD-led BEPS project did not touch upon this phenomenon; welcomes the announcement of the Inclusive Framework on BEPS to explore on a ‘without prejudice’ basis taxing rights that would strengthen the ability of jurisdictions to tax profits where the other jurisdiction with taxing rights applies a low effective rate of tax to those profits, by 2020<sup>2</sup>, which translates into minimum effective taxation; notes that, as stated by the Inclusive Framework on BEPS, the current OECD-led work does not imply changes to the fact that countries or jurisdictions remain free to set their own tax rates or not to have a corporate income tax system at all<sup>3</sup>;
79. Welcomes the new OECD global standard on substantial activities factor to no or only nominal tax jurisdiction<sup>4</sup>, largely inspired by the EU’s work on the EU listing process (Fair criterion 2.2 of the EU list);
80. Notes the discrepancies between estimates of large corporations’ effective tax rates – often based on provision for taxes<sup>5</sup> – and the actual tax paid by large MNEs; notes that traditional sectors pay on average an effective corporate tax rate of 23 %, while the digital sector pays about 9,5 %<sup>6</sup>;
81. Notes the diverging methodologies in assessing effective tax rates, which do not allow for reliable comparison of ETRs in the EU and globally; notes that some assessments of effective tax rates in the EU diverge from 2,2 % to 30 %<sup>7</sup>; calls on the Commission to develop its own methodology and regularly publish the ETRs in the Member States;
82. Calls on the Commission to assess the phenomenon of decreasing nominal tax rates and its impact on ETRs in the EU, and to propose remedies, both within the EU and towards third countries as applicable, including strong anti-abuse rules, defensive measures, such as stronger controlled foreign company rules, and a recommendation to amend tax treaties;
83. Believes that the global coordination on the tax base as a result of the OECD/BEPS project should be accompanied by better coordination on tax rates in an effort to achieve improved efficiency;

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<sup>1</sup> Taxation Trends in the European Union, Table 3: Top statutory corporate income tax rates (including surcharges), 1995-2018, European Commission, 2018.

<sup>2</sup> Addressing the Tax Challenges of the Digitalisation of the Economy – Policy Note, as approved by the Inclusive Framework on BEPS on 23 January 2019.

<sup>3</sup> Ibid.

<sup>4</sup> OECD, Resumption of Application of Substantial Activities Factor to No or only Nominal Tax Jurisdictions – Inclusive Framework on BEPS: Action 5, 2018.

<sup>5</sup> Public hearing of 27 November 2018 on ‘Alleged aggressive tax planning schemes within the EU’.

<sup>6</sup> Commission communication entitled ‘Time to establish a modern, fair and efficient taxation standard for the digital economy’ (COM(2018)0146).

<sup>7</sup> Public hearing of 24 January 2019 on The Evaluation of the Tax Gap’.

84. Invites the Member States to update the mandate of the CoC Group to explore the concept of minimum effective taxation of corporate profits to follow up on the OECD's work on the Tax Challenges of the Digitalisation of the Economy;
85. Takes note of the statement made by the French Finance Minister at the TAX3 meeting of 23 October 2018 regarding the need to discuss the concept of minimum taxation; welcomes France's readiness to include the debate on minimum taxation as one of the priorities of its G7 Presidency in 2019, as reiterated during the ECOFIN meeting of 12 March 2019;

### **2.3. *Administrative cooperation in relation to direct taxes***

86. Stresses that since June 2014 the DAC has been amended four times;
87. Calls on the Commission to assess and present proposals to close loopholes in DAC2, particularly by including hard assets and cryptocurrencies in the scope of the directive, by prescribing sanctions for non-compliance or false reporting from financial institutions, as well as by including more types of financial institution and types of accounts that are not being reported at the moment, such as pension funds;
88. Reiterates its call for a broader scope in relation to the exchange of tax rulings and broader access by the Commission, and for greater harmonisation of the tax ruling practices of different national tax authorities;
89. Calls on the Commission to swiftly release its first assessment of DAC3 in this regard, looking in particular at the number of rulings exchanged and the number of occasions on which national tax administrations accessed information held by another Member State; asks that the assessment also consider the impact of disclosing key information related to tax rulings (the number of rulings, the names of beneficiaries, the effective tax rate deriving from each ruling); invites the Member States to publish domestic tax rulings;
90. Deplores the fact that the Commissioner in charge of taxation does not recognise the need to extend the existing system for the exchange of information between national tax authorities;
91. Reiterates, furthermore, its call to ensure simultaneous tax audits of persons of common or complementary interests (including parent companies and their subsidiaries), and its call to further enhance tax cooperation between Member States through an obligation to answer group requests on tax matters; points out that the right to remain silent in dealings with tax authorities does not apply to a purely administrative investigation and that cooperation is mandatory<sup>1</sup>;
92. Considers that coordinated on-site inspections and joint audits should be part of the European framework of cooperation between tax administrations;
93. Emphasises that not only information exchanges and the processing of information, but also the sharing of best practices among tax authorities, contribute to more efficient tax collection; calls on Member States to give priority to the sharing of best practices among tax authorities, particularly regarding the digitalisation of tax administrations;

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<sup>1</sup> ECtHR, judgment of 16 June 2015 (No 787/14), *van Weerelt v the Netherlands*.

94. Calls on the Commission and Member States to harmonise procedures for a digital system of filing tax returns in order to facilitate cross-border activities and reduce red tape;
95. Calls on the Commission to swiftly assess the implementation of DAC4 and whether national tax administrations effectively access country-by-country information held by another Member State; asks the Commission to assess how DAC4 relates to Action 13 of the G20/BEPS action plan on exchange of country-by-country information;
96. Welcomes the automatic exchange of financial account information based on the global standard which has been developed by the OECD with Andorra, Liechtenstein, Monaco, San Marino and Switzerland; calls on the Commission and the Member States to upgrade the Treaty provisions so as to match the DAC as amended;
97. Stresses, furthermore, the contribution made through the Fiscalis 2020 Programme, which aims to enhance cooperation between participating countries, their tax authorities and their officials; stresses the added value brought by joint actions in this field and the role of the possible programme in developing and operating major trans-European IT systems;
98. Reminds Member States of all their obligations under the Treaty<sup>1</sup>, in particular to cooperate loyally, sincerely and expeditiously; calls, therefore, in the light of cross-border cases, and most notably the so-called cum-ex files, for the nomination of Single Points of Contact (SPoC) by all Member States' national tax authorities, in line with the SPoC-system of the Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC) in the framework of the OECD<sup>2</sup>, to facilitate and enhance cooperation in combating tax fraud, tax evasion and ATP; calls further on the Commission to facilitate and coordinate cooperation between Member States' SPoCs;
99. Recommends that Member States' authorities which are notified by their counterparts in other Member States of potential breaches of law be required to provide an official notification of receipt and, where appropriate, a substantive response on actions taken following the aforementioned notification in a timely manner;

#### **2.4. *Dividend stripping and coupon washing***

100. Notes that cum-ex transactions have been a known global problem since the 1990s, including in Europe, yet no coordinated counteraction has been taken; deplores the tax fraud revealed by the so-called cum-ex files scandal which has led to publicly reported losses of Member States' tax revenue, amounting to as much as EUR 55.2 billion according to some media estimates; highlights that the consortium of European journalists identifies Germany, Denmark, Spain, Italy and France as allegedly the main target markets for cum-ex trading practices, followed by Belgium, Finland, Poland, the Netherlands, Austria and the Czech Republic;
101. Stresses that the complexity of tax systems can give rise to legal loopholes facilitating tax fraud schemes such as cum-ex;

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<sup>1</sup> Article 4(3) of the TEU.

<sup>2</sup> Joint International Taskforce on Shared Intelligence and Collaboration.

102. Notes that the systematic fraud centred around the cum-ex and cum-cum schemes was made possible in part because the relevant authorities in the Member States did not perform sufficient checks on applications for the reimbursement of taxes and lack a clear and complete picture of the actual ownership of shares; calls on the Member States to give access to all relevant authorities to complete and up-to-date information on ownership of shares; calls on the Commission to assess whether EU action is needed in this regard, and to present a legislative proposal should the assessment demonstrate a need for such action;
103. Underlines that the revelations seem to indicate possible shortcomings in national taxation laws and in the current systems of exchange of information and cooperation between Member State authorities; urges the Member States to effectively use all communication channels, national data and data made available by the strengthened framework for exchange of information;
104. Stresses that the cross-border aspects of the cum-ex files should be addressed multilaterally; warns that the introduction of new bilateral treaties on exchanges of information and bilateral cooperation mechanisms between individual Member States would complicate the already complex web of international rules, introduce new loopholes and contribute to the lack of transparency;
105. Urges all Member States to thoroughly investigate and analyse dividend payment practices in their jurisdictions, to identify the loopholes in their tax laws that generate opportunities for exploitation by tax fraudsters and avoiders, to analyse any potential cross-border dimension of these practices and to put an end to all these harmful tax practices; calls on Member States to exchange best practices in this regard;
106. Calls on the Member States and their financial supervisory authorities to assess the need to ban exclusively tax-driven financial practices such as dividend arbitrage or dividend stripping and similar schemes, in absence of proof to the contrary by the issuer that these financial practices have a substantive economic purpose other than unjustified tax reimbursement and/or tax avoidance; calls for the EU legislators to evaluate the possibility of implementing this measure at EU level;
107. Calls on the Commission to start working immediately on a proposal for a European financial police force within the framework of Europol with its own investigatory capabilities, as well as on a European framework for cross-border tax investigations and other cross-border financial crimes;
108. Concludes that the cum-ex-files demonstrate the urgent need to improve cooperation between EU Member States' tax authorities, particularly with regard to information sharing; urges, therefore, the Member States to enhance their cooperation in detecting, stopping, investigating and prosecuting tax fraud and evasion schemes such as cum-ex and, where applicable, cum-cum, including exchange of best practices, and to support EU-level solutions where justified;

## **2.5. *Transparency in relation to corporate tax***

109. Welcomes the adoption of DAC4 providing for CBCR to tax authorities, in line with the BEPS Action 13 standard;

110. Recalls that public CBCR is one of the key measures to create greater transparency on tax information of companies; stresses that the proposal for public CBCR by certain undertakings and branches was submitted to the co-legislators just after the Panama Papers scandal on 12 April 2016, and that Parliament adopted its position on it on 4 July 2017<sup>1</sup>; recalls that it called for an enlargement of the scope of reporting and protection of commercially sensitive information with due regard to the competitiveness of EU enterprises;
111. Recalls Parliament's position in the PANA recommendations calling for ambitious public country-by-country reporting (CBCR) in order to enhance tax transparency and the public scrutiny of multinational enterprises (MNEs); urges the Council to reach a common agreement in order to adopt public CBCR, as one of the key measures for achieving greater transparency for all citizens in relation to companies' tax information;
112. Deplores the lack of progress and cooperation from the Council since 2016; urges that swift progress be made in the Council so that it enters into negotiations with Parliament;
113. Recalls that public scrutiny is useful for researchers<sup>2</sup>, investigative journalists, investors and other stakeholders to properly assess risks, liabilities and opportunities to stimulate fair entrepreneurship; recalls that similar provisions already exist for the banking sector in Article 89 of Directive 2013/36/EU (CDR IV)<sup>3</sup> and for the extractive and logging industries in Directive 2013/34/EU<sup>4</sup>; notes that some private stakeholders are voluntarily developing new reporting tools enhancing tax transparency, such as the Global Reporting Initiative standard 'Disclosure on tax and payments to governments', as part of their corporate social responsibility policy;
114. Recalls that measures on corporate tax transparency are to be regarded as relating to Article 50, paragraph 1 of the TFEU on freedom of establishment, hence the above-mentioned article is the appropriate legal base for the proposal for public CBCR as found in the Commission's impact assessment published on 12 April 2016 (COM(2016)0198);
115. Notes that, with regard to the limited capacity of developing countries to meet requirements through existing exchange of information procedures, transparency is particularly important, as it would ease access to information for their tax administrations;

## **2.6. State aid rules**

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<sup>1</sup> See also the European Parliament recommendation of 13 December 2017 to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion (OJ C 369, 11.10.2018, p. 132).

<sup>2</sup> Public hearing of 24 January 2019 on 'The Evaluation of the Tax Gap'.

<sup>3</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013, p. 63.

<sup>4</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, OJ L 182, 29.6.2013, p. 19.

116. Recalls that the area of direct business taxation falls within the scope of State aid<sup>1</sup> when fiscal measures discriminate between taxpayers, contrary to fiscal measures of a general nature that apply to all undertakings without distinction;
117. Calls on the Commission and, in particular, the Directorate-General for Competition, to assess possible measures to discourage Member States from granting such State aid in the form of a tax advantage;
118. Welcomes the Commission's new proactive and open approach to investigations into illegal State aid during the present term, which has led to a number of high-profile cases being concluded by the Commission;
119. Deplores the fact that companies can make agreements with governments to pay almost no tax in a given country despite conducting substantial activity there; points in this regard to a tax ruling between the Dutch tax revenue authority and Royal Dutch Shell plc that seems to be in violation of Dutch tax law, issued on the sole ground that the head office would be located in the Netherlands after the unification of the two former parent companies, and which results in an exemption from Dutch dividend withholding tax; points out that at the same time, recent investigations seem to show that the company pays no profit tax in the Netherlands either; reiterates its call on the Commission to investigate this case of potentially illegal State aid;
120. Welcomes the fact that since 2014, the Commission has been investigating the tax ruling practices of Member States, following up on allegations of the favourable tax treatment of certain companies, and has launched nine formal investigations since 2014, six of which concluded that the tax ruling constituted illegal State aid<sup>2</sup>; notes that one investigation was closed concluding that the double non-taxation of certain profits did not constitute State aid<sup>3</sup>, while the other two are ongoing<sup>4</sup>;
121. Deplores the fact that, nearly five years on from the LuxLeaks revelations, the Commission has opened a formal investigation<sup>5</sup> into only one of the over 500 tax rulings granted by Luxembourg that were disclosed as part of the LuxLeaks investigation led by the International Consortium of Investigative Journalists (ICIJ);

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<sup>1</sup> As the Court of Justice of the European Union stated as early as 1974.

<sup>2</sup> Decision of 20 June 2018 on State aid implemented by Luxembourg in favour of ENGIE (SA.44888); decision of 4 October 2017 on State aid granted by Luxembourg to Amazon (SA.38944); decision of 30 August 2016 on State aid implemented by Ireland to Apple (SA.38373); decision of 11 January 2016 on 'Excess Profit exemption in Belgium – Art. 185§2 b) CIR92' (SA.37667); decision of 21 October 2015 on State aid implemented by the Netherlands to Starbucks (SA.38374); and decision of 21 October 2015 on State aid which Luxembourg granted to Fiat (SA.38375). There are pending proceedings before the Court of Justice of the European Union and the General Court related to all six decisions.

<sup>3</sup> Decision of 19 September 2018 on 'Alleged aid to Mc Donald's – Luxembourg' (SA.38945).

<sup>4</sup> 'Possible State aid in favour of Inter IKEA investigation' opened on 18 December 2017 (SA.46470) and 'UK tax scheme for multinationals (Controlled Foreign Company rules)' opened on 26 October 2018 (SA.44896).

<sup>5</sup> Decision of 7 March 2019 on 'Alleged aid to Huhtamaki - Luxembourg' (SA.50400).

122. Notes that despite the fact that the Commission found McDonald's benefited from double non-taxation on certain of its profits in the EU, no decision under EU State aid rules could be issued, as the Commission concluded that the double non-taxation stemmed from a mismatch between Luxembourg and US tax laws and the Luxembourg-United States double taxation treaty<sup>1</sup>; acknowledges the announcement by Luxembourg to revise its double taxation treaties to conform with international tax law;
123. Is concerned about the fact that the Commission has ruled that the double non taxation achieved by McDonald's stemmed from a mismatch between Luxembourg and US tax laws and the Luxembourg-US double taxation treaty, a mismatch from which McDonald's profited by arbitrating between the jurisdictions; is further concerned about the fact that such arbitration-led tax avoidance is being enabled in the EU;
124. Is concerned by the magnitude of tax unpaid for all Member States over long periods<sup>2</sup>; recalls that the aim of the recovery of unlawful aid is to restore the position to the status quo, and that calculating the exact amount of aid to be repaid is part of the implementation obligation incumbent on the national authorities; calls on the Commission to assess and establish viable countermeasures, including fines, to help Member States avoid offering selective favourable tax treatment which constitutes State aid that is non-compliant with EU rules;
125. Reiterates its calls to the Commission for guidelines clarifying what constitutes tax-related State aid and 'appropriate' transfer pricing; calls also for the Commission to remove legal uncertainties for both compliant taxpayers and tax administrations, and provide a comprehensive framework for Member States' tax practices accordingly;
126. Expresses its regret at the Commission's failure to use the State aid rules against any tax measure that seriously distorts competition, and that it only applies these rules in select cases with particular characteristics so as to change the practice of the state concerned; calls on the Commission to make every effort to recover undue State aid, including for all companies mentioned in the Luxleaks scandal, in order to level the playing field; also calls on the Commission to provide further guidance to the Member States and market players on the application of State aid rules and what it means for companies' tax planning practices;
127. Calls for a reform of competition law to extend the scope of State aid rules in order to be able to act more vigorously against harmful fiscal State aid for multinational companies, which include tax rulings;

## **2.7. Letterbox companies**

128. Notes that there is no single definition of letterbox companies, i.e. companies registered in a jurisdiction for tax avoidance or tax evasion purposes only and without any significant economic presence; points out, however, that simple criteria such as actual business activity or the physical presence of staff working for a company could serve to

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<sup>1</sup> [http://europa.eu/rapid/press-release\\_IP-18-5831\\_en.htm](http://europa.eu/rapid/press-release_IP-18-5831_en.htm)

<sup>2</sup> As in the case of decision of 30 August 2016 (SA.38373) on State aid implemented by Ireland to Apple. The tax rulings in question were issued by Ireland on 29 January 1991 and 23 May 2007.



identify letterbox companies and combat their proliferation; reiterates its call for a clear definition;

129. Stresses that, as proposed in Parliament's position for inter-institutional negotiations for the amending directive as regards cross-border conversions, mergers and divisions<sup>1</sup>, Member States should be required to ensure that cross-border conversions correspond to the actual pursuit of a genuine economic activity, including in the digital sector, to avoid the setting up of 'letterbox' companies;
130. Calls for Member States to request that a set of financial information be exchanged between the competent authorities ahead of the execution of cross-border conversions, mergers or divisions;
131. Recommends that any entity creating an offshore structure should provide the competent authorities with the legitimate reasons behind such a decision in order to guarantee that offshore accounts are not used for money laundering or tax evasion purposes;
132. Calls for the identities of the actual owners to be disclosed to tax authorities;
133. Points out national measures to specifically ban commercial relationships with letterbox companies; highlights, in particular, the Latvian legislation which defines a letterbox company as an entity having no actual economic activity and holding no documentary proof to the contrary, as being registered in a jurisdiction where companies are not required to submit financial statements, and/or as having no place of business in its country of residence; notes, however, that, according to EU law, the banning of letterbox companies in Latvia cannot be used to ban letterbox companies resident in EU Member States, as that would be considered discriminatory<sup>2</sup>; calls for the Commission to propose changes to the current EU law that would enable the banning of letterbox companies even if resident in EU Member States;
134. Highlights that the high level of inward and outward FDI as a percentage of GDP in seven Member States (Belgium, Cyprus, Hungary, Ireland, Luxembourg, Malta, and the Netherlands) can only to a limited extent be explained by real economic activities taking place in these Member States<sup>3</sup>;
135. Underlines the high share of FDI in several Member States, particularly in Luxembourg, Malta, Cyprus, the Netherlands and Ireland<sup>4</sup>; notes that such FDI is usually held by special purpose entities (SPEs) that often serve to exploit loopholes; calls on the Commission to assess the role of the SPEs holding FDI;

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<sup>1</sup> Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law, OJ L 169, 30.6.2017, p. 46.

<sup>2</sup> TAX3 Delegation to Riga (Latvia), 30-31 August 2018, Mission Report.

<sup>3</sup> Kiendl Kristo I. and Thirion E., An overview of shell companies in the European Union, EPRS, PE 627.129, European Parliament, October 2018, p. 23.

<sup>4</sup> Kiendl Kristo I. and Thirion E., op. cit., p. 23; 'Study on Structures of Aggressive Tax Planning and Indicators – Final Report' (Taxation paper No 61, 27 January 2016); 'The Impact of Tax Planning on Forward-Looking Effective Tax Rates' (Taxation paper No 64, 25 October 2016) and 'Aggressive tax planning indicators – Final Report' (Taxation paper No 71, 7 March 2018).

136. Notes that economic indicators such as an unusually high level of FDI, as well as FDI held by SPEs, are included among ATP indicators<sup>1</sup>;
137. Notes that the ATAD anti-abuse rules (artificial arrangements) cover letterbox companies, while the CCTB and CCCTB would ensure that the income is attributed to where the real economic activity takes place;
138. Urges the Commission and the Member States to establish coordinated, binding, enforceable and substantial economic activity requirements as well as expenditure tests;
139. Calls on the Commission to carry out, within two years, fitness checks of the interconnected legislative and policy initiatives aimed at addressing the use of letterbox companies in the context of tax fraud, tax evasion, aggressive tax planning and money laundering;

### 3. *VAT*

140. Underscores the need for harmonisation of VAT rules at EU level to the extent that it is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition<sup>2</sup>;
141. Stresses that VAT is an important source of tax revenue for national budgets; notes that in 2016, VAT revenues in the EU-28 Member States amounted to EUR 1 044 billion, which corresponds to 18 % of all tax revenues in the Member States; takes note of the fact that the 2017 annual EU budget amounted EUR 157 billion;
142. Regrets, however, that every year, large amounts of the expected VAT revenue are lost because of fraud; highlights that according to the Commission's statistics, the VAT gap (which is the difference between the expected VAT revenue and the VAT actually collected, thereby providing an estimate of the VAT lost due not only to fraud, but also to bankruptcy, miscalculations and avoidance) in the EU in 2016 amounted to EUR 147 billion, which represents more than 12 % of the total expected VAT revenue<sup>3</sup>, although the situation is much worse in a number of Member States where the gap is close to or even above 20 %, showing a big difference between Member States in their handling of the VAT gap;
143. Notes that the Commission estimates that around EUR 50 billion – or EUR 100 per EU citizen each year – is lost to cross-border VAT fraud<sup>4</sup>; while Europol estimates that around EUR 60 billion of VAT fraud is linked to organised crime and terrorism financing; notes the increased harmonisation and simplification of VAT regimes in the EU, although cooperation between Member States is neither sufficient nor effective as of yet; calls on the Commission and the Member States to reinforce their cooperation to better fight against VAT fraud; calls on the next Commission to prioritise the introduction and implementation of the definitive VAT regime in order to improve it;

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<sup>1</sup> IHS, Aggressive tax planning indicators, prepared for the European Commission, DG TAXUD Taxation papers, Working paper No 71, 7 March 2018.

<sup>2</sup> Article 113 of the TFEU

<sup>3</sup> Study and Reports on the VAT Gap in the EU-28 Member States: 2018 Final Report / TAXUD/2015/CC/131.

<sup>4</sup> See Commission press release.

144. Calls for reliable statistics to estimate the VAT gap and stresses the need for a common approach to data collection and sharing within the EU; urges the Commission to ensure that harmonised statistics are collected and published regularly in the Member States;
145. Underlines that the feature of the current VAT (transitional) regime of applying an exemption to intracommunity supplies within the EU and exports has been abused by fraudsters, in particular in the VAT carousel fraud or missing trader intra-community fraud (MTIC);
146. Takes note of the fact that according to the Commission, businesses trading on a cross-border basis currently suffers from compliance costs which are 11 % higher compared to those incurred by companies that only trade domestically; notes that, in particular, SMEs suffer from disproportionate VAT compliance costs, which is one of the reasons they have remained wary of reaping the advantages of the single market; calls on the Commission and Member States to develop solutions to reduce the VAT compliance costs linked to cross-border trade;

### ***3.1. Modernisation of the VAT framework***

147. Welcomes, therefore, the Commission's VAT action plan of 6 April 2016 to reform the VAT framework and the 13 legislative proposals adopted by the Commission since December 2016 that address the shift towards the definitive VAT regime, remove VAT obstacles to e-commerce, review the VAT regime for SMEs, modernise the VAT rates policy and tackle the VAT tax gap;
148. Welcomes the fact that a VAT Mini One Stop Shop (MOSS) on telecommunications, broadcasting and electronic services was introduced in 2015 as a voluntary system for the registration, declaration and payment of VAT; welcomes the extension of the MOSS to other supplies of goods and services to final consumers as of 1 January 2021;
149. Notes that the Commission estimates that the reform to modernise VAT is expected to reduce red tape by 95 %, which amounts to an estimated EUR 1 billion;
150. Welcomes in particular the fact that on 5 December 2017 the Council adopted new rules making it easier for online businesses to comply with VAT obligations ; welcomes in particular the fact that the Council took Parliament's opinion on board in relation to introducing online platforms' liability for collecting VAT on the distance sales that they facilitate; considers that this measure will ensure a level playing field with non-EU businesses, as many goods that are imported for distance sales currently enter the EU VAT-free; calls on the Member States to correctly implement the new rules by 2021;
151. Welcomes the definitive VAT system proposals adopted on 4 October 2017<sup>1</sup> and 24 May 2018<sup>2</sup>; welcomes in particular the Commission's proposal to apply the destination principle to taxation, which means that VAT would be paid to the tax authorities of the Member State of the final consumer at the rate applicable in that Member State;

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<sup>1</sup> COM(2017)0569, COM(2017)0568 and COM(2017)0567.

<sup>2</sup> COM(2018)0329.

152. Welcomes in particular the progress made by the Council towards the definitive VAT regime by adopting the Quick Fixes<sup>1</sup> on 4 October 2018; expresses its concern, however, that no safeguards in relation to its fraud-sensitive aspects were adopted along the lines of Parliament's position<sup>2</sup> on the Certified Taxable Person (CTP) proposal<sup>3</sup>, as expressed in its opinion of 3 October 2018<sup>4</sup>; profoundly regrets that the Council postponed the decision on introduction of CTP status until the adoption of the definitive VAT regime;
153. Calls on the Council to ensure that CTP status is consistent with Authorised Economic Operator (AEO) status, which is granted by the customs authorities;
154. Calls for a minimal EU transparent coordination on the definition of CTP status, including a regular assessment by the Commission on how Member States grant CTP status; calls for the exchange of information between Member States' tax authorities about refusals to grant CTP status to certain companies, in order to enhance coherence and common standards;
155. Welcomes, furthermore, the revision of the special schemes for SMEs<sup>5</sup> which is key to ensuring a level playing field, as VAT exemption schemes are currently only available to domestic entities, and can contribute to the reduction of VAT compliance costs for SMEs; calls on the Council to take Parliament's opinion of 11 September 2018<sup>6</sup> into account, particularly when it comes to further administrative simplification for SMEs; calls, therefore, on the Commission to set up an online portal through which SMEs willing to avail themselves of the exemption in another Member State are required to register, and to put in place a one-stop shop through which small enterprises can file VAT returns for the different Member States in which they operate;
156. Notes the adoption of the Commission proposal for a general reverse charge Mechanism (GRCM)<sup>7</sup> that will allow temporary derogations from normal VAT rules in order to

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<sup>1</sup> Proposal for a Council Directive amending Directive 2006/112/EC as regards harmonising and simplifying certain rules in the value added tax system and introducing the definitive system for the taxation of trade between the Member States (COM(2017)0569).

<sup>2</sup> European Parliament legislative resolution of 3 October 2018 on the proposal for a Council directive amending Directive 2006/112/EC as regards harmonising and simplifying certain rules in the value added tax system and introducing the definitive system for the taxation of trade between Member States, texts adopted, P8\_TA(2018)0366.

<sup>3</sup> Proposal for a Council Directive amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (COM(2016)0757).

<sup>4</sup> Texts adopted, P8\_TA(2018)0367.

<sup>5</sup> Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises (COM(2018)0021).

<sup>6</sup> European Parliament legislative resolution of 11 September 2018 on the proposal for a Council directive amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises, Texts adopted, P8\_TA(2018)0319.

<sup>7</sup> Proposal for a Council Directive of 21 December 2016 amending Directive 2006/112/EC on the common system of value added tax as regards the temporary

better prevent carousel fraud in the Member States that are most severely affected by this type of fraud; calls on the Commission to closely monitor the application and the potential risks and benefits of this new legislation; insists, however, that the GRCM should by no means delay the swift implementation of a definitive VAT system;

157. Notes that the expansion of e-commerce can often pose a challenge for tax authorities, e.g. the absence of a seller's taxable identification in the EU, and the registration of VAT declarations well below the real value of the declared transactions; welcomes, therefore, the spirit of the proposed implementing rules relating to distance sales of goods adopted on 11 December 2018 by the Commission (COM(2018)0819 and COM(2018)0821), according to which, notably, from 2021 online platforms will have the responsibility to ensure that VAT is collected on sales of goods by non-EU companies to EU consumers taking place on their platforms;
158. Calls on the Commission and Member States to monitor e-commerce transactions involving sellers based outside the EU that would declare no VAT (for example by unduly using the 'sample' statute) or would deliberately underestimate the value in order to avoid altogether or reduce the VAT due; considers that such practices endanger the integrity and smooth functioning of the EU's internal market; calls on the Commission to come up with proposals if appropriate and necessary;

### **3.2. *The VAT gap, the fight against VAT fraud and administrative cooperation on VAT***

159. Reiterates its call to the factors contributing to the tax gap, not least VAT;
160. Welcomes the opening of infringement procedures by the Commission on 8 March 2018 against Cyprus, Greece and Malta, and on 8 November 2018 against Italy and the Isle of Man as regards abusive VAT practices in relation to the acquisition of yachts and aircraft, to ensure that they stop offering allegedly unlawful favourable tax treatment for private yachts and aircraft, which distorts competition in the maritime and aviation sectors;
161. Welcomes the amendments to Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of VAT; welcomes the Commission's monitoring visits to 10 Member States carried out in 2017, notably the subsequent recommendation to improve the reliability of the VAT Information Exchange System (VIES);
162. Notes that the Commission has recently proposed additional control tools and an enhanced role for Eurofisc, as well as mechanisms for closer cooperation between customs and tax administrations; calls on all Member States to participate more actively in the Transactional Network Analysis (TNA) system in the framework of Eurofisc;
163. Is of the opinion that the participation of all Member States in Eurofisc must be mandatory and a condition for receiving EU funds; echoes the preoccupation of the European Court of Auditors on VAT reimbursement in Cohesion spending<sup>1</sup> and on the EU Anti-Fraud Programme<sup>2</sup>;

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application of a generalised reverse charge mechanism in relation to supplies of goods and services above a certain threshold (COM(2016)0811).

164. Urges the Commission to examine the possibilities for real-time collection and communication of transactional VAT data by the Member States, as this would increase the effectiveness of Eurofisc and allow the further development of new strategies to defeat VAT fraud; calls on all relevant authorities to use a variety of statistical and data-mining technologies to identify anomalies, suspicious relationships and patterns, enabling tax agencies to better address a wide spectrum of non-compliance behaviours in a proactive, targeted and cost-effective way;
165. Welcomes the adoption of the Protection of Financial Interests (PIF) Directive<sup>1</sup> which clarifies the issues of cross-border cooperation and mutual legal assistance between Member States, Eurojust, Europol, the European Public Prosecutor's Office (EPPO), the European Anti-Fraud Office (OLAF) and the Commission in tackling VAT fraud; calls on the EPPO, OLAF, Eurofisc, Europol and Eurojust to cooperate closely with a view to coordinating their efforts against VAT fraud and to identifying and adapting to new fraudulent practices;
166. Points, however, to the need for better cooperation between the administrative, judicial and law-enforcement authorities within the EU, as highlighted by experts during the hearing held on 28 June 2018 and in a study commissioned by the TAX3 committee;
167. Welcomes the Commission's communication to extend the competences of the EPPO to cross-border terrorist crimes; calls on the Commission and Member States to ensure that the EPPO can begin operating as soon as possible and no later than 2022, ensuring close cooperation with the already established institutions, bodies, agencies and offices of the Union in charge of the protection of the financial interests of the Union; calls for exemplary, dissuasive and proportional sanctions to be pronounced; considers that anyone engaged in an organised VAT fraud scheme should be severely sanctioned in order to avoid a perception of impunity;
168. Considers that one of the main issues allowing fraudulent behaviour in relation to VAT to occur is the 'cash profit' that a fraudster can make; calls, therefore, on the Commission to analyse the proposal made by experts<sup>2</sup> to place cross-border transactional data on a blockchain, and to use secured digital currencies that can only be used for VAT payments (single purpose) instead of using fiat currency;

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<sup>1</sup> ECA, Rapid case review, VAT reimbursement in Cohesion – an error-prone and sub-optimal use of EU funds, 29 November 2018.

<sup>2</sup> ECA Opinion No 9/2018 of 22 November 2018 concerning the proposal for a Regulation of the European Parliament and of the Council establishing the EU Anti-Fraud Programme.

<sup>1</sup> Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017, p. 29, in particular Articles 3 and 15 thereof.

<sup>2</sup> Ainsworth, R. T., Alwohabi, M., Cheetham, M. and Tirand, C.: 'A VATCoin Solution to MTIC Fraud: Past Efforts, Present Technology, and the EU's 2017 Proposal', Boston University School of Law, Law and Economics Series Paper, No 18-08, 26 March 2018. See also: Ainsworth, R. T., Alwohabi, M. and Cheetham, M.: 'VATCoin: Can a Crypto Tax Currency Prevent VAT Fraud?', *Tax Notes International*, Vol 84, 14 November 2016.

169. Welcomes the fact that the fraud linked to imports has been addressed by the Council<sup>1</sup>; considers that the proper integration of data from customs declarations into the VIES will allow the Member States of destination to cross-check customs and VAT information in order to ensure that VAT is paid at the country of destination; calls on Member States to implement this new legislation in an effective and timely manner by 1 January 2020;
170. Considers that administrative cooperation between tax and customs authorities is suboptimal<sup>2</sup>; calls on Member States to mandate Eurofisc to develop new strategies to track goods under customs procedure 42, the mechanism which allows the importer to obtain a VAT exemption when the imported goods are eventually intended for transport to a business customer in a Member State other than the Member State of importation;
171. Highlights the importance of the implementation of a register of beneficial owners of corporate entities under AMLD5 as an important tool to tackle VAT fraud; urges Member States to enhance the competences and qualifications of the police forces, tax services, prosecutors and judges dealing with this type of fraud;
172. Is concerned by the results of the study<sup>3</sup> commissioned by the TAX3 committee stating that the Commission's proposals will reduce fraud on imports but not eliminate it; takes note that the issue of undervaluation and enforcement of EU rules in general in the case of non-EU taxable persons will not be solved; calls on the Commission to investigate alternative collection methods for these supplies for the longer term; stresses that relying on the good faith of non-EU taxable persons to collect EU VAT is not a sustainable option; considers that such alternative collection models should not only target sales made via electronic platforms, but encompass all sales made by non-EU taxable persons, irrespective of the business model that they use;
173. Calls on the Commission to closely monitor the consequences of the introduction of the definitive regime for VAT revenues on Member States; calls on the Commission to investigate seriously the possibilities of new fraud risks in the definitive VAT system, notably the potentially missing supplier in cross-border transactions supplanting the missing customer type of carousel fraud; stresses, in this regard, that the custom transit system, among others, can certainly facilitate trade within the EU; notes, however, that abuses are possible and that criminal organisations, by avoiding the payment of taxes and duties, may cause a huge loss both to Member States and the EU (by avoiding VAT); calls, therefore, on the Commission to monitor the custom transit system and come up with proposals building on the recommendations made notably by OLAF, Europol and Eurofisc;
174. Believes that a large majority of European citizens expect clear European and national legislation that enables those who do not pay the tax which they are due to pay to be identified and sanctioned, and for the missing tax to be recuperated in a timely manner;

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<sup>1</sup> Council Regulation (EU) 2017/2454 of 5 December 2017 amending Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax, OJ L 348, 29.12.2017, p. 1.

<sup>2</sup> Lamensch M. and Ceci E., *VAT fraud: Economic impact, challenges and policy issues*, European Parliament, Directorate-General for Internal Policies, Policy Department A – Economic, Scientific and Quality of Life Policies, 15 October 2018.

<sup>3</sup> Ibid.

#### **4. Taxation of individuals**

175. Emphasises that natural persons do not generally exercise their freedom of movement for the purposes of tax fraud, tax evasion and aggressive tax planning; underlines, however, that some natural persons have a tax base large enough to span several tax jurisdictions;
176. Regrets the fact that HNWI and ultra HNWI (UHNWI), using complex tax structures, including the setting up of companies, continue to have the possibility to shift their earnings and funds or their purchases through different tax jurisdictions to obtain substantially reduced or zero liability by using the services of wealth managers and other intermediaries; deplores the fact that some EU Member States have implemented tax schemes to attract HNWI without creating real economic activity;
177. Notes that headline rates for labour income are usually higher than for income from capital throughout the EU; notes that, overall, the contribution of wealth-based taxes to overall tax revenues has remained rather limited, at 4,3 % of overall tax revenues in the EU<sup>1</sup>;
178. Notes with regret that corporate tax fraud, tax evasion and ATP contribute to shifting the tax liability on to honest and fair taxpayers;
179. Calls on the Member States to impose dissuasive, effective, and proportionate penalties in cases of tax fraud, tax evasion and illegal ATP, and to ensure that these penalties are enforced;
180. Deplores the fact that some Member States have created dubious tax regimes allowing individuals who become resident for tax purposes to obtain income tax benefits, thereby undermining other Member States' tax base and fostering harmful policies which discriminate against their own citizens; notes that these regimes may include benefits not available to national citizens, such as the non-taxation of foreign possessions and income, lump-sum tax on foreign income, tax-free allowances on a part of incomes earned domestically or lower tax rates on pensions remitted to the country of origin;
181. Recalls that the Commission, in a communication from 2001, suggested the inclusion of special regimes for highly-qualified expatriate staff in the list of harmful tax practices of the CoC Group (on Business Taxation)<sup>2</sup>, but has not provided any data on the scope of the problem since; calls on the Commission to reassess this issue and, in particular, to assess the risks of double taxation as well as double non-taxation of such schemes;

##### **4.1. Citizenship by investment (CBI) and residency by investment (RBI) schemes**

182. Is concerned that a majority of Member States have adopted citizenship by investment (CBI) or residency by investment (RBI) schemes<sup>3</sup>, generally known as 'golden visa and

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<sup>1</sup> Gunnarson A., Spangenberg U. and Schratzenstaller M., *Gender equality and taxation in the European Union*, European Parliament, Directorate-General for Internal Policies, Policy Department C – Citizens' Rights and Constitutional Affairs, 17 January 2017.

<sup>2</sup> Commission communication entitled 'Tax policy in the European Union – Priorities for the years ahead' (COM(2001)0260).

<sup>3</sup> 18 Member States have some form of RBI scheme in place, including four Member States that operate CBI schemes in addition to RBI schemes: Bulgaria, Cyprus, Malta,



passports' or investor programmes, by which citizenship or residence is granted to EU and non-EU citizens in exchange for financial investment;

183. Observes that the investments made under these programmes do not necessarily promote the real economy of the Member State granting citizenship or residency, and that they often do not require applicants to spend any time on the territory in which the investment is made, and that even when such a requirement formally exists, its fulfilment is usually not verified; stresses that such schemes jeopardise the attainment of the Union's objectives and are therefore in breach of the principle of sincere cooperation;
184. Observes that at least 5 000 non-EU citizens have obtained EU citizenship through citizenship by investment schemes<sup>1</sup>; notes that, according to a study<sup>2</sup>, at least 6 000 people have been granted citizenship and almost 100 000 residence permits have been issued;
185. Worries that CBI and RBI are awarded without proper security screening of the applicants, including to high-risk third-country nationals, and therefore pose security risks for the Union; deplors the fact that the opaqueness surrounding the origin of the money connected to CBI and RBI schemes has significantly increased the political, economic and security risks for European countries;
186. Stresses that CBI and RBI schemes carry other significant risks, including a devaluation of EU and national citizenships and the potential for corruption, money laundering and tax evasion; notes that one Member State's decision to implement CBI and RBI schemes has spillover effects on other Member States; reiterates its concern that citizenship or residence could be granted through these schemes without proper or indeed any customer due diligence (CDD) having been carried out by the competent authorities;
187. Notes that the obligation laid down by AMLD5, whereby obliged entities should consider CBI and RBI applicants as high-risk in the course of their CDD process, does not absolve Member States of their responsibility to establish and conduct enhanced due diligence themselves; notes that several formal investigations into corruption and money laundering have been launched at national and EU level directly related to CBI and RBI schemes;
188. Underlines that, at the same time, the economic sustainability and viability of the investments provided through these schemes remain uncertain; highlights that citizenship and the rights associated to it should never be for sale;

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and Romania. 10 Member States have no such schemes: Austria, Belgium, Denmark, Finland, Germany, Hungary, Poland, Slovakia, Slovenia and Sweden. Source: Scherrer A. and Thirion E., *Citizenship by investment (CBI) and residency by investment (RBI) schemes in the EU*, EPRS, PE 627.128, European Parliament, October 2018, pp. 12-13 and 55-56; ISBN: 978-92-846-3375-3.

<sup>1</sup> See the above-mentioned study. Other studies provide higher figures, also including RBI.

<sup>2</sup> Transparency International and Global Witness, *European Getaway: Inside the Murky World of Golden Visas*, 10 October 2018.

189. Notes that the CBI and RBI schemes of some Member States have been used profusely by Russian citizens and by citizens from countries under Russian influence; highlights that these schemes may serve Russian citizens included in the sanctions list adopted after the illegal annexation of Crimea by Russia and the aggression of Russia on Crimea as a means to avoid EU sanctions;
190. Criticises that these programmes regularly involve tax privileges or special tax regimes for the beneficiaries; is concerned that these privileges could hamper the objective of making all citizens contribute fairly to the tax system;
191. Worries about the lack of transparency in relation to the number and origin of applicants, the numbers of individuals granted citizenship or residency by these schemes, the amount invested through these schemes and the origin thereof; appreciates the fact that some Member States make explicit the name and nationalities of the individuals who are granted citizenship or residency under these schemes; encourages other Member States to follow this example;
192. Is concerned that according to the OECD, CBI and RBI schemes could be misused to undermine the common reporting standard (CRS) due diligence procedures, leading to inaccurate or incomplete reporting under the CRS, in particular when not all jurisdictions of tax residence are disclosed to the financial institution; notes that in the OECD's view, the visa schemes which are potentially high-risk for the integrity of the CRS are those that give a taxpayer access to a low personal income tax rate of less than 10 % on offshore financial assets, and do not require a significant physical presence of at least 90 days in the jurisdiction offering the golden visa scheme;
193. Is concerned that Malta and Cyprus have schemes<sup>1</sup> among those that potentially pose a high risk to the integrity of CRS;
194. Concludes that the potential economic benefits of CBI and RBI schemes do not offset the serious security, money laundering and tax evasion risks they present;
195. Calls on Member States to phase out all existing CBI or RBI schemes as soon as possible;
196. Stresses that, in the meantime, Member States should require physical presence in the country as a condition for benefiting from CBI and RBI schemes, and should properly ensure that enhanced CDD on applicants for citizenship or residence through these schemes is duly carried out, as required by AMLD5; stresses that AMLD5 imposes enhanced CDD for politically exposed persons (PEPs); calls on Member States to ensure that governments bear the ultimate responsibility for performing due diligence on applicants for CBI or RBI; calls on the Commission to monitor rigorously and continuously the proper implementation and application of CDD within the framework of CBI and RBI schemes until they are repealed in each Member State;
197. Notes that the acquisition of a residence permit for or citizenship of a Member State gives the grantee access to a wide range of rights and entitlements in the entire territory

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<sup>1</sup> The Cypriot Citizenship by Investment: Scheme for Naturalisation of Investors by Exception, the Cypriot Residence by Investment, the Maltese Individual Investor Programme, and the Maltese Residence and Visa programme.

of the Union, including the right to move and reside freely in the Schengen area; calls, therefore, on Member States implementing CBI and RBI programmes, until they are finally repealed, to duly verify the character of the applicants and refuse their application if they present security risks, including money laundering; further alerts to the dangers posed by CBI and RBI schemes associated with family reunification, whereby family members of CBI or RBI beneficiaries can acquire citizenship or residence with little or no checks;

198. Calls, in this context, on all Member States to compile and publish transparent data related to their CBI and RBI schemes, including the number of refusals and the reasons for denial; calls on the Commission, until the schemes are finally repealed, to issue guidelines and to ensure better data collection and exchange of information among Member States in the context of their CBI and RBI schemes, including in relation to applicants who have had their application denied due to security issues;
199. Considers that until CBI and RBI are finally repealed, Member States should impose the same obligations on intermediaries in the trade of CBI and RBI as apply to obliged entities under AML legislation, and calls on Member States to prevent conflicts of interest linked to CBI and RBI schemes, which might arise when private firms which assisted the government in the design, management and promotion of these schemes, also advised and supported individuals by screening them for suitability and filing their applications for citizenship or residence;
200. Welcomes the Commission's report of 23 January 2019 on Investor Citizenship and Residence Schemes in the European Union (COM(2019)0012); notes that the report confirms that both types of schemes pose serious risks for the Member States and the Union as a whole, particularly in terms of security, money laundering, corruption, the circumvention of EU rules and tax evasion, and that these serious risks are further accentuated by shortcomings in the transparency and governance of the schemes; worries that the Commission has concerns that the risks posed by the schemes are not always sufficiently mitigated by the measures taken by the Member States;
201. Takes note of the Commission's intention to set up a group of experts to address matters of the transparency, governance and security of these schemes; welcomes the fact that the Commission has undertaken to monitor the impact of investor citizenship schemes implemented by visa-free countries as part of the visa suspension mechanism; calls on the Commission to coordinate information sharing between Member States on rejected applications; calls on the Commission to assess the risks associated with the selling of citizenship and residence as part of its next supranational risk assessment; calls on the Commission to assess the extent to which these schemes have been used by EU citizens;

#### **4.2. *Free ports, customs warehouses and other specific economic zones (SEZs)***

202. Welcomes the fact that free ports will become obliged entities under AMLD5, and that they will be under an obligation to carry out CDD requirements and report suspicious transactions to the financial intelligence units (FIUs);
203. Notes that free ports within the EU can be established under the 'free zone' procedure; notes that free zones are enclosed areas within the customs territory of the Union where non-Union goods can be introduced free of import duty, other charges (i.e. taxes) and commercial policy measures;

204. Recalls that free ports are warehouses in free zones, which were – originally – intended as spaces to store merchandise in transit; deplors the fact that they have since become popular for the storage of substitute assets, including art, precious stones, antiques, gold and wine collections – often on a permanent basis<sup>1</sup> – and financed from unknown sources; stresses that free ports or free zones must not be used for the purposes of tax evasion or to achieve the same effects as tax havens;
205. Notes that, apart from secure storage, the motivations for the use of free ports include a high degree of secrecy and the deferral of import duties and indirect taxes such as VAT or user tax;
206. Underlines that there are over 80 free zones in the EU<sup>2</sup> and many thousands of other warehouses under ‘special storage procedures’ in the EU, notably ‘customs warehouses’, which can offer the same degree of secrecy and (indirect) tax advantages<sup>3</sup>;
207. Observes that under the Union Customs Code, customs warehouses are on an almost identical legal footing with free ports; recommends, therefore, that they be put on an equal footing with free ports under legal measures aimed at mitigating money laundering and tax evasion risks therein, such as AMLD5; considers that warehouses should be equipped with sufficient and qualified staff to be able to undertake the necessary scrutiny of the operations that they host;
208. Notes that money laundering risks in free ports are directly associated with money laundering risks in the substitute assets market;
209. Notes that under DAC5, as of 1 January 2018, direct tax authorities have ‘access upon request’ to a broad information set with regard to ultimate beneficial ownership (UBO) information collected under the AMLD; notes that EU AML legislation is built on the trust in reliable CDD research and the diligent reporting of suspicious transactions by obliged entities, which will become AML gatekeepers; notes with concern that ‘access upon request’ to information held by free ports may only have very limited effect in specific cases<sup>4</sup>;
210. Calls on the Commission to assess the extent to which free ports and shipping licenses may be misused for the purposes of tax evasion<sup>5</sup>; calls on the Commission, moreover, to table a legislative proposal to ensure the automatic exchange of information between the relevant authorities such as law enforcement, tax and customs authorities and Europol, on beneficial ownership and transactions taking place in free ports, customs warehouses or SEZs, and to include a traceability obligation;
211. Calls on the Commission to bring forward a proposal for the urgent phasing out of the system of free ports in the EU;

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<sup>1</sup> Korver R., ‘Money Laundering and tax evasion risks in free ports’, EPRS, PE: 627.114, October 2018; ISBN: 978-92-846-3333-3.

<sup>2</sup> European Commission list of EU free zones.

<sup>3</sup> Korver R., op. cit.

<sup>4</sup> Korver R., op. cit.

<sup>5</sup> European Parliament recommendation of 13 December 2017 to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion (OJ C 369, 11.10.2018, p. 132).

212. Notes that the end of banking secrecy has led to the emergence of investment in new assets such as art, which has led to rapid growth of the art market in recent years; stresses that free zones provide them with a safe and widely disregarded storage space, where trade can be conducted untaxed and ownership can be concealed, while art itself remains an unregulated market, due to factors such as the difficulty of determining market prices and finding specialists; points out that, for example, it is easier to move a valuable painting to the other side of the world than a similar amount of money;

#### **4.3. Tax amnesties**

213. Recalls<sup>1</sup> the need to use amnesties with extreme caution or to refrain from using them altogether, as they only represent a source of easy and quick tax collection in the short run, often introduced to close budget loopholes, but may also serve to encourage residents to evade taxes and wait for the next amnesty without being subject to dissuasive sanctions or penalties; calls on the Member States which enact tax amnesties to always require the beneficiary to explain the source of funds previously omitted;

214. Calls on the Commission to assess past amnesty programmes enacted by Member States, and, in particular, the public revenues recovered and their impact in the medium and long term on tax base volatility; urges Member States to ensure that relevant data related to the beneficiaries of previous and future tax amnesties is duly shared with the judiciary, law enforcement and tax authorities, and to ensure compliance with AML/CFT rules and possible prosecution for other financial crimes;

215. Takes the view that the CoC Group should mandatorily screen and clear each tax amnesty programme before its implementation by a Member State; takes the view that a taxpayer or UBO of a company who has already benefited from one or more tax amnesties should never be entitled to benefit from another one; calls for national authorities managing the data on persons who have benefited from tax amnesties to engage in an effective exchange of the data from law enforcement or other competent authorities investigating crimes other than tax fraud or tax evasion;

#### **4.4. Administrative cooperation**

216. Acknowledges the fact that administrative cooperation in the field of direct tax frameworks now covers both individual and corporate taxpayers;

217. Stresses that international standards on administrative cooperation are minimum standards; considers, therefore, that Member States should go further than merely complying with these minimum standards; calls on the Member States to further remove barriers to administrative and legal cooperation;

218. Welcomes the fact that, with the adoption of the global standard on the automatic exchange of information (AEOI) implemented by DAC1, and the repeal of the 2003 Savings Directive, a single EU mechanism for the exchange of information has been established;

### **5. Anti-Money Laundering (AML)**

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<sup>1</sup> European Parliament recommendation of 13 December 2017 to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion (OJ C 369, 11.10.2018, p. 132).

219. Stresses that money laundering can assume various forms, and that the money laundered can have its origin in various illicit activities, such as corruption, arms and human trafficking, drug dealing, tax evasion and fraud, and can be used to finance terrorism; notes with concern that the proceeds from criminal activity in the EU are estimated to amount to EUR 110 billion per year<sup>1</sup>, corresponding to 1 % of the Union's total GDP; highlights that the Commission estimates that in some Member States up to 70 % of money laundering cases have a cross-border dimension<sup>2</sup>; further notes that the scale of money laundering is estimated by the UN<sup>3</sup> to be the equivalent of between 2 to 5 % of global GDP, or around EUR 715 billion and 1,87 trillion a year;
220. Underlines that various recent cases of money laundering within the Union are linked to capital, ruling elites, and/or citizens who come from Russia and from the Commonwealth of Independent States (CIS) in particular; expresses its concern about the threat posed to European security and stability by illicit proceeds from Russia and CIS countries which enter the European financial system in order to be laundered and further used to finance criminal activities; stresses that these proceeds endanger the security of EU citizens and create distortions and unfair competitive disadvantages for law-abiding citizens and companies; considers that, in addition to capital flight, which cannot be curbed without solving the economic and administrative problems of the country of origin, and money laundering for purely criminal reasons, these hostile activities, the intention of which is to weaken European democracies, their economies and their institutions, are carried out at such a magnitude as to destabilise the European continent; calls for better cooperation between Member States regarding the control of capital entering the Union from Russia;
221. Reiterates its call<sup>4</sup> for EU-wide sanctions on human rights abuses, inspired by the US Global Magnitsky Act, which should allow for the imposition of visa bans and targeted sanctions such as the blocking of property and interests in property within the EU jurisdiction vis-à-vis individual public officials or persons acting in an official capacity who are responsible for acts of corruption or serious human rights violations; welcomes Parliament's adoption of the report on the proposal for a regulation of the European Parliament and of the Council establishing a framework for screening of foreign direct investments into the European Union<sup>5</sup>; calls for increased scrutiny and supervision of banks' non-resident portfolios and the share thereof originating in countries deemed to pose security risks for the Union;

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<sup>1</sup> [From illegal markets to legitimate businesses: the portfolio of organised crime in Europe](#), Final report of Project OCP – Organised Crime Portfolio, March 2015.

<sup>2</sup> <http://www.europarl.europa.eu/news/en/press-room/20171211IPR90024/new-eu-wide-penalties-for-money-laundering>; Commission proposal of 21 December 2016 for a directive of the European Parliament and of the Council on countering money laundering by criminal law (COM(2016)0826).

<sup>3</sup> [UNODC](#)

<sup>4</sup> See, for example, the European Parliament resolution of 13 September 2017 on corruption and human rights in third countries (OJ C 337, 20.9.2018, p. 82), paragraphs 35 and 36, and the [Outcome of the 3662<sup>nd</sup> Council Meeting on Foreign Affairs held in Brussels on 10 December 2018](#).

<sup>5</sup> European Parliament legislative resolution of 14 February 2019 (Texts adopted, P8\_TA(2019)0121).

222. Welcomes the adoption of AMLD4 and of AMLD5; stresses that they represent significant steps in improving the effectiveness of the Union's efforts to combat the laundering of money from criminal activities and to counter the financing of terrorist activities; notes that the Union's AML framework chiefly relies on a preventive approach to money laundering, with a focus on the detection and the reporting of suspicious transactions;
223. Deplores the fact that Member States have failed to fully or partially transpose AMLD4 into their domestic legislation within the set deadline, and that for this reason, infringement procedures have had to be opened by the Commission against them, including referrals before the Court of Justice of the European Union<sup>1</sup>; calls on these Member States to swiftly remedy this situation; urges Member States, in particular, to comply with their legal obligation to respect the deadline of 10 January 2020 for transposing AMLD5 into their domestic legislation; emphasises and welcomes the Council conclusions of 23 November 2018 inviting Member States to transpose AMLD5 into their domestic legislation ahead of the 2020 deadline; calls on the Commission to make full use of the instruments at hand to provide support and ensure that Member States duly transpose and implement AMLD5 as soon as possible;
224. Recalls the crucial importance of CDD as part of the know-your-customer (KYC) obligation which consists of obliged entities having to properly identify their customers and the source of their funds as well as the UBOs of the assets, including the immobilisation of anonymous accounts; deplores the fact that some financial institutions and their related business models have actively facilitated money laundering; calls on the private sector to take an active role in combating the financing of terrorism and in the prevention of terrorist activities, as far as they may be able; calls on financial institutions to actively review their internal procedures to prevent any risk of money laundering;
225. Welcomes the Action Plan adopted by the Council on 4 December 2018, which includes several non-legislative measures to better tackle money laundering and the financing of terrorism in the Union; calls on the Commission to regularly update Parliament on the progress of the implementation of the Action Plan;
226. Is concerned by the absence of concrete procedures to assess and review the probity of members of the Governing Council of the ECB, especially when they are formally accused of criminal activity; calls for mechanisms to monitor and review the conduct and propriety of the members of the Governing Council of the ECB, and calls for them to be protected in the case of abuse of power by the appointing authority;
227. Condemns the fact that systemic failures in the enforcement of AML requirements, coupled with inefficient supervision, has led to a number of recent high-profile cases of

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<sup>1</sup> On 19 July 2018, the Commission referred Greece and Romania to the Court of Justice of the European Union for failing to transpose the fourth Anti-Money Laundering Directive into their national law. Ireland had transposed only a very limited part of the rules and was also referred to the Court of Justice. On 7 March 2019, the Commission sent a reasoned opinion to Austria and the Netherlands and a letter of formal notice to the Czech Republic, Hungary, Italy, Slovenia, Sweden and the United Kingdom for failing to fully transpose the 4th Anti-Money Laundering Directive.

ML in European banks linked to systematic breaches of the most basic KYC and CDD requirements;

228. Recalls that KYC and CDD are essential and should continue throughout the business relationship, and that customers' transactions should be continuously and carefully monitored for suspicious or unusual activities; recalls, in this context, the obligation for obliged entities to promptly inform national FIUs, on their own initiative, of transactions suspected of ML, associate predicate offences or terrorist financing; regrets the fact that, in spite of Parliament's efforts, AMLD5 continues, as a last resort, to allow for the natural person(s) who hold(s) the position of senior managing official to be registered as beneficial owners of a company or trust, while the real beneficial owner is not known or there is a suspicion about them; calls on the Commission, on the occasion of the next revision of AML rules in the EU, to make a clear assessment of the impact of this provision on the availability of reliable information on beneficial ownership in Member States, and to propose its removal should there be indications that the provision is prone to abuse aimed at shielding the identity of beneficial owners;
229. Notes that in some Member States there are unexplained wealth control mechanisms tracking the proceeds of criminal activities; stresses that this mechanism often consists of a court order requiring a person who is reasonably suspected of being involved in serious crime, or of being connected to a person involved in it, to explain the nature and extent of their interest in particular property, and to explain how that property was obtained, where there are reasonable grounds to suspect that the respondent's known lawfully obtained income would be insufficient to enable the respondent to obtain the property; invites the Commission to assess the effects and feasibility of such a measure at Union level;
230. Welcomes the decision in some Member States to ban the issuing of bearer shares and to convert existing ones into nominal securities; asks the Member States to consider the need to enact similar measures in their jurisdictions, in view of the new provisions of AMLD5 concerning beneficial ownership reporting and risks identified;
231. Stresses the urgent need to create a more efficient system for the exchange of communication and information among judicial authorities within the Union, thereby replacing the traditional instruments of mutual legal assistance in criminal matters, which provide for lengthy and burdensome procedures and therefore harm cross-border investigations into money laundering and other serious crimes; reiterates its call for the Commission to assess the need for legislative action in this regard;
232. Calls on the Commission to assess and report to Parliament on the role and particular money laundering risks posed by legal arrangements such as special purpose vehicles (SPVs), SPEs and non-charitable purpose trusts (NCPTs), particularly in the UK and its Crown Dependencies and Overseas Territories;
233. Urges the Member States to fully comply with AML legislation when issuing sovereign bonds on the financial markets; considers that due diligence in such financial operations is also strictly necessary;
234. Notes that during the mandate of the TAX3 committee alone, three deplorable cases of money laundering through EU banks have been disclosed: ING Bank N.V. recently admitted serious shortcomings in the application of AML/CFT provisions and agreed to



pay EUR 775 million in a settlement with the Netherlands' Public Prosecution Service<sup>1</sup>; ABLV Bank in Latvia went into voluntary liquidation after the United States Financial Crimes Enforcement Network (FinCEN) decided to propose a ban on ABLV from having a correspondence account in the United States due to money laundering concerns<sup>2</sup>, and Danske Bank admitted, after an investigation into 15 000 customers and around 9,5 million transactions linked to its Estonian branch had taken place, that major deficiencies in the bank's governance and control systems had made it possible to use its Estonian branch for suspicious transactions<sup>3</sup>;

235. Notes with concern that the 'Troika Laundromat' case has also exposed publicly how USD 4,6 billion from Russia and elsewhere passed through European banks and businesses; highlights that at the centre of the scandal is Troika Dialog, formerly one of the largest Russian private investment banks, and the network that may have enabled the Russian ruling elite to make secret use of illicit proceeds to acquire shares in state-owned companies, purchase real estate both in Russia and abroad and buy luxury items; further deplors the fact that several European banks have reportedly been involved in these suspicious transactions, namely Danske Bank, Swedbank AB, Nordea Bank Abp, ING Groep NV, Credit Agricole SA, Deutsche Bank AG, KBC Group NV, Raiffeisen Bank International AG, ABN Amro Group NV, Cooperatieve Rabobank U.A. and the Dutch unit of Turkiye Garanti Bankasi A.S.;
236. Notes that in the case of Danske Bank, transactions worth upwards of EUR 200 billion flowed in and out of its Estonian branch<sup>4</sup> without the bank having put in place adequate internal AML and KYC procedures, as subsequently admitted by the bank itself and confirmed by both the Estonian and Danish Financial Supervisory Authorities; considers that this failure shows a complete lack of responsibility on the part of both the bank and the competent national authorities; calls on the competent authorities to carry out urgent evaluations of the adequacy of AML and KYC procedures in all European banks to ensure proper enforcement of the Union's AML legislation;
237. Further notes that 6 200 customers of the Estonian branch of Danske Bank have been found to have engaged in suspicious transactions, that around 500 customers have been linked to publicly reported money laundering schemes, that 177 have been linked with the 'Russian Laundromat' scandal, and 75 to the 'Azerbaijani Laundromat' scandal, and that 53 customers were companies found to share addresses and directors<sup>5</sup>; calls on the relevant national authorities to track the destinations of the suspicious transactions of the 6 200 customers of the Estonian branch of Danske Bank in order to confirm that the money laundered was not used for further criminal activities; calls on the relevant national authorities to duly cooperate in this matter as the chains of suspicious transactions are clearly cross-border;

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<sup>1</sup> Netherlands' Public Prosecution Service, 4 September 2018

<sup>2</sup> European Parliament, Directorate-General for Internal Policies, Economic Governance Support Unit, in-depth analysis entitled 'Money laundering - Recent cases from a EU banking supervisory perspective', April 2018, PE 614.496.

<sup>3</sup> Bruun & Hjejle: Report on the Non-Resident Portfolio at Danske Bank's Estonian Branch, Copenhagen, 19 September 2018.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

238. Highlights that the ECB has withdrawn the banking licence of Malta's Pilatus Bank following the arrest in the United States of Ali Sadr Hashemi Nejad, Chairman of Pilatus Bank and its sole shareholder, on, among other things, charges of money laundering; stresses that the EBA concluded that the Maltese FIAU had breached EU law because it had failed to conduct an effective supervision of Pilatus Bank due to, among other things, procedural deficiencies and lack of supervisory actions; notes that on 8 November 2018, the Commission addressed a formal opinion to the Maltese FIAU calling on it to take additional measures to comply with its legal obligations<sup>1</sup>; calls on the Maltese FIAU to take steps to comply with the respective recommendations;
239. Takes note of the letter to the TAX3 committee from the Permanent Representative of Malta to the EU in reply to the committee's concerns regarding the alleged involvement of some Maltese PEPs in a possible new episode of money laundering and tax evasion connected to a United Arab Emirates (UAE)-based company called '17 Black'<sup>2</sup>; regrets the lack of precision in the answers received; is concerned about the apparent political inaction by the Maltese authorities; is particularly concerned at the fact that according to the 17 Black revelations, PEPs from the highest levels of the Maltese Government seem to be implicated; calls on the Maltese authorities to request evidence from the UAE in the form of letters of legal assistance; calls on the UAE to cooperate with the Maltese and European authorities and to ensure that funds frozen in the bank accounts of 17 Black remain frozen until a thorough investigation has been conducted; highlights, in particular, the apparent lack of independence of both the Maltese FIAU and the Maltese Commissioner of Police; regrets the fact that no measures have hitherto been taken against those PEPs involved in alleged corruption cases; underlines that the Maltese investigation would benefit from the establishment of a Joint Investigation Team (JIT), based on an ad hoc agreement<sup>3</sup>, in order to address the serious doubts about the independence and quality of ongoing national investigations, with the support of Europol and Eurojust;
240. Notes that at the time of her murder, the investigative journalist Daphne Caruana Galizia had been working on the largest information leak she had ever received from the servers of ElectroGas, the company operating Malta's power station; further notes that the owner of 17 Black, who was due to transfer large amounts of money to Maltese PEPs responsible for the power station, is also the director and a shareholder of ElectroGas;
241. Is concerned about the rise of money laundering in the context of other forms of business activities, in particular the phenomenon of the so-called 'flying money' and 'notorious streets'; stresses that stronger coordination and cooperation between local and regional administrative and law enforcement authorities is necessary in order to address these issues in European cities;

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<sup>1</sup> Commission Opinion of 8 November 2018 addressed to the Financial Intelligence Analysis Unit of Malta, based on Article 17(4) of Regulation (EU) No 1093/2010, on the action necessary to comply with Union law (C(2018)7431).

<sup>2</sup> Letter from the Permanent Representative of Malta to the EU of 20 December 2018 in reply to the letter from the Chair of the TAX3 committee of 7 December 2018.

<sup>3</sup> Based on the annex to the Council Resolution on a Model Agreement for setting up a Joint Investigation Team (JIT) (OJ C 18, 19.1.2017, p. 1).

242. Is aware that the current AML legal framework has so far consisted of directives and is based on minimum harmonisation, which has led to different national supervisory and enforcement practices in the Member States; calls on the Commission to assess, in the context of a future revision of the AML legislation, in the required impact assessment, whether a regulation would be a more appropriate legal act than a directive; calls, in this context, for a swift transformation into a regulation of the AML legislation if the impact assessment so advises;

### ***5.1. Cooperation between anti-money laundering and prudential supervisors in the European Union***

243. Welcomes the fact that, following recent cases of breaches or alleged breaches of AML rules, supplementary action was announced by the President of the Commission in his State of the Union address of 12 September 2018;

244. Calls for the necessary increased scrutiny and continuous supervision of the members of management boards and shareholders of credit institutions and investment firms and insurers in the Union, and stresses in particular the difficulty of revoking banking licences or equivalent specific authorisations;

245. Supports the work undertaken by the Joint Working Group comprising representatives of the Commission's Directorate-General for Justice and Consumers and its Directorate-General for Financial Stability, Financial Services and Capital Markets Union, the ECB, the European Supervisory Authorities (ESAs) and the Chair of the ESAs Joint Committee Anti-Money Laundering Sub-committee, with a view to detecting current shortcomings and proposing measures to enable effective cooperation and the coordination and exchange of information among supervisory and enforcement agencies;

246. Concludes that the current level of coordination of anti-money laundering and combating the financing of terrorism (AML/CFT) supervision of financial institutions, particularly in AML/CFT situations with cross-border effects, is not sufficient to address current challenges in this sector and that the Union's ability to enforce coordinated AML rules and practices is currently inadequate;

247. Calls for an assessment of long-term objectives leading to an enhanced AML/CFT framework as mentioned in the 'Reflection paper on possible elements of a Roadmap for seamless cooperation between Anti Money Laundering and Prudential Supervisors in the European Union'<sup>1</sup>, such as the establishment at EU level of a mechanism to better coordinate the activities of AML/CFT supervisors of financial sector entities, notably in situations where AML/CFT concerns are likely to have cross-border effects, and a possible centralisation of AML supervision via an existing or new Union body empowered to enforce harmonised rules and practices across Members States; supports further efforts for centralisation of anti-money laundering supervision and considers that if such a mechanism is established, it should be allocated sufficient human and financial resources in order for its functions to be carried out efficiently;

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<sup>1</sup> [Reflection paper on possible elements of a Roadmap for seamless cooperation between Anti Money Laundering and Prudential Supervisors in the European Union, 31 August 2018.](#)

248. Recalls that the ECB has the competence and responsibility for withdrawing authorisation from credit institutions for serious breaches of AML/CFT rules; notes, however, that the ECB is fully dependent on national AML supervisors for information relating to such breaches detected by national authorities; calls on national AML authorities, therefore, to make quality information available to the ECB in a timely manner, so that the ECB can perform its function properly; welcomes, in this regard, the Multilateral Agreement on the practical modalities for exchange of information between the ECB and all competent authorities (CAs) responsible for supervising the compliance of credit and financial institutions with AML/CFT obligations under AMLD4;
249. Considers that prudential and anti-money laundering supervision cannot be treated separately; highlights that ESAs have limited capabilities to take a more substantial role in the fight against money laundering owing to their decision-making structures, a lack of powers and limited resources; stresses that the EBA should take a leading role in this fight, while coordinating closely with the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), and should therefore, as a matter of urgency, be provided with sufficient capacity in human and material resources to contribute effectively to the consistent and efficient prevention of the use of the financial system for the purposes of money laundering, including by conducting risk assessments of competent authorities and reviews within its overall framework; calls for greater publicity for those reviews and, in particular, for relevant information to be systematically provided to Parliament and the Council in the event of serious shortcomings identified at national or EU level<sup>1</sup>;
250. Notes the increased importance of national financial supervisors; urges the Commission, following a consultation with the EBA, to propose mechanisms to facilitate increased cooperation and coordination between financial supervisory authorities; calls, in the long term, for increased harmonisation of the supervisory procedures of the different national AML authorities;
251. Welcomes the Commission communication of 12 September 2018 on strengthening the Union framework for prudential and anti-money laundering supervision for financial institutions (COM(2018)0645) and the proposal it contains on the ESAs' review to strengthen supervisory convergence; considers that the EBA should take a leading, coordinating and monitoring role at Union level to protect the financial system effectively from money laundering and the risks of terrorism financing, in view of the undesirable potential systemic consequences for the Union's financial stability which could ensue from abuses of the financial sector for money laundering or terrorism financing purposes, and in the light of the experience already gained by the EBA in protecting the banking sector from such abuses as an authority with the power of oversight over all Member States;
252. Notes the EBA's concerns about the implementation of the Capital Requirements Directive (2013/36/EU) on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms<sup>2</sup>; welcomes the EBA's suggestions to tackle the deficiencies caused by the current EU legal framework; calls

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<sup>1</sup> At the time of the TAX3 committee vote on 27 February 2019, interinstitutional negotiations were still ongoing.

<sup>2</sup> [Letter to Tiina Astola of 24 September 2018 on the request to investigate a possible breach of Union law under Article 17 of Regulation \(EU\) No 1093/2010.](#)

on Member States to swiftly transpose the recently adopted changes to the Capital Requirements Directive into national law;

## **5.2. Cooperation between financial intelligence units (FIUs)**

253. Recalls that pursuant to AMLD5, Member States are obliged to set up automated centralised mechanisms enabling swift identification of holders of bank and payment accounts, and to ensure that any FIU is able to provide information held in those centralised mechanisms to any other FIU in a timely manner; stresses the importance of having access to information in a timely manner in order to prevent financial crimes and the discontinuation of investigations; calls on the Member States to speed up the establishment of these mechanisms so that Member States' FIUs are able to cooperate effectively with each other in order to detect and counteract money laundering activities; strongly encourages Member States' FIUs to use the FIU.net system; notes the importance of data protection also in this field;
254. Considers that in order to help fight money laundering activities effectively, it is crucial that national FIUs should be provided with adequate resources and capacities;
255. Highlights that in order to fight money laundering activities effectively, cooperation is also essential, not only between Member States' FIUs but also between Member States' FIUs and the FIUs of third countries; notes the political agreements on the interinstitutional negotiations<sup>1</sup> with a view to the future adoption of the directive of the European Parliament and of the Council laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences and repealing Council Decision 2000/642/JHA;
256. Calls on the Commission to develop specialised training courses for FIUs, with particular regard to the more reduced capacities in some Member States; notes the contribution of the Egmont Group, which brings together 159 FIUs and aims to strengthen their operational cooperation by encouraging the continuation and implementation of numerous projects; awaits the Commission's assessment of the framework for FIUs' cooperation with third countries and obstacles and opportunities to enhance cooperation between FIUs in the Union, including the possibility of establishing a coordination and support mechanism; recalls that this assessment should be ready by 1 June 2019; calls on the Commission to consider this opportunity to issue a legislative proposal for an EU FIU, which would create a hub for joint investigative work and coordination with its own remit of autonomy and investigatory competences on cross-border financial criminality, as well as an early warning mechanism; takes the view that an EU FIU should have the broad role of coordinating, assisting and supporting Member States' FIUs in cross-border cases in order to extend the exchange of information and ensure joint analysis of cross-border cases and strong coordination of work;
257. Calls on the Commission to engage actively with Member States to find mechanisms to improve and enhance the cooperation of Member States' FIUs with the FIUs of third countries; calls on the Commission to take opportune action in this regard at the relevant international forums, such as the OECD and the Financial Action Task Force

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<sup>1</sup> COM(2018)0213.

(FATF); considers that in any resulting agreement proper consideration should be given to the protection of personal data;

258. Calls on the Commission to draw up a report to be addressed to Parliament and the Council assessing whether the differences in status and organisation between Member States' FIUs are hampering cooperation in the fight against serious crimes with a cross-border dimension;
259. Points out that the non-standardisation of suspicious transaction report (STR) formats and of STR thresholds among Member States and with respect to the different obliged entities leads to difficulties in the processing and exchange of information between FIUs; calls on the Commission to explore, with support from the EBA, mechanisms to set up, as soon as possible, standardised reporting formats for obliged entities in order to facilitate and enhance the processing and exchange of information between FIUs in cases with a cross-border dimension, and to consider the standardisation of suspicious transaction thresholds;
260. Calls on the Commission to explore the possibility of setting up automated STR retrieval systems that would allow Member States' FIUs to look up transactions and their initiators and receivers repeatedly reported as suspicious in different Member States;
261. Encourages the competent authorities and FIUs to engage with financial institutions and other obliged entities to enhance suspicious activity reporting and to reduce defensive reporting, thereby helping to ensure that FIUs receive more useful, focused and complete information to properly perform their duties, while at the same time ensuring compliance with the General Data Protection Regulation;
262. Recalls the importance of developing enhanced channels for dialogue, communication and the exchange of information between public authorities and specific private sectors stakeholders, generally known as public-private partnerships (PPPs), particularly for obliged entities under the AMLD, and highlights the existence and positive results of the only transnational PPP, the Europol Financial Intelligence Public-Private Partnership, which promotes strategic information-sharing between banks, FIUs, law enforcement agencies (LEAs) and national regulators across Member States;
263. Supports the continuous improvement of information-sharing between FIUs and LEAs, including Europol; considers that such a partnership should be established in the field of new technologies, including virtual assets, so as to formalise pre-existing operations in the Member States; calls on the European Data Protection Board (EDPB) to provide further clarification to market operators that process personal data as part of their due diligence obligations to enable them to comply with the relevant provisions on data protection;
264. Highlights that increasing and improving the cooperation between national supervisory authorities and FIUs is crucial to fight money laundering and tax evasion effectively; further highlights that the fight against money laundering and tax evasion also requires good cooperation between FIUs and customs authorities;
265. Calls on the Commission to report on the status quo and improvements in Member States' FIUs regarding the dissemination, exchange and processing of information,

following the PANA recommendations<sup>1</sup> and the mapping report carried out by the Member States' FIUs Platform;

### **5.3. Obligated entities (scope)**

266. Welcomes the fact that AMLD5 has broadened the list of obliged entities to include providers engaged in exchange services between virtual currencies and fiat currencies, custodian wallet providers, art traders and free ports;
267. Calls on the Commission to take action to improve the enforcement of CDD, in particular to better clarify that the responsibility for correct application of CDD always falls on the obliged entity, even when outsourced, and for provision to be made for penalties in the event of negligence or conflicts of interest in cases of outsourcing; underlines the legal obligation under AMLD5 for obliged entities to conduct enhanced checks and systematic reporting when performing CDD relating to business relationships or transactions involving countries identified by the Commission as high-risk third countries for money-laundering purposes;

### **5.4. Registers**

268. Welcomes the access to beneficial ownership and other CDD information granted to tax authorities in DAC5; recalls that this access is necessary for tax authorities to properly carry out their duties;
269. Notes that the Union's AML legislation obliges Member States to establish central registers containing complete beneficial ownership data for companies and trusts, and that it also provides for their interconnection; welcomes the fact that AMLD5 obliges Member States to ensure that the information on beneficial ownership is accessible in all cases to any member of the general public;
270. Notes, however, that in respect of trusts, national registers will only be accessible in principle to those demonstrating a legitimate interest to access; stresses that Member States remain free to open beneficial ownership registers for trusts to the public, as recommended by Parliament already; invites Member States to establish freely accessible and open data registers; recalls, in any case, that the fee they may decide to impose should not exceed the administrative costs of making the information available, including the registers' maintenance and developments costs;
271. Stresses that the interconnection of registers of beneficial owners should be ensured by the Commission; considers that the Commission should closely monitor the functioning of this interconnected system and assess within reasonable time whether it is working properly and whether it should be supplemented by the establishment of an EU public register of beneficial ownership or other instruments that could remedy any potential shortcomings effectively; calls on the Commission, in the meantime, to develop and issue technical guidelines to promote convergence of format, interoperability and interconnection of Member States' registers; takes the view that beneficial ownership of

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<sup>1</sup> European Parliament recommendation of 13 December 2017 to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion (OJ C 369, 11.10.2018, p. 132).

trusts should have the same level of transparency as companies under AMLD5, while ensuring appropriate safeguards;

272. Is concerned that the information in the registers of beneficial owners is not always sufficient and/or accurate; calls on Member States to ensure, therefore, that registers of beneficial owners contain verification mechanisms to ensure the accuracy of the data; calls on the Commission to assess their verification mechanisms and reliability of the data in its reviews;
273. Calls for a more stringent and precise definition of beneficial ownership to ensure that all natural persons who ultimately own or control a legal entity are identified;
274. Recalls the need for clear rules facilitating straightforward identification of beneficial owners, including an obligation for trusts and similar arrangements to exist in written form and to be registered in the Member State where the trust is created, administered or operated;
275. Underscores the problem of money laundering through investment in real estate in European cities through foreign shell companies; recalls that the Commission should assess the necessity and proportionality of harmonising the information in the land and real estate registers and assess the need for the interconnection of those registers; calls on the Commission to accompany the report with a legislative proposal, if appropriate; takes the view that Member States should have publicly accessible information in place on the ultimate beneficial ownership of land and real estate;
276. Reiterates its position on the creation of beneficial ownership registers for life insurance contracts, as articulated in the interinstitutional negotiations on AMLD5; calls on the Commission to assess the feasibility and necessity of making beneficial ownership information on life insurance contracts and financial instruments accessible to the relevant authorities;
277. Notes that under AMLD5 the Commission must carry out an analysis of the feasibility of specific measures and mechanisms at Union and Member State level making it possible to collect and access the beneficial ownership information of corporate and other legal entities incorporated outside of the Union; calls on the Commission to present a legislative proposal for such a mechanism should the feasibility analysis be favourable;

#### **5.5. *Technology risks and virtual assets, including virtual and crypto-currencies***

278. Underlines the positive potential of new distributed ledger technologies (DLTs), such as blockchain technology; notes at the same time the increasing abuse of new payment and transfer methods based on these technologies to launder criminal proceeds or to commit other financial crimes; acknowledges the need to monitor fast-changing technological developments to ensure that legislation addresses in an effective manner the abuse of new technologies and anonymity, which facilitates criminal activity, without curtailing its positive aspects;
279. Urges the Commission to closely examine those relevant crypto players not yet covered by the Union's AML legislation, and to expand the list of obliged entities if required, particularly service providers in the field of transactions involving exchanges of one or



more virtual currencies; calls on the Member States, meanwhile, to transpose as soon as possible the provisions of AMLD5 imposing an obligation on virtual currency wallets and on the exchange of services to identify their customers, which would make the anonymous use of virtual currencies very difficult;

280. Calls on the Commission to closely monitor technological developments, including the swift expansion of innovative Fintech business models and the adoption of emerging technologies such as AI, DLTs, cognitive computing and machine learning, in order to assess technological risks and potential loopholes and boost resilience to cyberattacks or system breakdowns, namely by promoting data protection; encourages the competent authorities and the Commission to undertake a thorough assessment of the possible systemic risks involving DLT applications;
281. Stresses that the development and use of virtual assets is a long-term trend that is expected to continue and increase in the coming years, in particular through the use of virtual coins for various purposes, such as corporate financing; calls on the Commission to develop an appropriate framework at EU level to manage these developments, drawing inspiration from work at international level and from European bodies such as ESMA; considers that this framework should provide the necessary safeguards against the specific risks posed by virtual assets without hindering innovation;
282. Notes, in particular, that the opacity of virtual assets could be used to facilitate money laundering and tax evasion; urges the Commission, in this context, to provide clear guidance about the conditions under which virtual assets could be classified as an existing or new financial instrument in MiFID2 and the circumstances in which EU legislation is applicable to initial coin offerings;
283. Calls on the Commission to assess the banning of certain anonymity measures on specific virtual assets, and, should it be deemed necessary, to consider regulating virtual assets as financial instruments; considers that FIUs should be able to link virtual and crypto-currency addresses to the identity of the owner of virtual assets; considers that the Commission should assess the possibility of the mandatory registration of virtual assets users; recalls that some Member States have already adopted various types of measures for specific segments in this field, such as initial coin offerings, which could be a source of inspiration for future EU action;
284. Stresses that the FATF has recently highlighted the urgent need for all countries to take coordinated action to prevent the use of virtual assets for crime and terrorism, urging all jurisdictions to take legal and practical steps to prevent the misuse of virtual assets<sup>1</sup>; calls on the Commission to seek ways of incorporating into the European legal framework the recommendations and standards developed by the FATF on virtual assets; stresses that the Union should continue advocating a coherent and coordinated international regulatory framework around virtual assets, building on the efforts it has undertaken at the G20;
285. Reiterates its call for an urgent assessment by the Commission of the implications of e-gaming activities for money laundering and tax crimes; considers such an assessment to be a priority; notes the rise of the e-gaming sector in some jurisdictions, including

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<sup>1</sup> [FATF, Regulation of virtual assets, 19 October 2018](#)

certain UK Crown Dependencies such as the Isle of Man, where e-gaming already accounts for 18 % of national income;

286. Takes note of the expert-level work on electronic identification and remote KYC processes, which explores issues such as the possibility of financial institutions using electronic identification (e-ID) and of KYC portability to identify customers digitally; calls on the Commission, in this regard, to assess the potential advantages of introducing a European e-ID system; recalls the importance of maintaining a proper balance between data and privacy protection and the need for the competent authorities to have access to information for the purposes of criminal investigations;

## **5.6. Sanctions**

287. Stresses that EU AML legislation requires Member States to lay down sanctions for breaches of anti-money laundering rules; stresses that these sanctions must be effective, proportionate and dissuasive; calls for the introduction of simplified procedures in Member States for the enforcement of financial sanctions imposed for breaches of AML legislation;
288. Urges Member States to publish, as soon as possible and unfailingly, information on the nature and value of the sanctions imposed, in addition to information on the type and nature of the breach and the identity of the person responsible; calls on Member States to also apply sanctions and measures vis-à-vis the members of the management body and other natural persons who are responsible for breaches of AML rules under national law<sup>1</sup>;
289. Calls on the Commission to report to Parliament every two years on the national legislation and practices with regard to sanctions for breaches of AML legislation;
290. Welcomes the adoption of Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders<sup>2</sup>, which aims to facilitate the cross-border recovery of criminal assets and will therefore help to strengthen the Union's capacity to fight organised crime and terrorism and cut off the sources of financing for criminals and terrorists across the Union;
291. Welcomes the adoption of Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law<sup>3</sup>, which introduces new criminal law provisions and facilitates more efficient and faster cross-border cooperation between competent authorities in order to prevent, more effectively, money laundering and the related financing of terrorism and organised crime; notes that Member States should have to take the necessary measures to ensure, as appropriate, that their competent authorities freeze or confiscate, in accordance with [Directive 2014/42/EU](#)<sup>4</sup>, the proceeds derived from and instrumentalities used or

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<sup>1</sup> TAX3 mission report of the delegation to Estonia and Denmark, 6-8 February 2019.

<sup>2</sup> OJ L 303, 28.11.2018, p. 1.

<sup>3</sup> OJ L 284, 12.11.2018, p. 22.

<sup>4</sup> Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39).

intended to be used in the commission or contributing to the commission of those offences;

### **5.7. *International dimension***

292. Notes that under AMLD4, the Commission is obliged to identify high-risk third countries that present strategic deficiencies in their regimes on anti-money laundering and counter-terrorism financing;
293. Considers that, even if the work undertaken at international level to identify high-risk third countries for the purposes of fighting money laundering and terrorist financing should be taken into consideration, particularly that of the FATF, it is essential that the Union have an autonomous list of high-risk third countries; welcomes, in this regard, the Commission Delegated Regulation of 13 February 2019 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies (C(2019)1326), and regrets that the Council objected to the delegated act; welcomes, in addition, the Commission Delegated Regulation of 31 January 2019 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council with regard to regulatory technical standards for the minimum action and the type of additional measures credit and financial institutions must take to mitigate money laundering and terrorist financing risk in certain third countries<sup>1</sup>;
294. Welcomes the Commission's adoption of the Methodology for identifying high-risk third countries under Directive (EU) 2015/849, published on 22 June 2018<sup>2</sup>; welcomes the Commission's assessment of 31 January 2019 regarding 'Priority 1' countries;
295. Stresses the need to ensure consistency and complementarity between the AML list of high-risk third countries and the European list of non-cooperative jurisdictions; reiterates its call to entrust the Commission with a central role for the management of both lists; calls on the Commission to ensure the transparency of the jurisdictions' screening process;
296. Is concerned at allegations that the competent authorities in Switzerland are not performing their AML/CFT functions properly<sup>3</sup>; calls on the Commission to take these elements into consideration when updating the list of high-risk third countries and in future bilateral relations between Switzerland and the Union;
297. Calls on the Commission to provide technical assistance to third countries with the aim of developing effective systems for combating money laundering and the continuous improvement thereof;
298. Calls on the Commission and the Member States to ensure that the EU speaks with one voice at the FATF and that they actively contribute to the ongoing reflection on its reform, with a view to strengthening its resources and its legitimacy; calls on the

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<sup>1</sup> C(2019)0646.

<sup>2</sup> SWD(2018)0362.

<sup>3</sup> At the TAX3 hearing of 1 October 2018 on relations with Switzerland in tax matters and the fight against money laundering, panellists stated that Switzerland was not complying with FATF Recommendations 9 and 40.

Commission to include European Parliament staff as observers in the Commission delegation to the FATF;

299. Calls on the Commission to lead a global initiative for the establishment of public central registers of beneficial ownership in all jurisdictions; stresses, in this regard, the vital role of international organisations such as the OECD and the UN;

## **6. *International dimension of taxation***

300. Points out that a European fair tax system requires a fairer global tax environment; reiterates its call to monitor ongoing tax reforms of third countries;
301. Notes the effort made by some third countries to act decisively against BEPS; stresses, however, that such reforms should remain in line with existing WTO rules;
302. Considers the information gathered during the committee visit to Washington DC about the US tax reforms and their possible impact on international cooperation to be of particular importance; finds that some of the provisions of the US Tax Cuts and Jobs Act of 2017 would be incompatible with existing WTO rules according to some experts; notes that certain provisions of the US tax reform seek, unilaterally and without any reciprocity, to revitalise transnational benefits attributable to US territory (presuming that at least 50 % of these are generated on US territory); welcomes the fact that the Commission is currently in the process of assessing the potential regulatory and commercial implications of, in particular, the BEAT, GILTI and FDII<sup>1</sup> provisions of the new US tax reform; asks the Commission to inform Parliament of the results of the assessment;
303. Notes that two types of intergovernmental agreements (IGAs) on the Foreign Account Tax Compliance Act (FATCA) were developed to help FATCA conform with international laws<sup>2</sup>; notes that only one of the IGA Models is reciprocal; deplores the severe imbalance in the reciprocity of these agreements, as the US typically receives far more information from foreign governments than it provides; calls on the Commission to conduct a mapping exercise to analyse the extent of reciprocity in the exchange of information between the US and the Member States;
304. Calls on the Council to give a mandate to the Commission to negotiate an agreement with the US to ensure reciprocity in FATCA;
305. Reiterates the proposals put forward in its resolution of 5 July 2018 on the adverse effects of FATCA on EU citizens and in particular ‘accidental Americans’<sup>3</sup>, which calls on the Commission to take action to ensure that the fundamental rights of all citizens, in particular those of ‘accidental Americans’, are guaranteed;

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<sup>1</sup> Respectively ‘Base Erosion and Anti-Abuse Tax’ (BEAT), ‘Global Intangible Low Tax Income’ (GILTI) and ‘Foreign-Derived Intangible Income’ (FDII).

<sup>2</sup> More specifically: IGA Model 1, whereby foreign financial institutions report relevant information to their home authorities, which then passes this on to the US IRS, and IGA Model 2, whereby foreign financial institutions do not report to their home governments but directly to the IRS.

<sup>3</sup> Texts adopted, P8\_TA(2018)0316.

306. Calls on the Commission and the Council to present a joint EU approach to FATCA in order to adequately protect the rights of European citizens (particularly ‘accidental Americans’) and ensure reciprocity in the automatic exchange of information by the US, with the CRS being the preferred standard; calls on the Commission and Council, in the meantime, to consider countermeasures, such as a withholding tax, where appropriate, to ensure a level playing field if the US does not ensure reciprocity in the framework of FATCA;
307. Calls on the Commission and the Member States to monitor new corporate tax provisions of countries that cooperate with the EU on the basis of an international agreement<sup>1</sup>;

#### **6.1. Tax havens and jurisdictions facilitating ATP within and outside the EU**

308. Recalls the importance of a common EU list of non-cooperative jurisdictions for tax purposes (referred to herein as ‘the EU list’) based on comprehensive, transparent, robust, objectively verifiable and commonly accepted criteria that are regularly updated;
309. Regrets the fact that the initial EU listing process only considered third countries; notes that the Commission, within the framework of the European Semester, has identified shortcomings in some Member States’ tax systems which facilitate ATP; welcomes, nonetheless, the statement made by the Chair of the Code of Conduct Group on Business Taxation during the TAX3 committee hearing of 10 October 2018 about the possibility of screening Member States against the same criteria set for the EU list in the context of the revision of the mandate of the CoC Group<sup>2</sup>;
310. Welcomes the adoption by the Council of the first EU list on 5 December 2017 and the ongoing monitoring of the commitments made by third countries; notes that the list has been updated several times on the basis of the assessment of those commitments and, as a consequence, various countries have been removed; notes that as a consequence of the revision of 12 March 2019 the list now comprises the following tax jurisdictions: American Samoa, Aruba, Guam, Barbados, Belize, Bermuda, Dominica, Fiji, Marshall Islands, Oman, Samoa, Trinidad and Tobago, United Arab Emirates, the US Virgin Islands, and Vanuatu;
311. Notes the addition of two other jurisdictions to the grey list (Australia and Costa Rica)<sup>3</sup>;
312. Notes that eight major pass-through economies – the Netherlands, Luxembourg, Hong Kong, the British Virgin Islands, Bermuda, the Cayman Islands, Ireland and Singapore – host more than 85 % of global investment in special purpose entities, which are often established for tax reasons<sup>4</sup>; regrets that only one of them (Bermuda) is currently listed on the EU list of non-cooperative jurisdictions for tax purposes<sup>5</sup>;

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<sup>1</sup> As mentioned in the TAX 3 hearing of 1 October 2018.

<sup>2</sup> TAX3 exchange of views with Fabrizia Lapcorella, Chair of the Code of Conduct Group on Business Taxation, held on 10 October 2018.

<sup>3</sup> Council conclusions of 12 March 2019 on the revised EU list of non-cooperative jurisdictions for tax purposes, available at

<https://www.consilium.europa.eu/media/38450/st07441-en19-eu-list-oop.pdf>

<sup>4</sup> <https://www.oxfam.org/en/research/hook-how-eu-about-whitewash-worlds-worst-tax-havens>

313. Underlines that the screening and monitoring processes are opaque and that it is unclear whether real progress has been achieved with regard to those countries taken off the list;
314. Underlines that the assessment by the Council and its CoC Group on Business Taxation is based on criteria deriving from a technical scoreboard by the Commission and that Parliament had no legal involvement in this process; calls on the Commission and the Council, in this context, to inform Parliament in detail ahead of any proposed change to the list; calls on the Council to publish a regular progress report regarding black- and grey-listed jurisdictions as part of the regular update from the CoC Group to the Council;
315. Calls on the Commission and the Council to work on an ambitious and objective methodology which does not rely on commitments but on an assessment of the effects of duly and properly implemented legislation in those countries;
316. Deeply regrets the lack of transparency during the initial listing process and deplores the non-objective application of the listing criteria laid down by ECOFIN; insists that the process must be free from any political interference; welcomes, however, the improvement in transparency made by the disclosure of letters sent to jurisdictions screened by the CoC Group, as well as the set of commitment letters received; calls for all remaining undisclosed letters to be made publicly available to ensure scrutiny and proper implementation of commitments; takes the view that those jurisdictions refusing to consent to the disclosure of their commitments arouse public suspicion of not being cooperative in tax matters;
317. Welcomes the recent clarifications from the CoC Group on fair taxation criteria, especially regarding the lack of economic substance for jurisdictions having no corporate income tax rate or a rate close to 0 %; calls on the Member States to work towards the gradual improvement of the EU listing criteria to cover all harmful tax practices<sup>1</sup>, notably by including a detailed economic analysis looking at the facilitation of tax avoidance and a 0 % tax rate or absence of corporate income tax as a stand-alone criterion;
318. Welcomes the new OECD global standard on application of substantial activities factor to no or only nominal tax jurisdictions<sup>2</sup>, largely inspired by the EU's work on the EU listing process<sup>3</sup>; calls on the Member States to push the G20 to reform the OECD blacklist criteria to go beyond pure tax transparency and tackle tax evasion and ATP;
319. Notes and welcomes the work done by the EU and UK negotiating teams on the issue of taxation, as indicated in Annex 4 to the Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and

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<sup>5</sup> Council conclusions of 12 March 2019 on the revised EU list of non-cooperative jurisdictions for tax purposes, available at <https://www.consilium.europa.eu/media/38450/st07441-en19-eu-list-oop.pdf>

<sup>1</sup> Work on fair taxation criteria 2.1 and 2.2 of Council conclusions 14166/16 of 8 November 2016.

<sup>2</sup> OECD, 'Resumption of Application of Substantial Activities Factor to No or only Nominal Tax Jurisdictions Inclusive Framework on BEPS': Action 5, 2018.

<sup>3</sup> Fair taxation criterion 2.2 of the EU List.

the European Atomic Energy Community<sup>1</sup>; is concerned about possible divergences that may emerge even in the short run upon the UK's withdrawal from the EU in policies against financial crimes, tax evasion and tax avoidance between the UK and the EU, which would constitute new economic, fiscal and security risks; calls on the Commission and the Council to immediately react to any such risks and ensure that the EU's interests are protected;

320. Recalls that, in accordance with Article 79 of the Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom<sup>2</sup>, the future relationship should ensure open and fair competition through provisions on state aid, competition, social and employment standards, environmental standards, climate change, and relevant tax matters; notes with concern the announcement by the British Prime Minister, Theresa May, that 'the lowest level of corporation tax in the G20' would be introduced in the United Kingdom; calls on the UK to remain a strong partner in the global effort to ensure better and more efficient taxation and in combating financial crime as a member of the international community; calls on the Commission and the Council to include the UK in the assessment of the EU list of non-cooperative jurisdictions and the EU list of jurisdictions with deficiencies in their AML regimes, including detailed monitoring of its economic relationships with its crown dependencies and its overseas territories, as soon as the UK becomes a third country;
321. Highlights that, regardless of the developments after the withdrawal deadline, the UK will remain a member of the OECD bound by its OECD BEPS Action Plan recommendations and other tax good governance actions;
322. Calls, in the specific case of Switzerland, for which no precise deadline is envisaged due to a previous agreement between Switzerland and the EU, for the country to be put on Annex I by the end of 2019, provided that by then, following the proper escalation process, Switzerland does not repeal its non-compliant tax regimes, which allow unequal treatment of foreign and domestic income as well as tax benefits for certain types of companies;
323. Notes with concern that third countries may repeal non-compliant tax regimes but substitute them with new ones that are potentially harmful to the EU; stresses that this could be particularly true in the case of Switzerland; calls on the Council to properly reassess Switzerland and any other third country<sup>3</sup> that introduces similar legislative changes<sup>4</sup>;

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<sup>1</sup> The text of the Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community is available on [https://ec.europa.eu/commission/publications/draft-agreement-withdrawal-united-kingdom-great-britain-and-northern-ireland-european-union-and-european-atomic-energy-community-agreed-negotiators-level-14-november-2018\\_en](https://ec.europa.eu/commission/publications/draft-agreement-withdrawal-united-kingdom-great-britain-and-northern-ireland-european-union-and-european-atomic-energy-community-agreed-negotiators-level-14-november-2018_en)

<sup>2</sup> The text of the Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom is available on <https://www.consilium.europa.eu/media/37059/20181121-cover-political-declaration.pdf>

<sup>3</sup> Including Andorra and Liechtenstein.

324. Notes that the negotiations between the EU and Switzerland on the revision of the bilateral approach to reciprocal market access are still ongoing; calls on the Commission to ensure that the final agreement between the EU and Switzerland contains a tax good governance clause including specific rules on State aid under the form of a tax advantage, automatic exchange of information on taxation, public access to beneficial ownership information, where appropriate, and anti-money laundering provisions; requests that the EU negotiators finalise an agreement that, inter alia, eliminates shortcomings<sup>1</sup> in the Swiss supervisory system and protects whistle-blowers;
325. Welcomes the revised EU list of 12 March 2019<sup>2</sup>; welcomes the release of the detailed assessment of commitments and reforms of jurisdictions which were listed in Annex II when the first EU list was released on 5 December 2017; welcomes the fact that jurisdictions which were previously listed in Annex II thanks to commitments made in 2017 are now listed in Annex I on account of the fact that reforms were not implemented by the end of 2018 or within the agreed timeframe;
326. Is concerned that Austrian residents who hold bank accounts with credit institutions in Liechtenstein are not affected by the Act on Common Reporting Standards if their capital incomes are yielded from asset structures (private foundations, establishments, trusts and the like), and the credit institution in Liechtenstein takes care of the taxation in accordance with bilateral treaties; calls on Austria to change its law in this regard so as to close the loophole of the CRS;
327. Notes, by way of example, that according to OECD data on FDI, Luxembourg and the Netherlands combined have more inward investment than the US, a substantial part of which has been in SPEs with no evident substantial economic activity, and that Ireland has more inward investment than either Germany or France; points out that according to its National Statistics Office, foreign investment in Malta amounts to 1 474 % of the size of its economy;
328. Recalls a research study showing that tax avoidance via six EU Member States results in a loss of EUR 42,8 billion in tax revenue in the other 22 Member States<sup>3</sup>, which means that the net payment position of these countries can be offset against the losses they inflict on the tax base of other Member States; notes, for instance, that the Netherlands imposes a net cost on the Union as a whole of EUR 11,2 billion, which means the country is depriving other Member States of tax income to the benefit of multinationals and their shareholders;

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<sup>4</sup> TAX3 hearing on relations with Switzerland in tax matters and the fight against money laundering, 1 October 2018, and exchange of views with Fabrizia Lapecorella, Chair of the Code of Conduct Group on Business Taxation, 10 October 2018.

<sup>1</sup> Ibid.

<sup>2</sup> The revised EU list of non-cooperative jurisdictions for tax purposes – Council conclusions 7441/19 of 12 March 2019.

<sup>3</sup> In the first section of ‘The missing profits of nations’ by Tørsløv, T.R., Wier L.S. and Zucman G., it is suggested, using modern macroeconomic models and recently published balance of payments data, that the gap in global tax revenues amount to around USD 200 billion and that FDI channelled through tax-haven jurisdictions accounts for somewhere between 10 and 30 % of total FDI. These figures are rather higher than previous estimations using other methods.



329. Recalls that, in order to improve the Union and Member States' fight against tax fraud, tax avoidance and money laundering, all available data, including macroeconomic data, must be used effectively;
330. Recalls that the Commission has criticised seven Member States<sup>1</sup> – Belgium, Cyprus, Hungary, Ireland, Luxembourg, Malta and the Netherlands – for shortcomings in their tax systems that facilitate aggressive tax planning, arguing that they undermine the integrity of the European single market; takes the view that these jurisdictions can also be regarded as facilitating aggressive tax planning globally; highlights that the Commission has acknowledged that some of the aforementioned Member States have taken measures to improve their tax systems to address the Commission's criticism<sup>2</sup>; notes that a recent research study<sup>3</sup> has identified five EU Member States as corporate tax havens: Cyprus, Ireland, Luxembourg, Malta and the Netherlands; stresses that the criteria and methodology used to select those Member States included a comprehensive assessment of their harmful tax practices, measures that facilitate aggressive tax planning and distortion of economic flows based on Eurostat data, which included a combination of high inward and outward foreign direct investment, royalties, interests and dividend flows; calls on the Commission to currently regard at least these five Member States as EU tax havens until substantial tax reforms are implemented;
331. Asks the Council to release a detailed assessment of commitments from jurisdictions which voluntarily committed to reform and were listed in Annex II when the first EU list was released on 5 December 2017;

## **6.2. Countermeasures**

332. Renews its call for the EU and its Member States to undertake effective and dissuasive countermeasures against non-cooperative jurisdictions with a view to incentivising good cooperation on tax matters and compliance by the countries included in Annex I of the EU list;
333. Deplores the fact that most countermeasures proposed by the Council are left to national discretion; notes with concern that during the TAX3 committee hearing of 15 May 2018, some experts<sup>4</sup> highlighted the fact that countermeasures might not sufficiently

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<sup>1</sup> [Country Report Belgium 2018](#);  
[Country Report Cyprus 2018](#);  
[Country Report Hungary 2018](#);  
[Country Report Ireland 2018](#);  
[Country Report Luxembourg 2018](#);  
[Country Report Malta 2018](#);  
[Country Report The Netherlands 2018](#).

<sup>2</sup> See [Country Report Belgium 2019](#); [Country Report Cyprus 2019](#); [Country Report Hungary 2019](#); [Country Report Ireland 2019](#); [Country Report Luxembourg 2019](#); [Country Report Malta 2019](#); [Country Report The Netherlands 2019](#)  
([https://ec.europa.eu/info/sites/info/files/file\\_import/2019-european-semester-country-report-netherlands\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/file_import/2019-european-semester-country-report-netherlands_en_0.pdf))

<sup>3</sup> <https://www.oxfam.org/en/research/hook-how-eu-about-whitewash-worlds-worst-tax-havens>

<sup>4</sup> Contributions by Alex Cobham (Tax Justice Network) and Johan Langerock (Oxfam), TAX3 committee hearing on the fight against harmful tax practices within the EU and abroad, 15 May 2018.

incentivise non-cooperative jurisdictions to comply, since ‘the EU list omits some of the most notorious tax havens’; believes that this undermines the credibility of the listing process, as some experts have also pointed out;

334. Calls on the Member States to adopt a single set of strong countermeasures, such as withholding taxes, exclusion from calls for public procurement tenders, increased auditing requirements and automatic CFC rules for companies present in listed non-cooperative jurisdictions unless the taxpayers convey genuine economic activities there;
335. Invites both tax administrations and taxpayers to cooperate to gather the relevant facts in case the controlled foreign company carries out substantive real economic activity and has substantial economic presence supported by staff, equipment, assets and premises, as evidenced by relevant facts and circumstances;
336. Notes that developing countries might not possess the resources to implement newly agreed international or European tax standards; calls on the Council, therefore, to exclude countermeasures such as cuts in development aid;
337. Notes that countermeasures are essential to fight tax evasion, aggressive tax planning and money laundering; further notes that the economic clout of the European Union can serve to deter non-cooperative jurisdictions and taxpayers from exploiting the tax loopholes and harmful tax practices offered by those jurisdictions;
338. Calls on the European financial institutions<sup>1</sup> to consider applying reinforced and enhanced due diligence on a project-by-project basis to jurisdictions listed in Annex II of the EU list in order to avoid EU funds being invested in or channelled through entities in third countries which do not comply with EU tax standards; notes the EIB’s approval of its revised Group Policy Towards Weakly Regulated, Non-Transparent and Non-Cooperative Jurisdictions and Tax Good Governance and calls for this policy to be regularly updated and to include increased transparency requirements in line with EU standards; calls on the EIB to publish this policy as soon as it has been adopted; calls for a level playing field and for the same level of standards to be applied across the European financial institutions;

### **6.3. *Position of the EU as a global leader***

339. Reiterates its call for the EU and its Member States to have, following ex-ante coordination, a leading role in the global fight against tax evasion, aggressive tax planning and money laundering, in particular through Commission initiatives in all related international forums, including the UN, G20 and OECD, which played a central role in tax matters, especially after the international financial crisis;
340. Recalls that multilateral policies and international cooperation between countries, including developing countries, remains the preferred means to achieve concrete results while respecting the principle of reciprocity; regrets the fact that some legislative proposals that go beyond the OECD BEPS recommendations and could serve as a basis for further fruitful work at an international level are stalled in the Council;

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<sup>1</sup> Namely the European Investment Bank and the European Bank for Reconstruction and Development.

341. Believes that the creation of an intergovernmental tax body within the framework of the UN, which should be well equipped and have sufficient resources and, where appropriate, enforcement powers, would ensure that all countries can participate on an equal footing in the formulation and reform of a global tax agenda<sup>1</sup> to fight harmful tax practices effectively and ensure an appropriate allocation of taxing rights; takes notes of recent calls for the UN Committee of Experts on International Cooperation in Tax Matters to be upgraded to an intergovernmental UN Global Tax Body<sup>2</sup>; stresses that the UN Model Tax Convention ensures a fairer distribution of taxing rights between source and residence countries;
342. Calls for an intergovernmental summit on the remaining necessary global tax reforms in order to enhance international cooperation and put pressure on all countries, in particular their financial centres, to comply with transparency and fair taxation standards; calls for the Commission to take the initiative for such a summit and for the summit to launch a second set of international tax reforms to follow up on the BEPS action plan and to allow for the establishment of the abovementioned intergovernmental global tax body;
343. Takes note of the Commission's action and contribution to the OECD Global Forum on Transparency and Exchange of Information and the Inclusive Framework on BEPS, namely to promote higher standards of tax good governance globally, while ensuring that the international tax good governance standards continue to be fully respected within the EU;

#### **6.4. *Developing countries***

344. Believes that supporting developing countries in combating tax evasion and aggressive tax planning, as well as corruption and secrecy that facilitate illicit financial flows, is of the utmost importance for strengthening policy coherence for development in the EU and improving developing countries' tax capacities and ability to mobilise their own resources for sustainable economic development; stresses the need to increase the share of financial and technical assistance to the tax administrations of developing countries, so as to create stable and modern legal taxation frameworks;
345. Welcomes the cooperation between the EU and the African Union (AU) as part of the Addis Tax Initiative (ATI), the Extractive Industries Transparency Initiative (EITI) and the Kimberley Process; calls on the Commission and Member States to support AU countries in the implementation of transparency policies; encourages, in this regard, national and regional tax authorities to exchange information automatically; recalls the convenience of close, reinforced cooperation between Interpol and Afripol;
346. Recalls the need for Member States, in close cooperation with the Commission, to undertake regular spillover analyses of the material impact of tax policies and bilateral tax treaties on other Member States and developing countries, while acknowledging that some work has taken place in this regard within the framework of the Platform for Tax

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<sup>1</sup> European Parliament resolution of 6 July 2016 on tax rulings and other measures similar in nature or effect (OJ C 101, 16.3.2018, p. 79) and recommendation of 13 December 2017 to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion (OJ C 369, 11.10.2018, p. 132).

<sup>2</sup> The G77 called for such a body in 2017.

Good Governance; calls on all Member States to conduct such spillover analyses under the supervision of the Commission;

347. Urges Member States to review and update bilateral taxation agreements between Member States and with third countries in order to close loopholes that incentivise tax-driven trading practices with the purpose of tax avoidance;
348. Recalls the need to take into account the specific legal features and vulnerabilities of developing countries, in particular in the context of automatic exchange of information, namely in terms of the transition period and their need for support in their capacity-building;
349. Notes that closer work with regional organisations is needed, in particular with the AU in order to combat illegal financial flows and corruption in the private and public sectors;
350. Welcomes the participation on an equal footing of all countries involved in the Inclusive Framework, which brings together over 115 countries and jurisdictions to collaborate on the implementation of the OECD/G20 BEPS Package; calls on the Member States to support a reform of both the mandate and functioning of the Inclusive Framework to ensure that developing countries' interests are taken into consideration; recalls, however, the exclusion of over 100 developing countries from the negotiations on the BEPS actions;
351. Acknowledges that tax haven regimes are also present in developing countries; welcomes the Commission's proposal for enhanced cooperation with third countries in fighting the financing of terrorism and, in particular, the creation of an import license for antiques;
352. Recalls that public development aid targeting poverty reduction should be directed to a greater extent towards the implementation of an appropriate regulatory framework and the bolstering of tax administrations and institutions responsible for fighting illicit financial flows; calls for this aid to be provided in the form of technical expertise in relation to resource management, financial information and anti-corruption rules; calls for this aid to also favour regional cooperation against tax fraud, tax evasion, ATP and money laundering; stresses that this aid should include support to civil society and media in developing countries to ensure public scrutiny over domestic tax policies;
353. Expects the Commission to come up with adequate resources to implement the 'Collect More – Spend Better' approach, notably through its flagships programmes<sup>1</sup>;
354. Calls for concerted external action from the EU and its Member States, at all levels of policy, to provide third countries and developing countries in particular with the wherewithal to bolster balanced economic development and avoid dependence on one single sector, especially finance;
355. Recalls the need for fair treatment of developing countries when negotiating tax treaties, taking into account their particular situation and ensuring a fair allocation of tax rights according to genuine economic activity and value creation; calls, in this regard, for

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<sup>1</sup> European Commission discussion paper: [A Contribution to the Third Financing for Development Conference in Addis Ababa.](#)

adherence to the UN Model Tax Convention to be considered as a minimum standard and for transparency around treaty negotiations to be ensured; acknowledges that the OECD Model Tax Treaty grants more rights to the country of residence;

356. Invites the Commission to include provisions against financial crimes, tax evasion and aggressive tax planning in the treaty to be negotiated with ACP countries upon expiry of the current Cotonou Agreement in February 2020; notes the particular importance of transparency in tax matters for such provisions to be implemented effectively;

#### **6.5. *EU agreements with third countries***

357. Recalls that tax good governance is a global challenge which requires, above all, global solutions; recalls its position therefore that a ‘tax good governance’ clause should be included systematically in new relevant EU agreements with third countries in order to ensure that these agreements cannot be misused by companies or intermediaries to avoid or evade taxes or launder illicit proceeds, without hampering the EU’s exclusive competences; takes the view that this clause should include specific rules on State aid under the form of a tax advantage, transparency requirements and anti-money laundering provisions;
358. Encourages the Member States to use their bilateral relations with the respective third countries in a coordinated manner, with the support of the Commission if appropriate, to establish further bilateral cooperation between FIUs, tax authorities and competent authorities to fight financial crime;
359. Notes that, in parallel to the political agreements containing this tax good governance clause, the EU’s free trade agreements (FTAs) include tax exceptions that provide policy space for implementing the EU’s approach to fight tax evasion and money laundering, for example by insisting on tax good governance and via effective use of the EU list of non-cooperating tax jurisdictions; further notes that FTAs also aim to promote relevant international standards and their enforcement in third countries;
360. Considers that the EU should not conclude agreements with non-cooperative tax jurisdictions as appearing in Annex I of the EU list until the jurisdiction is compliant with EU tax good governance standards; calls on the Commission to investigate whether non-compliance with EU tax good governance standards affects the proper functioning of FTAs or of political agreements in cases where an agreement has already been signed;
361. Recalls that tax good governance and transparency clauses, as well as the exchange of information, should be included in all new relevant EU agreements with third countries, and should be negotiated as part of the revision of existing agreements, in view of the fact that they are core instruments of EU external policy and yet, depending on the specific policy field, involve different levels of competence;

#### **6.6. *Bilateral tax treaties concluded by Member States***

362. Notes that some experts consider that many tax treaties concluded by EU Member States currently in force restrict the tax rights of low and lower-middle income

countries<sup>1</sup>; requests that when negotiating tax treaties, the European Union and its Member States should comply with the principle of policy coherence for development established in Article 208 TFEU; underlines that it is the prerogative of Member States to conclude tax treaties;

363. Notes that the intensity of losses due to tax avoidance is substantially greater in low and middle-income countries, especially in sub-Saharan Africa, Latin America and the Caribbean, and South Asia than in other regions<sup>2</sup>; asks Member States, therefore, to renegotiate their bilateral tax treaties with third countries with the aim of introducing anti-abuse clauses, preventing ‘treaty shopping’ and a race to the bottom among developing countries;
364. Calls on the Commission to review all tax treaties in force and signed by Member States with third countries to ensure that they are all compliant with new global standards such as the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (‘MLI’); notes that the MLI represents OECD-based standards which were not established with consideration for the needs or challenges of developing countries; asks the Commission to release recommendations to Member States regarding their existing bilateral tax treaties to ensure that they include general anti-abuse rules, looking at genuine economic activity and value creation;
365. Is aware that bilateral tax treaties do not reflect the current reality of digitalised economies; calls on Member States to update their bilateral tax treaties based on the Commission recommendation relating to the corporate taxation of a significant digital presence<sup>3</sup>;

#### **6.7. Double taxation**

366. Welcomes the strengthened framework on avoiding double non-taxation; emphasises that the elimination of double taxation is of great importance for ensuring that honest taxpayers are treated fairly and their trust is not undermined; calls on Member States to abide by their double taxation treaties and cooperate sincerely and swiftly in cases of reported double taxation;
367. Welcomes the adoption of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the EU, implementing the standard set out in BEPS action 14; points out that the implementation deadline of the directive (30 June 2019) has not yet elapsed and that the provisions will need to be monitored in order to ensure that they are efficient and effective;
368. Calls on the Commission to collect and release information on the number of tax disputes submitted and resolved, sorted by type of dispute per year and by countries involved, so as to monitor the mechanism and ensure that it is efficient and effective;

#### **6.8. Outermost regions**

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<sup>1</sup> Action Aid, Mistreated Tax Treaties Report, February 2016.

<sup>2</sup> Cobham, A and Janský, P., 2017. ‘Global distribution of revenue loss from tax avoidance’.

<sup>3</sup> C(2018) 1650.

369. Calls on the Commission and the Member States to ensure that the EU's outermost regions implement the BEPS minimum standards, as well as ATAD;
370. Notes that the Commission has opened an in-depth investigation into the application of the Madeira Free Zone regional aid scheme by Portugal<sup>1</sup>;

## 7. *Intermediaries*

371. Welcomes the broad definition of both 'intermediary'<sup>2</sup> and 'reportable cross-border arrangement' in the recently adopted DAC6<sup>3</sup>; calls for the hallmarks under DAC6 to be updated in order to cover, amongst others, dividend arbitrage schemes, including the granting of dividend and capital gains tax refunds; calls on the Commission to reassess the extension of the DAC6 reporting obligation to domestic cases; recalls the obligation of intermediaries under DAC6 to report schemes based on structural loopholes in tax legislation to tax authorities, particularly in view of the increasing number of cross-border tax avoidance strategies; considers that schemes deemed to be harmful by the relevant domestic authorities should be addressed and made public in an anonymised manner;
372. Reiterates that intermediaries play a crucial role in facilitating money laundering and the financing of terrorism and should be held accountable for these actions;
373. Reiterates the need for enhanced cooperation between tax administrations and financial supervisors for joint and effective surveillance of the role of financial intermediaries and in the light of the fact that some tax-driven financial instruments may pose a risk to financial market stability and market integrity;
374. Considers that the Union should lead by example, and calls on the Commission to ensure that intermediaries promoting aggressive tax planning and tax evasion should not have a role in guiding or advising the Union's policy-making institutions on these matters;
375. Calls on the Commission and the Member States to recognise and address the risks of conflicts of interest stemming from the provision of legal advice, tax advice and auditing services when advising both corporate clients and public authorities; notes that a conflict of interest can take several forms, such as public procurement contracts that require the provision of paid advice for such services, the provision of informal or unpaid advice, official advisory and expert groups, or revolving doors; stresses,

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<sup>1</sup> An in-depth Commission investigation to examine whether Portugal has applied the Madeira Free Zone regional aid scheme in conformity with its 2007 and 2013 decisions approving it, namely by verifying whether tax exemptions granted by Portugal to companies established in the Madeira Free Zone are in line with the Commission decisions and EU State aid rules; highlights that the Commission is verifying whether Portugal complied with the requirements of the schemes, i.e. whether the company profits benefiting from the income tax reductions originated exclusively from activities carried out in Madeira and whether the beneficiary companies actually created and maintained jobs in Madeira.

<sup>2</sup> Also referred to as enablers, promoters or facilitators in some legislation.

<sup>3</sup> Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (OJ L 139, 5.6.2018, p. 1).

therefore, the importance of transparent indication of what services are provided to a particular client and a clear separation between these services; reiterates its requests from previous reports<sup>1</sup> on this issue;

376. Welcomes the monitoring of the enforcement of Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts<sup>2</sup> and of Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC<sup>3</sup>, in particular the provision on statutory auditors or audit firms carrying out statutory audits of public-interest entities; points out the need to ensure that the rules are properly applied;
377. Calls on the Member States to consider the introduction of mandatory tax reporting for all tax and financial intermediaries referred to in Action 12 of the BEPS Project who, in the course of their professional activities, become aware of the existence of abusive or aggressive transactions, devices or structures;
378. Calls for a rotation of auditors every seven years to prevent conflicts of interest and for the provision of non-audit services to be kept to a minimum;
379. Reiterates that financial institutions, advisors and other intermediaries that knowingly, systematically and repeatedly facilitate, engage or participate in money laundering or tax evasion activities, or that establish offices, branches or subsidiaries in EU-listed jurisdictions to offer their clients aggressive tax planning schemes, should face effective, proportional and dissuasive penalties; calls for such institutions and individuals to have their operational businesses licenses subjected to a serious review in the event that they are convicted for participating in fraudulent behaviour, or they are cognisant of it being carried out by their clients, and, where applicable, for restrictions on their operating in the single market;
380. Points out that professional secrecy cannot be used for the purposes of protecting or covering up illegal practices or for violating the spirit of the law; urges that attorney-client privilege should not impede adequate STRs or the reporting of other potentially illegal activities, without prejudice to the rights guaranteed by the Charter of Fundamental Rights of the European Union and the general principles of criminal law;
381. Calls on the Commission to issue guidance on the interpretation and application of the legal privilege principle for professionals and to introduce a clear line of demarcation between traditional judicial advice and lawyers acting as financial operators, in line with the case-law of the European courts;

## **8. *Protection of whistle-blowers and journalists***

382. Believes that the protection of whistle-blowers in both the private and public sectors is of major importance to ensure that unlawful activities and abuse of law are prevented or

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<sup>1</sup> See, for example, the European Parliament recommendation of 13 December 2017 to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion, paragraph 143 (OJ C 369, 11.10.2018, p. 132).

<sup>2</sup> OJ L 158, 27.5.2014, p. 196.

<sup>3</sup> OJ L 158, 27.5.2014, p. 77.



do not prosper; recognises that whistle-blowers play a crucial role in strengthening democracy in societies in the fight against corruption and other serious crimes or illegal activities, and in the protection of the Union's financial interests; stresses that whistle-blowers are often a crucial source for investigative journalism and should therefore be protected from all forms of harassment and retaliation; notes the importance of making all reporting channels available;

383. Deems it necessary to protect the confidentiality of the sources of investigative journalism, including whistle-blowers, if the role of investigative journalism as a watchdog in democratic society is to be safeguarded;
384. Considers, therefore, that the duty of confidentiality should only be waived in exceptional circumstances where disclosure of the information relating to the reporting person's personal data is a necessary and proportionate obligation required under Union or national law in the context of investigations or judicial proceedings or to safeguard the freedoms of others including the right of defence of the person concerned, and in any case should be subject to appropriate safeguards under such laws; considers that appropriate sanctions should be provided for in the event of breaches of the duty of confidentiality concerning the reporting person's identity<sup>1</sup>;
385. Notes that the US False Claims Act provides a solid framework for rewarding whistle-blowers in cases where the government recovers funds lost as a result of fraud<sup>2</sup>; underlines that according to a US Justice Department report, whistle-blowers were directly responsible for the detection and reporting of 3.4 billion of the total USD 3.7 billion recovered; calls on Member States to establish safe and confidential communication channels for whistle-blowers' reporting within the relevant authorities and private entities;
386. Calls on the Commission to examine best practices around the world<sup>3</sup> on protecting and providing incentives for whistle-blowers and, where appropriate and necessary, to consider reviewing existing legislation in order to make similar schemes in the EU even more effective;
387. Calls for a general EU fund to be set up to provide appropriate financial support to whistle-blowers whose livelihoods are put at risk as a result of disclosures of criminal activity or facts which are clearly in the public interest;
388. Worries that whistle-blowers are often discouraged from reporting their concerns for fear of retaliation and that if retaliation is not discouraged and remains unpunished, potential whistle-blowers may be dissuaded from reporting their concerns; considers that the recognition in AMLD5 of the right of whistle-blowers to present a complaint in a safe manner to the respective competent authorities, i.e. via a single point of contact in complex international cases, when exposed to a threat or retaliation and of their right to an effective remedy, constitutes a significant improvement of the situation of individuals reporting suspicions of money laundering or terrorist financing internally

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<sup>1</sup> Report on the proposal for a directive of the European Parliament and of the Council of 26 November 2018 on the protection of persons reporting on breaches of Union law (COM(2018)0218) – C8-0159/2018 – 2018/0106(COD)).

<sup>2</sup> TAX3 hearing of 21 November 2018.

<sup>3</sup> In particular the relevant US legislation.

within the company or to a FIU; urges Member States to transpose, in a timely manner, and to duly enforce, the provisions on whistle-blower protection laid down in AMLD5;

389. Welcomes the outcome of the interinstitutional negotiations between the European Parliament and the Council on the protection of persons reporting on breaches of Union law, and calls on Member States to adopt the new standards as soon as possible in order to protect whistleblowers through measures such as clear reporting channels, confidentiality, legal protections and sanctions for those who attempt to persecute whistleblowers;
390. Recalls that EU officials enjoy whistle-blower protection under the Staff Regulations and the Conditions of Employment of Other Servants of the European Union<sup>1</sup> and invites Member States to introduce comparable standards for their civil servants;
391. Considers that non-disclosure agreements included in employment contracts and dismissal agreements should by no means prevent employees from reporting suspected cases of violations of law and of human rights<sup>2</sup> to the competent authorities; calls on the Commission to assess the possibility of proposing legislation prohibiting abusive non-disclosure agreements;
392. Notes that the TAX3 committee invited the whistle-blowers in the cases of Julius Bär and Danske Bank to testify at public parliamentary hearings<sup>3</sup>; is concerned that whistle-blower protection in financial institutions is not fully satisfactory and that fears of retaliation from both employers and authorities may prevent whistle-blowers from coming forward with information on breaches of law; deeply regrets the fact that the Danske Bank whistle-blower could not freely and fully share his insight into the Danske Bank case owing to legal restraints;
393. Deplores the fact that the Danish Financial Supervisory Authority failed to make contact with the whistle-blower who reported massive money-laundering activities in Danske Bank; is of the opinion that this omission constitutes gross negligence on the part of the Danish Financial Supervisory Authority of its duty to conduct proper investigations following serious allegations of large-scale and systematic money laundering through a bank; calls on the relevant EU and Member State authorities to make full use of the information provided by whistle-blowers and to act swiftly and decisively on the information obtained from them;
394. Calls on the Member States to work closely within the Council of Europe for the promotion and implementation in the domestic law of all Council of Europe Member States of the recommendation on the protection of whistle-blowers; calls on the Commission and the Member States to take the lead in other international fora to

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<sup>1</sup> Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities (OJ L 124, 27.4.2004, p. 1).

<sup>2</sup> As suggested by the Council of Europe in its Recommendation CM/Rec(2014)7 of the Committee of Ministers to Member States on the protection of whistleblowers, adopted on 30 April 2014.

<sup>3</sup> Mr Rudolf Elmer, hearing on 1 October 2018; Mr Howard Wilkinson, hearing on 21 November 2018.

promote the adoption of binding international standards for the protection of whistle-blowers;

395. Notes that in addition to guaranteeing the confidentiality of the identity of whistle-blowers as an essential measure for the protection of the reporting person, anonymous reporting should be further protected from generalised threats and attacks issued by those allegedly offended which seek to discredit the reporting person;
396. Acknowledges the difficulties faced by journalists when investigating or reporting on cases of money laundering, tax fraud, tax evasion and ATP; worries that investigative journalists are often subjected to threats and intimidation, including legal intimidation by strategic lawsuits against public participation (SLAPPs); calls on the Member States to improve protection for journalists, particularly those involved in investigations on financial crime;
397. Calls on the Commission to set up a financial support scheme for investigative journalism as soon as possible, possibly in the form of a permanent and dedicated budget line to support independent, quality media and investigative journalism under the new multiannual financial framework;
398. Strongly condemns acts of violence against journalists; recalls with dismay that in recent years journalists involved in the investigation of dubious activities with a money laundering component have been murdered in Malta and Slovakia<sup>1</sup>; underlines that according to the Council of Europe, abuses and crimes committed against journalists have a deeply chilling effect on freedom of expression and amplify the phenomenon of self-censorship;
399. Urges the Maltese authorities to deploy all available resources to make progress in identifying the instigators behind the murder of the investigative journalist Daphne Caruana Galizia; welcomes the initiative of 26 international media freedom and journalists' organisations pushing for an independent public inquiry into the murder of Daphne Caruana Galizia and to assess whether it could have been avoided; urges the Maltese Government to initiate this independent public inquiry without delay; notes that the Maltese Government has engaged with international organisations such as Europol, the FBI and the Dutch Forensic Institute, in an effort to strengthen its expertise;
400. Welcomes the charges brought by the Slovak authorities against the alleged instigator of the murders of Ján Kuciak and Martina Kušnírová as well as the alleged perpetrators of the murders; encourages the Slovak authorities to continue their investigation into the murders and to ensure that all aspects of the case are fully investigated, including any possible political links to the crimes; calls on the Slovak authorities to fully investigate the cases of large-scale tax evasion, VAT fraud and money laundering brought to light by Ján Kuciak's investigations;
401. Deplores the fact that investigative journalists, including Daphne Caruana Galizia, are often victims of abusive [lawsuits](#) intended to [censor](#), [intimidate](#) and silence them by burdening them with the costs of [legal defence](#) until they are forced to abandon their criticism or opposition; recalls that these abusive lawsuits constitute a threat to

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<sup>1</sup> Daphne Caruana Galizia, killed in Malta on 16 October 2017; Ján Kuciak, killed together with his partner Martina Kušnírová, in Slovakia on 21 February 2018.

fundamental democratic rights, such as to freedom of expression, freedom of the press and freedom to disseminate and receive information;

402. Calls on the Member States to put in place mechanisms to prevent SLAPPs; considers that these mechanisms should duly take into consideration the right to a good name and reputation; calls on the Commission to assess the possibility and the nature of the concrete action that should be taken in this area;
403. Deplores the fact that Swiss libel laws are used to silence critics in Switzerland and worldwide because the burden of proof lies with the defendant and not the plaintiff; highlights that this not only affects journalists and whistle-blowers, but also reporting entities in the European Union and obliged persons under the beneficial ownership register, as in the event that the obligation of reporting a Swiss beneficial owner should arise, the reporting person may end up being prosecuted in Switzerland for libel and slander, which are criminal offences<sup>1</sup>;

## **9. Institutional aspects**

### **9.1. Transparency**

404. Welcomes the work done by the Platform for Tax Good Governance; notes that the mandate of the Platform applies until 16 June 2019; calls for it to be extended or renewed to ensure that civil society concerns and expertise are heard by Member States and the Commission; encourages the Commission to broaden the scope of the experts invited to the Expert Group on Money Laundering and Terrorist Financing (EGMLTF) to include experts from the private sector (business and NGOs);
405. Stresses that the European Ombudsman has the mandate to look into the EU institutions' application of EU rules on public access to documents, including into the working methods of the Council or the CoC Group in the area of taxation;
406. Recalls the results of the Ombudsman's own-initiative inquiry into the Council's working methods and its recommendation of 9 February 2018 concluding that the Council's practice of not making legislative documents widely accessible, its disproportionate use of the 'LIMITE' status and its systematic failure to record the identities of Member States that take a position in a legislative procedure constitute maladministration<sup>2</sup>;
407. Recalls that taxation remains the competence of the Member States and that the European Parliament has limited powers in these matters;
408. Points out, however, that issues of tax fraud, tax evasion and aggressive tax planning cannot be effectively tackled by Member States individually; deplores the fact, therefore, that despite requests to the Council, no relevant documents have been made available to the TAX3 committee; is greatly concerned about the lack of political will from the Member States in the Council to take substantial steps in the fight against money laundering, tax fraud, tax evasion and aggressive tax planning or to comply with

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<sup>1</sup> TAX3 committee hearing of 1 October 2018.

<sup>2</sup> [Recommendation of the European Ombudsman in case OI/2/2017/TE on the Transparency of the Council legislative process.](#)

the TEU and the principle of sincere cooperation<sup>1</sup> by ensuring sufficient transparency and cooperation with the other EU institutions;

409. Regrets the fact that the rules currently in place for accessing classified and other confidential information made available to Parliament by the Council, Commission or Member States, do not provide full legal clarity but are generally interpreted as excluding accredited parliamentary assistants (APAs) from consulting and analysing non-classified ‘other confidential information’ in a secure reading room; calls, therefore, for the introduction of a clearly worded provision in a negotiated interinstitutional agreement guaranteeing the right of access to documents for APAs on the basis of the ‘need to know’ principle, in their supporting role for Members;
410. Regrets the fact that despite repeated invitations, the representatives of the Council Presidency refused to appear before the TAX3 committee to report on progress in implementing the recommendations of the TAXE, TAX2 and PANA committees; emphasises that working contacts between the Council Presidency and special and inquiry committees of the European Parliament should be standard practice;

## **9.2. Code of Conduct Group on Business Taxation**

411. Notes the increased communication from the CoC Group and welcomes in particular the biannual publication of its report to the Council, as well as the letters sent to jurisdictions and commitments received in the context of the EU listing process;
412. Regrets, however, the opaque nature of the negotiations regarding the EU listing process, and calls on the Member States to ensure transparency in the forthcoming update of the lists;
413. Welcomes the fact that the Chair of the CoC Group appeared before the TAX3 committee, in a reversal of the CoC Group’s previous position; also notes that since the start of the work of the TAX3 committee, compilations of the CoC Group’s work have been made available<sup>2</sup>; regrets, however, that those documents were not published sooner and that important parts of them have been redacted;
414. Stresses that the abovementioned Ombudsman recommendations also apply to the CoC Group, which should provide the necessary information, relating in particular to harmful tax practices of Member States and the EU listing process;
415. Calls on the CoC Group to take further measures to ensure the transparency of its meetings, in particular by making public the positions of the different Member States on the discussed agenda no later than six months after the meeting;

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<sup>1</sup> Article 4(3) of the TEU.

<sup>2</sup> In particular as recalled in the CoC Group report to the Council of June 2018: the Procedural Guidelines for carrying out the process of monitoring commitments concerning the EU list of non-cooperative jurisdictions for tax purposes (doc. 6213/18); a compilation of all the agreed guidance since the creation of the Group in 1998 (doc. 5814/18 REV1); a compilation of all the letters signed by the COCG Chair seeking commitments by jurisdictions (doc. 6671/18); a compilation of the commitment letters received in return, when consent was given by the jurisdiction concerned (doc. 6972/18 and addenda); and an overview of the individual measures assessed by the Group since 1998 (doc. 9 639/18).

416. Calls on the Commission to report on the implementation of the code of conduct for business taxation and on the application of fiscal State aid, as laid down in recital N of the code<sup>1</sup>;
417. Believes that the mandate of the CoC Group needs to be updated, since it addresses matters beyond the assessment of harmful EU tax practices, which is more than simply providing technical input to the decisions made by the Council; calls, based on the nature of the work undertaken by the Group which is also of a political nature, for such tasks to be brought back under a framework which enables democratic control or supervision, starting by applying transparency;
418. Calls in this context for the opaque nature of the composition of CoC Group to be remedied by publishing a list of its members;

### ***9.3. Enforcement of EU legislation***

419. Calls for the newly elected Parliament to initiate an overall assessment on progress as regards access to documents requested by the TAXE, TAX2, PANA and TAX3 committees, comparing the requests made with those granted by the Council and other EU institutions, and to initiate, if needed, the necessary procedural and/or legal measures;
420. Calls for the creation of a new Union Tax Policy Coherence and Coordination Centre (TPCCC) within the structure of the Commission, which should be able to assess and monitor Member States' tax policies at Union level and ensure that no new harmful tax measures are implemented by Member States;

### ***9.4. Cooperation of non-institutional participants***

421. Welcomes the participation and input of stakeholders in TAX3 committee hearings, as referred to in section IV.3 of the overview of activities during the mandate of the TAX3 committee; deplors the fact that other stakeholders refused to participate in TAX3 committee hearings, as referred to in section IV.4 of the overview of activities; notes that no dissuasive sanctions could be found for cases where no reason was given for this refusal;
422. Calls on the Council and the Commission to agree on the establishment of a publicly accessible and regularly updated list of non-cooperative non-institutional parties in the interinstitutional agreement on a mandatory transparency register for lobbyists; considers, in the meantime, that a record should be kept of those professionals and organisations who without justifiable reason refused to attend the TAXE, TAX2, PANA and TAX3 committee hearings; invites the EU institutions to bear this attitude in mind during any future dealings with the stakeholders concerned and to withdraw their access badges to their premises;

### ***9.5. Parliament's right of inquiry/investigative right***

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<sup>1</sup> The code is set out in Annex I to the conclusions of the ECOFIN Council Meeting of 1 December 1997 concerning taxation policy, recital N of which relates to the monitoring and revision of the code's provisions (OJ C 2, 6.1.1998, p. 1.).

- 423. Considers that it is vital for the exercise of democratic control over the executive that Parliament be empowered with investigative and inquiry powers that match those of Member States' national parliaments; believes that in order to exercise this role Parliament must have the power to summon and compel witnesses to appear and to compel the production of documents;
- 424. Believes that in order for these rights to be exercised Member States must agree to implement sanctions against individuals for failure to appear or produce documents in line with national law governing national parliamentary inquiries and investigations;
- 425. Urges the Council and the Commission to engage in the timely conclusion of the negotiations on the proposal for a regulation of the European Parliament on the detailed provisions governing the exercise of Parliament's right of inquiry;

#### **9.6. *Unanimity vs qualified majority voting***

- 426. Reiterates its call on the Commission to use, if appropriate, the procedure laid down in Article 116 of the TFEU which makes it possible to change the unanimity requirement in cases where the Commission finds that a difference between the provisions laid down by law, regulation or administrative action in Member States is distorting the conditions of competition in the internal market;
- 427. Welcomes the Commission's contribution through its communication 'Towards a more efficient and democratic decision making in EU tax policy' proposing a roadmap to qualified majority voting for specific and pressing tax policy issues where vital legislative files and initiatives aimed at combating tax fraud, tax evasion and ATP have been blocked in the Council to the detriment of a large majority of Member States; welcomes the support expressed by some Member States for this proposal<sup>1</sup>;
- 428. Stresses that all scenarios should remain envisaged, and not only that of shifting from unanimity to qualified majority voting through a passerelle clause; calls on the European Council to add this point to a Summit agenda before the end of 2019 in order to engage in a fruitful debate on how to facilitate decision-making on tax issues in the interests of the functioning of the single market;

#### **9.7. *Follow-up***

- 429. Takes the view that the work of the TAXE, TAX2, PANA and TAX3 committees should be continued, in the forthcoming parliamentary term, in a permanent structure within Parliament in the form of a subcommittee to the Committee on Economic and Monetary Affairs (ECON), allowing for cross-committee participation;

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- 430. Instructs its President to forward this resolution to the European Council, the Economic and Financial Affairs Council, the Commission, the European External Action Service, the European Supervisory Authorities, the European Public Prosecutor's Office, the

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<sup>1</sup> TAX 3 hearing with the Spanish Secretary of State for Finance, 19 February 2019.

European Central Bank, Moneyval, the Member States, the national parliaments, the UN, the G20, the Financial Action Task Force and the OECD.