



**2018/2121(INI)**

9.11.2018

# **DRAFT REPORT**

on financial crimes, tax evasion and tax avoidance  
(2018/2121(INI))

Special Committee on financial crimes, tax evasion and tax avoidance

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**CONTENTS**

**Page**

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION ..... 3

## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### 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 its recommendation of 13 December 2017 to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion<sup>5</sup>,
- having regard to the Commission's follow-up to each of the above mentioned Parliament resolutions,<sup>6</sup>
- having regard to the revelations of investigative journalists, which have become known as the LuxLeaks, Panama papers, Paradise papers and CumEx scandals,
- 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

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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, [T8-0048/2018](#).

<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> Legislative resolution of 16 December 2015 'Bringing transparency, coordination and convergence to corporate tax policies in the Union', [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](#).

<sup>6</sup> The March 2016 [joint follow-up](#) on bringing transparency, coordination and convergence to corporate tax policies in the Union and TAXE 1 resolutions, the November 2016 follow-up to the [TAXE 2](#) resolution and the April 2018 follow-up to the [PANA](#) resolution.

Union'<sup>1</sup>,

- having regard to the study on ‘VAT fraud: economic impact, challenges and policy issues’<sup>2</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>3</sup>,
- having regard to the Commission studies on ‘aggressive tax planning indicators’<sup>4</sup>,
- having regard to the evidence collected by the TAX3 Committee in its 26 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>5</sup> and ATAD II<sup>6</sup>) and the reviews of the Directive on Administrative Cooperation in taxation (DAC)<sup>7</sup>,
- having regard to the Commission proposals pending for adoption, in particular on the CC(C)TB<sup>8</sup>, the digital taxation package<sup>9</sup> and public country-by-country reporting

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<sup>1</sup> Scherrer A. and Thirion E., [Citizenship by Investment \(CBI\) and Residency by Investment \(RBI\) schemes in the EU](#), EPRS, European Parliament, October 2018; Korver R., [Money laundering and tax evasion risks in free ports](#), EPRS, European Parliament, October 2018 and Kiendl Kristo I. and Thirion E., [An overview of shell companies in the European Union](#), EPRS, European Parliament, October 2018.

<sup>2</sup> Lamensch M., [VAT fraud: economic impact, challenges and policy issues](#), Policy Department A, DG IPOL, European Parliament, 2018.

<sup>3</sup> Study Houben R. and Snyers A., [Cryptocurrencies and blockchain](#) and the study by Hadzhieva E., Impact of Digitalisation on International Tax Matters, Policy Department A, DG IPOL, European Parliament, 2018.

<sup>4</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 ‘Aggressive tax planning indicators - Final Report’ ([Taxation paper No 71](#), 7 March 2018).

<sup>5</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 L193 of 19.7.2016, p. 1](#).

<sup>6</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>7</sup> Relating respectively to the automatic exchange of tax rulings (Directive (EU) 2015/2376 of 8 December 2015, DAC3), exchange of country-by-country reports between tax authorities (Directive 2016/881 of 25 May 2016, DAC4), access to anti-money-laundering information by tax authorities, beneficial ownership and other customer due diligence (Directive 2016/2258 of 6 December 2016, DAC5), mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (Directive 2018/822 of 25 May 2018, DAC6).

<sup>8</sup> Proposal of 25 October 2016 for a Council Directive on a Common Corporate Tax Base (CCTB), [COM\(2016\)0685](#) (2016/0337(CNS)) and on a Common Consolidated Corporate Tax Base (CCCTB), [COM\(2016\)0683](#) (2016/0336(CNS)).

<sup>9</sup> The package consists of the ‘Time to establish a modern, fair and efficient taxation standard for the digital economy’ communication (COM(2018)0146), the proposal for a Council directive laying down rules relating to the corporate taxation of a significant digital presence ([COM\(2018\)0147](#), 2018/0072(CNS)), the proposal 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](#), 2018/0073 (CNS)) and the recommendation relating to the corporate taxation of a significant digital presence ([C\(2018\) 1650](#)).

(CBCR)<sup>1</sup>,

- 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,
- having regard to the communication from the Commission of 21 March 2018 on new requirements against tax avoidance in EU legislation governing in particular financing and investment operations<sup>2</sup>,
- having regard to the ongoing modernisation of the VAT framework, in particular the VAT definitive regime,
- having regard to the recently adopted new EU anti-money laundering framework, in particular after the adoption of the fourth (AMLD4)<sup>3</sup> and fifth (AMLD5)<sup>4</sup> reviews of the Anti-Money Laundering Directive,
- having regard to the Commission Action Plan on strengthening the fight against terrorist financing<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 Commission Staff Working Document of 26 June 2017 on improving cooperation between EU Financial Intelligence units<sup>6</sup>,
- having regard to the state aid investigations and decisions of the Commission<sup>7</sup>,
- 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

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<sup>1</sup> Proposal of 12 April 2016 for a directive amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches, [COM\(2016\)0198](#) (2016/0107(COD)).

<sup>2</sup> [C\(2018\) 1756](#).

<sup>3</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. 23](#).

<sup>4</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>5</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/2016/050 final](#).

<sup>6</sup> SWD(2017)0275.

<sup>7</sup> Relating to Fiat, Starbucks and the Belgian excess-profit ruling, and decisions to open state aid investigations on McDonalds, Apple and Amazon.

July 2015 on the Addis Ababa Action Agenda,

- having regard to the Commission communication on an External Strategy for Effective Taxation in which the Commission also called for the EU to ‘lead by example’<sup>1</sup>,
- 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 (A8-0000/2018),

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

### ***1.1. Changes***

1. Recalls that current international and national tax rules were mostly conceived in the early 20th century; asserts that there is an urgent need for reform of the rules, so that international, EU and national tax systems are fit for the new economic, social and technologic challenges of the 21st century; notes the broad understanding that current tax systems are not equipped to keep up with these developments and ensure that all market participants pay fair taxes;
2. Highlights that Parliament has made a substantial contribution to the fight against financial crimes, tax evasion and tax avoidance as uncovered in the LuxLeaks, Panama Papers and Paradise Papers cases, notably with the work of the TAXE, TAX2 and TAX3 Special Committees, the PANA inquiry committee and the ECON committee;
3. Welcomes the fact that during its current term the Commission has put forward 22 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; calls for the swift adoption of 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;

### ***1.2. Quantitative assessment***

4. Deplores 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’;
5. 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) to EUR160-190 billion (adding individualised tax arrangements of major MNEs, and inefficiencies in collection);
6. Calls on the Council and Member States to prioritise projects, notably with the support

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<sup>1</sup> [COM\(2016\)0024](#).

of the Fiscalis programme, aimed at quantifying the magnitude of tax avoidance in order to better address the current tax gap;

7. Notes that the IMF<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);
8. Highlights that close to 40 % of MNEs' profits are shifted to tax havens globally each year<sup>2</sup>;

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

9. Recalls that the fight against tax evasion and fraud tackles illegal acts, whereas the fight against tax avoidance addresses situations that are a priori within the limits of the law but against its spirit;
10. Recalls that ATP describes the setting of a tax design aimed at reducing tax liability by using the technicalities of a tax system or of mismatches between two or more tax systems that go against the spirit of the law;
11. Calls on the Commission and the Council to propose and adopt a comprehensive definition of aggressive tax planning indicators, building on both the hallmarks identified in the fifth review of the Directive on administrative cooperation (DAC6)<sup>3</sup> and the Commission's relevant studies and recommendations<sup>4</sup>; calls on Member States to use those indicators as a basis to repeal all harmful tax practices deriving from existing tax loopholes;
12. Stresses the similarity between corporate tax payers and high-net-worth individuals in the use of corporate structures and similar structures such as trusts and offshore locations for the purpose of ATP; recalls the role of intermediaries in setting up such schemes;
13. Welcomes the Commission's assessment and inclusion of ATP indicators in its 2018 European Semester country reports; calls for such 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;
14. Reiterates its call on companies, as taxpayers, to fully comply with their tax obligations and refrain from aggressive tax planning leading to BEPS, and to consider fair taxation

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<sup>1</sup> Crivelli, De Mooij and Keen, [Base Erosion, Profit Shifting and Developing Countries](#), 2016).

<sup>2</sup> Tørsløv, Wier and Zucman 'The missing profits of nations', National Bureau of Economic Research, Working Paper 24701, 2018.

<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](#).

<sup>4</sup>

[https://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/taxation/gen\\_info/economic\\_analysis/tax\\_papers/taxation\\_paper\\_61.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/gen_info/economic_analysis/tax_papers/taxation_paper_61.pdf)  
and [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/tax\\_policies\\_survey\\_2017.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/tax_policies_survey_2017.pdf)

strategy as an important part of their corporate social responsibility;

## **2. Corporate taxation**

15. Recalls that taxes must be paid in the jurisdictions where the actual economic activity and value creation takes place or, in case of indirect taxation, where consumption takes place;
16. 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 the readiness by France to include the debate on minimum taxation as one of the priorities of its G7 Presidency in 2019;
17. 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 in 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; calls on the Council to resume negotiations on the interest and royalties proposal<sup>1</sup>;

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

18. 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;
19. Notes that the G20/OECD 15-point BEPS action plan 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 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 such as the allocation of taxing rights among countries are covered by the current international framework to combat BEPS practices;
20. 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;
21. Welcomes the adoption by the EU of ATAD I and ATAD II; takes note that they provide a minimum level of protection against corporate tax avoidance throughout the EU, while 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

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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 - [2011/0314\(CNS\)](#).



creating further mismatches, between Member States and with third countries;

22. 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);
23. 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 at obtaining a tax advantage; reiterates its repeated call for the adoption of a general and common anti-abuse rule, namely in existing legislation and in particular in the parent-subsidiary directive, the merger directive and the interest and royalties directive;
24. Reiterates its call for a clear definition of permanent establishment so that companies cannot artificially avoid having a taxable presence in a Member State in which they have economic activity;
25. Calls for the finalisation of the work being done within the EU Joint Transfer Pricing Forum (JTTPF) on the development of good practices and monitoring of Member States' implementation by the Commission;
26. 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;
27. Emphasises that the EU actions aimed at addressing BEPS and ATP have equipped tax authorities with an updated toolbox to ensure fair tax collection; stresses that tax authorities should be responsible for making effective use of the tools without imposing an additional burden on responsible taxpayers, particularly SMEs;
28. 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;

## ***2.2. Strengthening EU actions to fight against corporate aggressive tax planning (ATP) and supplementing BEPS action plan***

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

29. 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>1</sup>; welcomes the studies and data drawn up by the Commission<sup>2</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;

30. 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 assessed by the latter; welcomes the fact that these features of ATP schemes can be updated if new arrangements or practices emerge;
31. Calls on the CoC Group report yearly 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 countermeasures that might potentially be needed;
32. Calls on the Commission to issue a proposal aimed at repealing patent boxes, and calls on Member States to favour non-harmful and, if appropriate, direct support for R&D; 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; welcomes the improved definition of R&D costs in the common corporate tax base (CCTB) proposal;

### ***2.2.2. Common consolidated corporate tax base (CCCTB)***

33. Welcomes the re-launch of the CCCTB project in a two-step approach, with the Commission's adoption of interconnected proposals on CCTB and CCCTB; calls on the Council to swiftly adopt them, taking into consideration Parliament's opinion that already includes the concept of virtual permanent establishment that would close the remaining loopholes allowing tax avoidance to take place and level the playing field in light of digitalisation;

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

34. 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>3</sup>;
35. Welcomes the digital tax package adopted by the Commission on 21 March 2018; calls on the Council to swiftly adopt these proposals, taking into account Parliament's

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<sup>1</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>2</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.

<sup>3</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.

opinion on them;

36. 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;

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

37. Stresses that since June 2014 the DAC has been amended four times;
38. Reiterates its call for a broader scope in relation to the exchange of tax rulings and broader access by the Commission; 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);
39. 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;
40. Emphasises that not only information exchanges between, 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;
41. 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; similarly, asks the Commission to assess how DAC4 relates to Action 13 of the G20/BEPS action plan on exchange of country-by-country information;
42. 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;
43. Reminds Member States of their obligation under the Treaty<sup>1</sup> to cooperate loyally, sincerely and expeditiously; calls, therefore, in the light of cross-border cases, 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 aggressive tax planning; calls further on the Commission to facilitate and coordinate cooperation between Member States' SPoCs;

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

<sup>2</sup> <http://www.oecd.org/tax/forum-on-tax-administration/jitsic/>

44. 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. *Transparency in relation to corporate tax***

45. Stresses that the proposal for public CBCR 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; recalls that the latter called for an enlargement of the scope of reporting and protection of commercially sensitive information; deplores the lack of progress and cooperation from the Council since 2016; urges for progress to be made in the Council so that it enters into negotiations with Parliament;

#### **2.5. *State aid rules***

46. 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;
47. Calls on the Commission to assess possible measures to discourage Member States from granting such State aid in the form of a tax advantage;
48. 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>, and one of which 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>;
49. 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>5</sup>;
50. Is concerned by the magnitude of tax unpaid for all Member States over long periods<sup>6</sup>;

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

<sup>6</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.

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 possible countermeasures, including fines, to prevent Member States from offering selective favourable tax treatment which constitutes State aid is non-compliant with EU rules;

51. Reiterates its calls for guidelines clarifying what constitutes tax-related State aid and ‘appropriate’ transfer pricing, with a view to removing legal uncertainties for both compliant taxpayers and tax administrations, and providing a framework for Member States’ tax practices accordingly;

## **2.6. Letterbox companies**

52. Notes that there is no single definition of letterbox companies;
53. 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;
54. Highlights that the high level of inward and outward foreign direct investment as a percentage of GDP in seven Member States (Belgium, Cyprus, Hungary, Ireland, Luxembourg, Malta, and the Netherlands) can only be partially explained by real economic activities taking place in these Member States;<sup>1</sup>
55. Underlines that a high share of foreign direct investment held by special purpose entities exists in several Member States, particularly in Malta, Luxembourg and the Netherlands;<sup>2</sup>
56. Notes that economic indicators such as an unusually high level of foreign direct investment, as well as foreign direct investment held by special purpose entities are ATP indicators<sup>3</sup>;
57. Notes that the ATAD anti-abuse rules (artificial arrangements) cover letterbox companies, and that the CCTB and CCCTB would ensure that the income is attributed to where the real economic activity takes place;
58. Urges the Commission and the Member States to establish coordinated substantial economic activity requirements as well as expenditure tests;
59. 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

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<sup>1</sup>Kiendl Kristo I. and Thirion E., [An overview of shell companies in the European Union](#), EPRS, European Parliament, October 2018, p.23.

<sup>2</sup> Kiendl Kristo I. and Thirion E., [op. cit.](#), p.23.

<sup>3</sup> IHS, [Aggressive tax planning indicators](#), prepared for the European Commission, DG TAXUD Taxation papers, Working paper No 71, October 2017.

companies in the context of tax fraud, tax evasion, aggressive tax planning and money laundering;

### 3. VAT

60. Stresses that VAT is an important revenue source for national budgets; notes that in 2016, VAT revenues in the EU28 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;
61. 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 in 2016 amounted to EUR 147 billion, which represents more than 12 % of the total expected VAT revenue<sup>1</sup>; 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>2</sup>;
62. Calls for additional statistics to estimate the VAT gap; stresses that there is no common approach to data collection and sharing within the EU;
63. Underlines that the feature of the current VAT (transitional) regime of applying an exemption to intracommunity supplies and exports within the EU has been abused by fraudsters, in particular in the VAT carousel fraud;
64. Takes note that according to the Commission, businesses trading on a cross-border basis currently suffer from compliance costs which are 11 % higher compared to those incurred by companies that only trade domestically;

#### 3.1. Modernisation of the VAT framework

65. 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;
66. 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;
67. Welcomes in particular the fact that the Council adopted new rules making it easier for online businesses to comply with VAT obligations on 5 December 2017; 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;
68. Welcomes the definitive VAT system proposals adopted on 4 October 2017<sup>3</sup> and 24

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<sup>1</sup> Study and Reports on the VAT Gap in the EU-28 Member States: 2018 Final Report / [TAXUD/2015/CC/131](#).

<sup>2</sup> See Commission press release: [http://europa.eu/rapid/press-release\\_IP-17-3443\\_en.htm](http://europa.eu/rapid/press-release_IP-17-3443_en.htm)

<sup>3</sup> COM(2017)0569, COM(2017)0568 and COM(2017)0567.

May 2018<sup>1</sup>; welcomes in particular the Commission's proposal to apply the destination principle to taxation, which means that VAT would be paid in the country of the customer;

69. Welcomes in particular the progress made by the Council towards the definitive VAT regime by adopting the Quick Fixes<sup>2</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>3</sup> on the Certified Taxable Person (CTP) proposal<sup>4</sup>, as expressed in its opinion of 3 October 2018<sup>5</sup>; profoundly regrets that the Council postponed the decision on introduction of CTP status until the adoption of the definitive VAT regime;
70. Welcomes, furthermore, the revision of the special schemes for SMEs<sup>6</sup> which is key to ensuring a level playing field, and can contribute to the reduction of VAT; calls on the Council to take Parliament's opinion of 11 September 2018<sup>7</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;

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

71. Welcomes the opening of infringement procedures by the Commission on 8 March 2018 against Cyprus, Greece and Malta to ensure that they stop offering unlawful favourable tax treatment for private yachts, which distorts competition in the maritime sector;
72. Calls on the Commission and Eurofisc to rapidly conclude their investigations on the Isle of Man's VAT collection practices on private yachts and aircraft, as revealed by the Paradise papers; and, if necessary, to open infringement procedures;
73. 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

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<sup>1</sup> COM/2018/329.

<sup>2</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>3</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>4</sup> Proposal for a Council Directive amending Directive 2006/112/EC as certain value added tax obligations for supplies of services and distance sales of goods (COM(2016)0757).

<sup>5</sup> Texts adopted, P8\_TA(2018)0367.

<sup>6</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>7</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.

recommendation to improve the reliability of the VAT Information Exchange System (VIES);

74. 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, the European Public Prosecutor's Office (EPPO) and the Commission in tackling VAT fraud;
75. 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;
76. Calls on the EPPO to begin operating as soon as possible and by 2022 at the latest; calls for exemplary 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;
77. 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;
78. Welcomes the fact that the fraud linked to imports has been addressed by the Council<sup>3</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;
79. Is concerned by the results of the study<sup>4</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

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<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.

<sup>3</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>4</sup> Study entitled '[VAT fraud: Economic impact, challenges and policy issues](#)', European Parliament, Directorate-General for Internal Policies, Policy Department for Economic, Scientific and Quality of Life Policies, 15 October 2018.



taxable persons, irrespective of the business model that they use;

80. Calls on the Commission to investigate seriously the possibility 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;

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

81. 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;
82. Regrets that high net worth individuals (HNWI) and ultra HNWI (UHNWI) 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;
83. Notes with regret that corporate tax fraud, tax evasion and aggressive tax planning contribute to shifting the tax burden on to honest and fair taxpayers;
84. Deplores the fact that some Member States have created tax regimes allowing non-nationals to obtain income tax benefits, hereby undermining other Member States' tax base and fostering harmful policies which discriminate against their own citizens;

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

85. Observes that a majority of Member States have adopted citizenship by investment (CBI) or residency by investment (RBI) schemes<sup>1</sup>, generally known as visa or investor programmes, by which citizenship or residence is granted to non-EU citizens in exchange for financial investment; observes that these programmes do not necessarily require applicants to spend time on the territory in which the investment is made;
86. Observes that at least 5 000 non-EU citizens have obtained EU citizenship through citizenship by investment schemes<sup>2</sup>;
87. Stresses that CBI and RBI schemes carry significant risks, including a devaluation of EU citizenship and the potential for corruption, money laundering and tax evasion; 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; 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; underlines that, at the same time, the economic sustainability and viability of

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<sup>1</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, Romania. 10 Member States have no such schemes: Austria, Belgium, Denmark, Finland, Germany, Hungary, Poland, Slovakia, Slovenia and Sweden. Source: study entitled '[Citizenship by investment \(CBI\) and residency by investment \(RBI\) schemes in the EU](#)', EPRS, October 2018, PE: 627.128; ISBN: 978-92-846-3375-3.

<sup>2</sup> See the above-mentioned study.

the investments provided through these schemes remain uncertain;

88. Notes 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;
89. Worries that there is very little transparency in relation to the number and origin of applicants, the numbers of individuals granted citizenship or residency by these schemes and the amount invested through these schemes; 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;
90. 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; is concerned that Malta and Cyprus have schemes<sup>1</sup> among those that potentially pose a high risk to the integrity of CRS;
91. Concludes that the potential economic benefits of CBI and RBI schemes do not offset the serious money laundering and tax evasion risks they present; calls on Member States to phase out all existing CBI or RBI schemes as soon as possible; stresses that, in the meantime, Member States should properly ensure that enhanced CDD on applicants for citizenship or residence through these schemes is duly carried out, as required by AMLD5; 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;
92. 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;
93. Urges the Commission to finalise its study on CBI and RBI schemes in the Union; urges the Commission to examine whether, and, if so, which of these schemes posed a threat to EU legislation;

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

94. 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

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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.

transactions to the financial intelligence units (FIUs);

95. 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;
96. 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>
97. 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;
98. 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>
99. Observes that under the Union Customs Code, customs warehouses are on an almost identical legal footing with free ports; recommends, therefore, 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;
100. Notes that money laundering risks in free ports are directly associated with money laundering risks in the substitute assets market;
101. 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>;
102. Calls on the Commission to table a legislative proposal to ensure the automatic exchange of information between the relevant authorities, including tax and customs authorities, on beneficial ownership and transactions taking place in free ports, customs warehouses or SEZs;

### **4.3. Amnesties**

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<sup>1</sup> EPRS study entitled ‘[Money Laundering and tax evasion risks in free ports](#)’, October 2018, PE: 627.114; ISBN: 978-92-846-3333-3.

<sup>2</sup> European Commission [list of EU free zones](#).

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

<sup>4</sup> EPRS study entitled ‘Money Laundering and tax evasion risks in free ports’, October 2018, PE: 627.114; ISBN: 978-92-846-3333-3.

103. Recalls the need to use amnesties with extreme caution in order not to encourage tax avoiders to wait for the next amnesty; calls on the Member States which enact tax amnesties to always require the beneficiary to explain the source of funds previously omitted;
104. 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;
105. 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 ultimate beneficial owner 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**

106. 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)**

107. Stresses that money laundering can assume various forms, and that the money laundered can have its origin in various illicit activities ranging from terrorism to tax evasion and fraud; 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;
108. 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;
109. Deplores the fact that a large number of 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

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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 - <https://www.unodc.org/unodc/en/money-laundering/globalization.html>

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; reminds Member States of their legal obligation to respect the deadline of 10 January 2020 for the transposition of AMLD5 into their domestic legislation;

110. 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 ultimate beneficial owners of the assets, including the immobilisation of anonymous accounts;
111. 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 ML in European banks linked to systematic breaches of the most basic KYC and CDD requirements;
112. Recalls that KYC and CDD continues throughout the business relationship, and that customers' transactions have to be 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;
113. 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/CTF provisions and agreed to pay EUR 775 million in a settlement with the Netherlands' Public Prosecution Service<sup>2</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>3</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>4</sup>;
114. Notes that in the case of Danske Bank, transactions worth upwards of EUR 200 billion flowed in and out of its Estonian branch<sup>5</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

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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.

<sup>2</sup> Netherlands' Public Prosecution Service, September 4 2018:

<https://www.om.nl/actueel/nieuwsberichten/@103952/ing-pays-775-million/>

<sup>3</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>4</sup> Bruun & Hjejle: [Report on the Non-Resident Portfolio at Danske Bank's Estonian Branch](#), Copenhagen, 19 September 2018.

<sup>5</sup> Ibid.

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;

115. 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>1</sup>;
116. Highlights that the European Central Bank (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 European Banking Authority (EBA) concluded that the Maltese Financial Intelligence Analysis Unit 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;
117. 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***

118. 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;
119. Calls for increased scrutiny and continuous supervision of the members of management boards and shareholders of credit institutions and investment firms in the EU, and stresses in particular the difficulty of revoking banking licences or equivalent specific authorisations;
120. 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 coordination and exchange of information among supervisory and enforcement agencies;
121. 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

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<sup>1</sup> Ibid.

address current challenges in this sector and that the Union's ability to enforce coordinated AML rules and practices is currently inadequate;

122. 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', 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;
123. Recalls that the ECB has the competence and responsibility for withdrawing authorisation from credit institutions for serious breaches of AML/CFT rules;
124. Stresses that ESAs, and in particular the EBA, should be provided with sufficient resource capacity to carry out their oversight functions and improve AML supervision;
125. 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;

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

126. 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; 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;
127. Highlights that in order to fight effectively against money laundering activities, cooperation is essential not only between Member States' FIUs but also between Member States' FIUs and the FIUs of third countries; 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 (FATF); considers that in any resulting agreement proper consideration should be given to the protection of personal data;
128. Points out that the non-standardisation of suspicious transaction report formats 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 mechanisms to set up standardised reporting formats for obliged entities in order to facilitate the exchange of information between FIUs in cases with a cross-border dimension;

129. Encourages the competent authorities and FIUs to engage with financial institutions and other obliged entities to enhance suspicious activity reporting, ensuring 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;

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

130. 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;

131. 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;

### **5.4. *Registers***

132. 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;

133. 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; stresses that the interconnection of registers should be ensured by the Commission; considers that the Commission should closely monitor the functioning of this interconnected system and assess within a reasonable time whether it is working properly and whether it should be supplemented by the establishment of an EU public register of beneficial ownership;

134. 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;

135. 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;

136. 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, if appropriate, to accompany the report with a legislative proposal;

137. 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 currencies**

138. Underlines the positive potential of new distributed ledger technologies, 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 technological developments to ensure that legislation addresses in an effective manner the abuse of new technologies and anonymity, which facilitates criminal activity;
139. 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>; reiterates its call for an urgent assessment by the Commission of the implications for money laundering and tax crimes involving e-gaming activities;
140. 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;

### **5.6. Sanctions**

141. Recalls 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;
142. Welcomes the adoption of the Regulation on the mutual recognition of freezing and confiscation orders to facilitate the cross-border recovery of criminal assets<sup>2</sup>, which will help strengthen the Union's capacity to fight organised crime and terrorism and to cut off the sources of financing for criminals and terrorists across the Union;
143. Welcomes the adoption of the Directive on countering money laundering by criminal law<sup>3</sup>; 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, the proceeds derived from and instrumentalities used or intended to be used in the commission or contributing to the commission of those offences;

### **5.7. International dimension**

144. Considers that, even if the work undertaken at international level to identify high-risk third countries for the purposes of fighting against money laundering and terrorist financing should be taken into consideration, particularly that of the FATF, it is

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<sup>1</sup> FATF, Regulation of virtual assets, 19 October 2018

<http://www.fatf-gafi.org/publications/fatfrecommendations/documents/regulation-virtual-assets.html>

<sup>2</sup> Not yet published.

<sup>3</sup> Not yet published.

essential that the Union have an autonomous list of high-risk third countries;

145. Takes note of the Methodology for identifying high-risk third countries under Directive (EU) 2015/849 published on 22 June 2018 (SWD(2018)0362);
146. Calls on the Commission and the Member States to ensure that the EU speaks with one voice at the FATF; calls on the Commission to include European Parliament staff as observers in the Commission delegation to the FATF;

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

147. Is worried about the accelerating corporate tax race to the bottom worldwide in terms of nominal tax rate<sup>12</sup>;
148. Recognises 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; 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; 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>3</sup> provisions of the new US tax reform; asks the Commission to inform Parliament of the results of the assessment;
149. Calls on the Commission to conduct a mapping exercise to analyse the extent of reciprocity in the exchange of information between the US and Member States; calls on the Council to give a mandate to the Commission to negotiate an agreement with the US to ensure reciprocity in the Foreign Account Tax Compliance Act (FATCA);

### **6.1. *List of tax havens***

150. Recalls the importance of a common EU list of non-cooperative jurisdictions for tax purposes (hereinafter 'EU list') based on comprehensive, transparent, robust, objectively verifiable and commonly accepted criteria that is regularly updated;
151. 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; underlines that this assessment is based on criteria deriving from a technical scoreboard and that Parliament had no legal involvement in this process; calls in this context on the

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<sup>1</sup> The average corporate income tax rate across the OECD dropped from 32.5 % in 2000 to 23.9 % in 2018. Overall, 22 of the 38 countries surveyed in the latest tax policy reform 2018 report from the OECD now have combined statutory corporate income tax rates equal to or below 25 %, compared with only six in 2000. Source: [OECD and Selected Partner Economies, Tax Policy Reforms 2018](#).

<sup>2</sup> It is also worth noting that the EU 28 are already well below this level, with an average corporate income tax rate in 2018 of 21.9 %, down from 32 % in 2000, according to the Commission: [Taxation Trends in the European Union - Data for the EU Member States, Iceland and Norway, 2018 Edition](#) (page 36) and [Taxation Trends in the European Union - Data for the EU Member States, Iceland and Norway, 2015 Edition](#) (page 147).

<sup>3</sup> Respectively 'Base Erosion and Anti-Abuse Tax' (BEAT), 'Global Intangible Low Tax Income' (GILTI) and 'Foreign-Derived Intangible Income' (FDII).

Commission and the Council 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;

152. Deeply regrets the lack of transparency during the initial listing process; 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;
153. 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>;
154. 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, 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, by then;

## **6.2. Countermeasures**

155. Renews its call for countermeasures aimed at incentivising compliance by the countries listed in Annex I of the EU list; takes note that most countermeasures proposed by the Council are left to national discretion;
156. Calls on the Member States to adopt a single set of strong countermeasures, including automatic CFC rules, for blacklisted jurisdictions unless the taxpayers convey genuine economic activities there; 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;
157. Calls on the European financial institutions<sup>2</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;

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

158. Reiterates its call for the EU to have a leading role in the global fight against tax evasion, aggressive tax planning and money laundering, in particular through

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

Commission initiatives in all related international forums;

159. Recalls its position regarding the creation of a global tax body within the UN framework, which should be well equipped and have sufficient resources to ensure that all countries can participate on an equal footing in the formulation and reform of global tax policies;
160. Calls for a global summit on 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 allow for the establishment of the abovementioned global tax body;

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

161. 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 domestic resource mobilisation;
162. 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;
163. Notes that closer work with regional organisations is needed, in particular with the African Union (AU) in order to combat illegal financial flows and corruption in the private and public sectors;
164. 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;
165. Recalls that public development aid 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, aggressive tax planning 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;
166. 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>;

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

167. 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 adherence to the UN model tax convention and for transparency around treaty negotiations to be ensured;

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

168. 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 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;

169. 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;

170. 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;

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

171. 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>;

172. 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'); 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;

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

173. 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

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<sup>1</sup> Action Aid, [Mistreated Tax Treaties Report](#), February 2016:

BEPS action 14; points out that the implementation deadline of the directive (30 June 2019) has not yet lapsed and that the provisions will need to be monitored in order to ensure that they are efficient and effective;

174. Calls on the Commission to collect and release 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***

175. 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;
176. Notes that the Commission has opened an in-depth 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;

#### **7. *Intermediaries***

177. Welcomes the broad definition of both 'intermediary' and 'reportable cross-border arrangement' in the recently adopted DAC6<sup>1</sup>;
178. Draws attention to the risks of conflicts of interest stemming from the provision of legal advice, tax advice and auditing services within the same accountancy firm; stresses, therefore, the importance of transparent indication of what services are provided to a particular client and clear separation between these services;
179. Reiterates that financial institutions, advisors and other intermediaries that knowingly, systematically and repeatedly facilitate, engage or participate in money laundering or tax evasion activities should face effective, proportional and dissuasive penalties, and, where applicable, be restricted from operating in the single market;

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

180. Believes that the protection of whistle-blowers is of major importance to ensure that unlawful activities and abuse of law are prevented or do not prosper; stresses that whistle-blowers are often a crucial source for investigative journalism and should therefore be protected against any form of harassment and retaliation; believes that it is necessary to protect the confidentiality of investigative journalism's sources, including whistle-blowers, if the role of investigative journalism as a watchdog in democratic society is to be safeguarded;

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<sup>1</sup> [OJ L 139, 5.6.2018, p. 1.](#)

181. Worries that whistle-blowers are often discouraged from reporting their concerns for fear of retaliation; 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 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 within the company or to a FIU;
182. 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;
183. 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>1</sup>;
184. Acknowledges the difficulties faced by journalists when investigating or reporting on cases of money laundering, tax fraud, tax evasion and aggressive tax planning; worries that investigative journalists are often subject to physical threats and intimidation;
185. 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>2</sup>;
186. Urges the Maltese authorities to make progress in identifying the instigator of the murder of Daphne Caruana Galizia;
187. Encourages the Slovak authorities to continue their investigation into the murders of Ján Kuciak and Martina Kušnírová;
188. Deplores the fact that investigative journalists 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 fundamental democratic rights, such as to freedom of expression, freedom of the press and freedom to disseminate and receive information; calls on the Member States to put in place mechanisms to prevent strategic lawsuits against public participation (SLAPP); considers that these mechanisms should take duly into consideration the right to a good name and reputation; calls on the Commission to assess the possibility of taking legislative action in this area;

## **9. Institutional aspects**

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<sup>1</sup> Mr Rudolf Elmer, hearing on 1.10.2018; Mr Howard Wilkinson, hearing on 21.11.2018.

<sup>2</sup> Daphne Caruana Galizia, killed in Malta on 16.10.2017; Ján Kuciak, killed together with his partner Martina Kušnírová, in Slovakia on 21.2.2018.

## **9.1. Transparency**

189. 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);
190. 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;
191. 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>1</sup>;
192. Notes that, despite requests to the Council, no relevant documents have been made available to the TAX3 Committee; calls into question, therefore, the political will of the Council to enhance transparency and cooperation in the fight against money laundering, tax fraud, tax evasion and aggressive tax planning or to comply with the TEU and the principle of sincere cooperation;

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

193. 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;
194. Regrets, however, the opaque nature of the negotiations regarding the EU listing process, and calls on the Member States to ensure transparency in the coming update of the lists;
195. 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

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<sup>1</sup> [Recommendation](#) of the European Ombudsman in case OI/2/2017/TE on the Transparency of the Council legislative process.

<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. 9639/18).



sooner;

196. 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;
197. 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;
198. 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***

199. 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;

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

200. Welcomes the participation and input of stakeholders as referred to in Annex XX on TAX3 committee hearings;
201. Takes note of the persons who refused to participate in TAX3 committee hearings as referred to in Annex XX;
202. 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 stakeholders who have not attended the committee's public meetings;

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

203. 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; 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; 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**

204. Reiterates its call on the Commission to use the procedure laid down in Article 116 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;
205. Welcomes the Commission's intention to propose qualified majority voting for specific and pressing tax policy issues where vital legislative files and initiatives aimed at combating tax fraud, tax evasion, aggressive tax planning or financial crimes have been blocked in the Council to the detriment of Member States;
206. Stresses that all scenarios should be envisaged and not only shifting from unanimity to qualified majority voting through a *passerelle* clause; calls on the Commission to issue its proposal before the end of its current mandate, early 2019;

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

207. 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 such as a subcommittee to the Committee on Economic and Monetary Affairs (ECON);
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208. Instructs its President to forward this resolution to the European Council, the Council, the Commission, the Member States, the national parliaments, the UN, the G20 and the OECD.