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Special Report

Combatting harmful tax regimes and corporate tax avoidance

The EU has established a first line of defence, but there are shortcomings in the way measures are implemented and monitored

EUROPEAN
COURT
OF AUDITORS

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Executive Summary

I Harmful tax regimes and corporate tax avoidance are economic phenomena that are not only evident at EU level but also constitute a global challenge. A tax regime is considered harmful when a country implements one that has adverse effects, such as the erosion of foreign tax bases or the unfair distribution of tax burdens. Such regimes can lead to significant tax losses for EU member states and distortions in the internal market.

II The EU has put a legal framework in place and uses other supporting instruments as a first line of defence against harmful tax regimes and corporate tax avoidance. The national governments of EU member states remain largely free to design their own tax laws and systems, and EU-level intervention can only take place where the functioning of the internal market is affected. Within this framework, the European Commission is responsible for enforcing EU law, and monitoring, coordinating and harmonising member states' actions.

III This audit assessed whether the EU framework is adequate within the limited scope of EU competences in the field of direct taxation. We therefore assessed the appropriateness of measures and mechanisms employed in the EU by both the Commission and the member states. In particular, we focused on the design and implementation of three directives (the Anti-Tax Avoidance Directive, the 5th amendment to the Directive on administrative cooperation in the field of taxation (DAC 6) and the Directive on Tax Dispute Resolution Mechanisms) between 2019 and 2023. We also examined whether the member states and Commission fulfilled their obligations in respect of the non-legally binding EU Code of Conduct for business taxation, and assessed whether they monitor, in an effective manner, the performance of their policies in the area that we audited.

IV We carried out this audit because the EU measures taken to fight harmful tax regimes and corporate tax avoidance have not been comprehensively covered by ECA audits, while their economic relevance and importance on the EU agenda have increased. Our previous work in the area focused on the procedures introduced by the Directive on administrative cooperation in the field of taxation (DACs 1 to 5, special report 03/2021). In this audit we extended the scope of our analysis to cover a wider range of measures with a view to improving their effectiveness, the ultimate purpose of which is to ensure that the right amount of tax is paid in the correct member state.

V Our overall conclusion is that the established EU framework serves as a necessary first line of defence to support the fight against harmful tax regimes and corporate tax avoidance within the limited scope of the EU's competences. However, there are shortcomings in the way EU measures were drawn up and implemented, and there is no appropriate monitoring system for assessing their effectiveness.

VI We note that in recent years the Commission has advanced the legislative framework for tackling harmful tax regimes and corporate tax avoidance at EU level. However, we found unclear definitions and gaps that have resulted in different interpretations across the member states. The Commission oversees the incorporation of EU legislation into national law effectively, but some evaluations, although ongoing, are overdue. At the level of the member states, our main findings concern the implementation of the DAC 6. We found that the five member states visited did exchange tax information on potentially harmful cross-border arrangements, but carried out few data quality checks and make little use of the information received.

VII Although the Commission provides satisfactory assistance to the Code of Conduct Group in assessing potentially harmful tax regimes, its role was very limited at the time of the audit. Member states withdraw their harmful tax regimes when this is recommended by the Group. However, in several cases the period to comply was much longer than the two years recommended by the Council. This gives rise to the risk that companies continue to benefit longer from unfair tax advantages.

VIII We also found that the Commission and four of the five member states visited had taken no suitable approach to measuring the performance of the tools used to combat harmful tax regimes and corporate tax avoidance in the EU. The lack of appropriate performance frameworks prevented them from measuring and assessing their efforts and deploying resources where they are most needed.

IX We recommend that the Commission should:

- clarify the EU legislative framework;
- improve the quality of DAC 6 reports;
- ensure that the impact of penalties is adequate;
- enhance its support to the Code of Conduct Group;
- monitor the results and impact of the fight against harmful tax regimes and corporate tax avoidance.

Introduction

Harmful tax regimes and corporate tax avoidance – an EU perspective

01 In the EU single market, each member state's national tax system is influenced by other tax jurisdictions, particularly when those jurisdictions offer tax benefits to attract corporations, individuals or capital into their territory. Any national tax measure that increases the competitiveness of one country's tax system over that of another is a form of tax competition.

02 Tax competition in the form of harmful tax regimes becomes a concern to the EU if it leads to undesirable consequences, in particular, distortion of competition within the EU single market. A tax regime is harmful when it causes adverse effects such as the erosion of foreign tax bases, or an unfair distribution of tax burdens (see ***Box 1***).

Box 1

Models of harmful tax practices

Certain tax measures may be employed to make a national tax system more competitive. While such measures are legitimate, there is a risk that they will harm the EU single market if their structure distorts trade and investment and erodes other national tax bases.

The European Parliament's 2021 study on "Harmful tax practices within the EU: definition, identification and recommendations" identified seven tax measures applied by member states that, in certain cases, could be considered harmful tax practices:

— lowering of corporate tax rates (so-called “race to the bottom”);

— patent box regimes;

— structures for the creation of shell companies;

— notional interest deduction regimes;

— foreign source income exemption regimes;

— special economic zone regimes;

— tax rulings.

03 When taxpayers use legal methods to minimise the amount of tax owed, it is called tax avoidance. The globalised economic environment has facilitated ever more complex business models and corporate structures, making it easier for multinational enterprises to shift profits across borders and avoid corporate taxation. A company’s use of mismatches and gaps between national tax systems for aggressive tax planning purposes becomes a form of harmful corporate tax avoidance.

04 Harmful tax regimes and corporate tax avoidance give rise to a situation, where taxpayers who are not in a position to make use of aggressive tax planning schemes, or similar measures, end up having to make up the “missing” tax revenue by contributing more. They also lead to unfair competition between companies and an unlevel playing field between countries, which may well lead to lost tax revenue for EU member states and distortions in the internal market. The fight against these phenomena does not take place solely at EU level but is a global challenge. Consequently, numerous recent EU actions in this field are based on international agreements, such as the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), which consists of 15 actions aimed at mitigating the associated challenges and setting an international standard in this area.

05 EU data on estimates of tax losses due to harmful tax regimes and tax avoidance are few, and up-to-date estimates are unavailable. The Commission’s annual report on taxation 2023 highlighted corporate tax revenues losses due to aggressive tax planning and tax avoidance. Based on 2013 estimates, tax revenue losses could amount to around €172.7 billion worldwide, €68.2 billion of which could be lost to Europe. Studies on corporate income taxation estimate that the global scale of profit shifting has resulted in a total global tax-revenue loss of €183-€274 billion.

EU measures and instruments

06 Tackling tax avoidance and ensuring fair tax competition have recently been placed higher on the EU agenda, though EU actions cannot undermine member states' prerogative in the area of direct taxation. The EU's competences are limited to setting general rules for member states' tax policies. In contrast with indirect taxes, the EU Treaties do not explicitly provide for the harmonisation of direct taxes.

07 The EU Treaty provides for action being taken at EU level where the Commission detects a difference in the legal provisions, rules or administrative practice of member states that directly affects the establishment or functioning of the internal market (Article 115 TFEU). A number of directives establish general standards at a systemic level and create tools to support the fight against harmful tax regimes and corporate tax avoidance. Besides legislative acts in the form of directives, the EU regulatory framework is endorsed by soft law instruments (such as the EU Code of Conduct for business taxation or country-specific recommendations in the framework of the European Semester), which have no legally binding force.

08 The groundwork for the current EU framework for supporting the fight against harmful tax regimes and corporate tax avoidance was laid by the Commission in several tax packages and action plans[1]. The Council conclusions of December 2015 also stressed the need to find common, yet flexible, solutions at EU level consistent with the 15 actions of the OECD's Action Plan on Base Erosion and Profit Shifting (BEPS), which became the OECD/G20 Inclusive Framework on BEPS in June 2016. The revised project expanded the scope of the initiative to include a broader group of countries beyond the OECD membership and has established an international standard in this field.

09 The directives (adopted before 1 January 2019) in the area of direct taxation, which established rules applicable to all taxpayers subject to corporate tax in a member state, comprise:

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[1] Communication from the Commission to the European Parliament and the Council – A Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action, COM(2015) 302 final; Communication from the Commission to the European Parliament and the Council – An Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy, COM(2020) 312 final.

— the Anti-Tax Avoidance Directive (**ATAD**) and its amendment[2];

— the 5th amendment to the Directive on administrative cooperation in the field of taxation (2011/16/EU) (**DAC 6**)[3];

— the Directive on Tax Dispute Resolution Mechanisms (**TDRD**)[4].

10 The ATAD aims to strengthen the average level of protection against aggressive tax planning by laying down rules intended to prevent the erosion of tax bases in the internal market and the shifting of profits out of the internal market, as well as create a fair and transparent tax environment across member states by harmonising tax avoidance rules. The directive addresses various forms of tax avoidance, particularly aggressive tax planning strategies that exploit differences in national tax laws to reduce a company's overall tax liability.

11 Council Directive 2011/16/EU (DAC), which established the legal basis for administrative cooperation in the field of direct taxation in the EU, requires all member states to share certain tax-related information with each other. The 5th amendment to the directive (DAC 6) introduced mandatory disclosure obligations for potentially harmful cross-border arrangements to further strengthen tax transparency and combat aggressive tax planning.

12 The Commission’s 2015 action plan focused greatly on measures to avoid base erosion and profit shifting, but also called for improved mechanisms for eliminating double taxation to ensure certainty and predictability for businesses, since double taxation in the single market can have a negative impact on cross-border investment and lead to economic distortions and inefficiency. The TDRD aims to improve the mechanisms for resolving tax disputes between EU member states by introducing common procedures and deadlines, and thus ensure smoother resolution of tax disputes. Taxpayers facing more restrictive tax dispute resolution mechanisms in one member state compared to others experience a form of unfair treatment. Hence, from a taxpayer’s point of view, the TDRD is instrumental in mitigating this treatment that is harmful to them by levelling the playing field.

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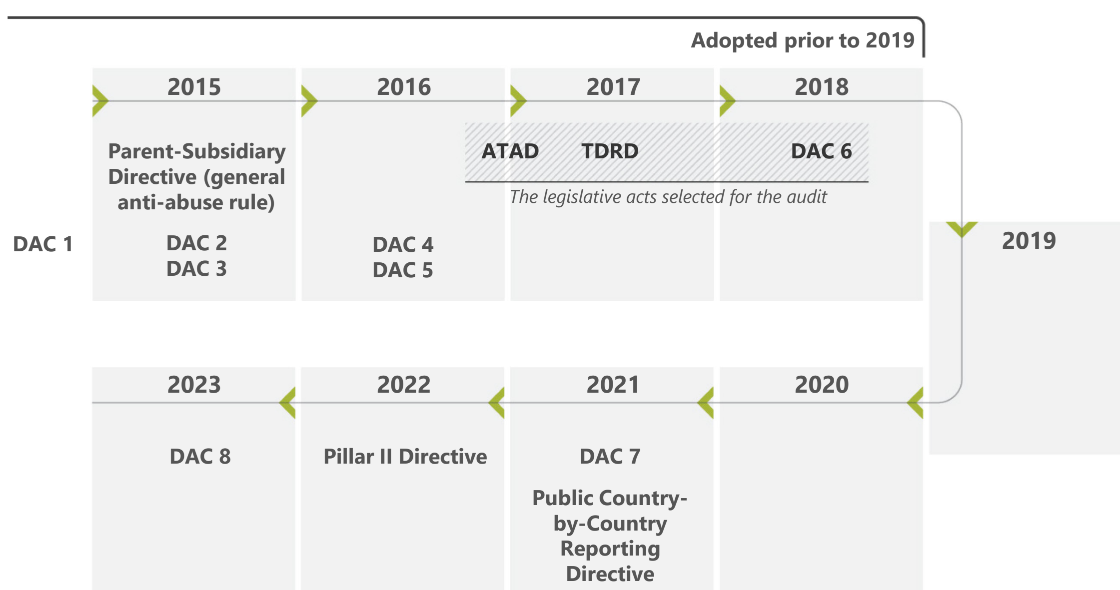
[2] Council Directive (EU) 2016/1164 (ATAD 1), as amended by Council Directive (EU) 2017/952 (ATAD 2).

[3] Council Directive (EU) 2018/822 (DAC 6).

[4] Council Directive (EU) 2017/1852 (TDRD).

13 Other relevant EU legislative acts (adopted prior to 2019) in the field of direct taxation include the DAC 3 (automatic exchange of information on advance cross-border tax rulings and advance pricing agreements), the DAC 4 (country-by-country reports) and the Parent-Subsidiary Directive (including an anti-abuse rule). The EU legislative framework is evolving and expanding, the most recent developments being the DAC 7, DAC 8, and the adoption of the "Pillar 2" Directive on ensuring a minimum level of taxation for large multinational enterprises and large-scale domestic groups within the EU (see ***Figure 1***).

Figure 1 – Adoption of relevant EU legislation



Source: ECA.

14 In addition to the legislative acts, the Council adopted an EU Code of Conduct for business taxation (the "Code")[5], which is a soft law instrument, in 1997. It called for member states to cooperate fully in preventing tax evasion and avoidance by applying this intergovernmental, non-legally binding instrument, and plays a special role in promoting fair tax competition, both within the EU and beyond. In 1998, a Code of Conduct Group (the "Group") was set up to assess preferential tax measures that might fall within the scope of the Code. The Group is composed of high-level representatives of the member states and the Commission.

[5] Conclusions of the ECOFIN Council meeting on 1 December 1997 concerning taxation policy, OJ C 2, 6.1.1998.

15 The Commission is also able to address national tax regimes that encourage aggressive cross-border tax planning and make country-specific recommendations within the scope of the European Semester, another soft law instrument. The European Semester is the framework for the integrated surveillance and coordination of economic and employment policies across the EU.

Roles and responsibilities

16 The design and development of tax policies, as well as tax collection, lie within the competence of the EU member states. However, fighting harmful tax regimes and corporate tax avoidance are also priorities under EU tax policy. The Commission plays a multifaceted role in this area. Its responsibilities encompass monitoring, coordination, harmonisation and enforcement, the aim of which is to promote fair tax competition and prevent distortion of the single market arising from harmful tax regimes and corporate tax avoidance.

17 The Commission department responsible is the Directorate-General for Taxation and Customs Union (DG TAXUD). In its role as central body in the EU's efforts to create a fair and transparent tax environment within the EU single market, DG TAXUD is required to:

— draft legislative proposals and oversee the implementation of the legislation in member states;

— provide mechanisms, systems and electronic interfaces to enable the exchange of tax information and oversee an EU central directory for the exchange of information on cross-border tax arrangements;

— provide guidelines and ensure uniform interpretation and application of the relevant EU legislation in member states;

— analyse member states' tax regimes and provide the Code of Conduct Group with recommendations regarding the harmfulness of those regimes;

— analyse the tax regimes of any non-EU countries concerned and propose them for inclusion in or exclusion from the EU list of non-cooperative jurisdictions for tax purposes.

18 The European Parliament constantly monitors developments in tax evasion and avoidance and is active through a number of its committees, e.g. the standing Subcommittee on Tax Matters (FISC) and the ad hoc inquiry committees. Council working groups and other preparatory bodies covering these areas operate primarily via the Code of Conduct Group (the "Group"). In general, EU tax law is adopted by unanimous vote of the Council, taking into account the European Parliament's opinion.

19 The Group was set up to assess tax measures that might fall within the scope of the non-legally binding EU Code of Conduct for business taxation (the "Code"). The Group's main duties are as follows:

- identifying tax practices within EU member states that are considered harmful to fair competition;
- monitoring tax regimes and assessing whether they meet the established criteria for determining harmful tax regimes;
- facilitating dialogue and cooperation between member states, enabling them to share best regimes and coordinate their efforts;
- promoting transparency by requiring member states to provide information on their tax measures and ruling practices;
- protecting the EU from harmful tax regimes of non-EU countries: the Group is responsible for preparing the EU list of non-cooperative tax jurisdictions.

20 The national governments of EU member states are broadly free to design their own tax laws and systems. However, all national legislation must respect certain fundamental principles, such as non-discrimination and freedom of movement in the internal market.

21 It is the role of member states to:

- operate taxation systems;
- implement EU measures designed to combat tax avoidance, tax evasion and profit shifting;
- collect and report the requisite tax-related information;
- share best regimes;
- ensure fair tax competition in the internal market.

Audit scope and approach

22 The objective of our audit was to assess whether the EU framework for fighting harmful tax regimes and corporate tax avoidance is adequate, within the limited scope of EU competences in the area of direct taxation (see paragraph *06*). To do so, we assessed the appropriateness of measures and mechanisms employed in the EU by focusing on the design and implementation of three directives (the ATAD, DAC 6 and TDRD) over the 2019-2023 period.

23 We selected the ATAD, DAC 6 and TDRD because they were the key legislative acts in the field of direct taxation adopted prior to 1 January 2019, they address systemic issues, and are generally applicable to all companies in the EU. The cut-off date was determined by the time needed for member states to incorporate them into national legislation and implement them. We also examined whether the member states and the Commission fulfilled their obligations in respect of the non-legally binding EU Code of Conduct for business taxation, and assessed performance monitoring in the area of the audit.

24 We carried out the audit because, up to the time concerned, the mechanisms and systems for fighting harmful tax regimes and corporate tax avoidance had not been audited extensively. Our audit on “Exchanging tax information in the EU: solid foundation, cracks in the implementation” (special report 03/2021) highlighted the deficiencies in the procedures under DACs 1 to 5. This audit built on the conclusions reached in that report and we extended the scope of analysis to cover a wider range of measures that have been introduced, with a view to improving their effectiveness.

25 The audit addressed systemic issues and we focused in particular on:

— the design and monitoring of the legislation selected, the Commission’s provision of guidance on the implementation of the ATAD, DAC 6 and TDRD, and member states’ implementation of the same legislation;

— the implementation of the EU central directory for the exchange of DAC 6 reports, and the quality and use of DAC 6 information exchanged by member states;

— the appropriateness of the Commission’s assistance to the Code of Conduct Group, and the implementation of the Group’s recommendations by the member states concerned;

— the monitoring of the performance of the measures taken by the Commission and member states in the area of the audit.

26 We carried out this audit within the limits of EU competences (see paragraphs ***06*** and ***22***), which means that we did not review, among other things, specific national tax regimes of the EU member states. Our audit in the member states focused on the implementation of the three directives selected and the Group's recommendations.

27 The Commission's work in connection with prohibited state aid and issuing country-specific recommendations in the context of the European Semester (see paragraph ***15***) do not fall within the scope of this audit, as the state aid procedures and recommendations made are individual and specific to the member state concerned. These subject areas are also horizontal, i.e. not specific to direct taxation, and have been the subject of other ECA audits (for example, special reports 16/2020 and 21/2020).

28 We audited the activity of the Commission DG TAXUD (see ***Annex I*** for an overview of the audit approach) and five member states (Ireland, Cyprus, Luxembourg, Malta and the Netherlands), which we selected on the basis of quantitative and qualitative risk criteria (see ***Annex II***).

29 In the member states visited, we used risk-based sampling to select exchanges of information on cross-border tax arrangements (DAC 6), cases of tax disputes involving the member states visited (TDRD), and potentially harmful tax regimes examined by the Code of Conduct Group.

30 We complemented audit evidence by discussing the international benchmarks applied to the instruments and mechanisms used to fight tax evasion and tax avoidance with the Organisation for Economic Co-operation and Development (OECD). We also interviewed representatives of the European Parliament's Subcommittee on Tax Matters (FISC Subcommittee) and held a panel discussion with external corporate-taxation experts to obtain feedback on the design and implementation of the EU framework in place.

Observations

A common EU legislative framework is in place, but lacks guidance to clarify legal ambiguities

31 Legislation relating to the fight against harmful tax regimes and corporate tax avoidance should ensure that companies and individuals have fewer opportunities to avoid or evade paying the right amount of tax in the correct member state. Member states should duly incorporate such EU legislation into national law. The Commission should present comprehensive legislative proposals and oversee the incorporation of legislation and its implementation by the member states; it should also provide guidelines for its effective application. These measures make up a first line of defence in the field of direct taxation, where EU competences are limited to interventions linked to distortion of the internal market. We assessed the legislative design of the ATAD, DAC 6 and TDRD and the Commission's monitoring and evaluation actions. We did so within the scope of EU competences in the area of taxation, as laid down in the EU Treaties.

Legislation is broadly aligned with international developments, but significant ambiguities in the application of the rules persist

32 The EU drew up its legislation on fighting harmful tax regimes and tax avoidance in the wake of intense international efforts deployed by the OECD. The OECD/G20 launched the Base Erosion and Profit Shifting (BEPS) project which, in 2015, introduced 15 measures to enable member countries to align their efforts in fighting tax avoidance and evasion, thereby effectively setting an international standard. Binding EU legislation soon followed, and the ATAD, DAC 6 and TDRD largely align with or exceed corresponding BEPS measures (see paragraph ***08*** and ***Annex III***).

33 Even though all three directives have specific objectives intended to improve the legal framework and ensure a level playing field for EU businesses, while supporting the fight against harmful tax regimes and corporate tax avoidance, the Commission did not set quantifiable targets for any of them. Furthermore, the Commission carried out an impact assessment in respect of the DAC 6 and TDRD, but not of the ATAD.

The ATAD

34 The ATAD aims to ensure a minimum level of protection for all member states' tax bases, a coherent and consistent approach towards preventing tax avoidance throughout the single market and coordinated EU implementation of some of the recommendations resulting from the OECD/G20 initiative, and specifically covering those regarding BEPS Actions 2 to 6[6] (see ***Table 1*** and ***Annex III***).

Table 1 – The ATAD's objectives

Prevention of base erosion and profit shifting (BEPS)	The ATAD aims to prevent base erosion, which involves reducing a company's taxable income by shifting profits to lower-tax jurisdictions. It therefore seeks to curb profit shifting by ensuring that companies pay their fair share of tax in the jurisdictions in which they generate their income.
Elimination of double non-taxation	The ATAD aims to prevent companies from exploiting differences in tax treatment between countries, which can lead to double non-taxation or reduced taxation.

Source: Council Directive (EU) 2016/1164.

35 The Directive introduced five specific rules to reach its objectives (see ***Annex IV***):

- the **controlled foreign company (CFC) rule**: to deter profit shifting to a low or no tax country;
- the **exit taxation rule**: to prevent companies from avoiding tax when relocating assets;
- the **interest limitation rule**: to discourage artificial debt arrangements designed to minimise taxes;
- the **general anti-abuse rule**: to counteract aggressive tax planning when other rules do not apply;
- the **anti-hybrid rules**: to neutralise hybrid mismatches.

36 Overall, we found the ATAD to be a coherent EU legislative act, creating a minimum level of protection for member states' tax bases without limiting member states' competences in the free design of their tax systems. The directive introduced a range of newly created minimum standards on combatting tax avoidance and

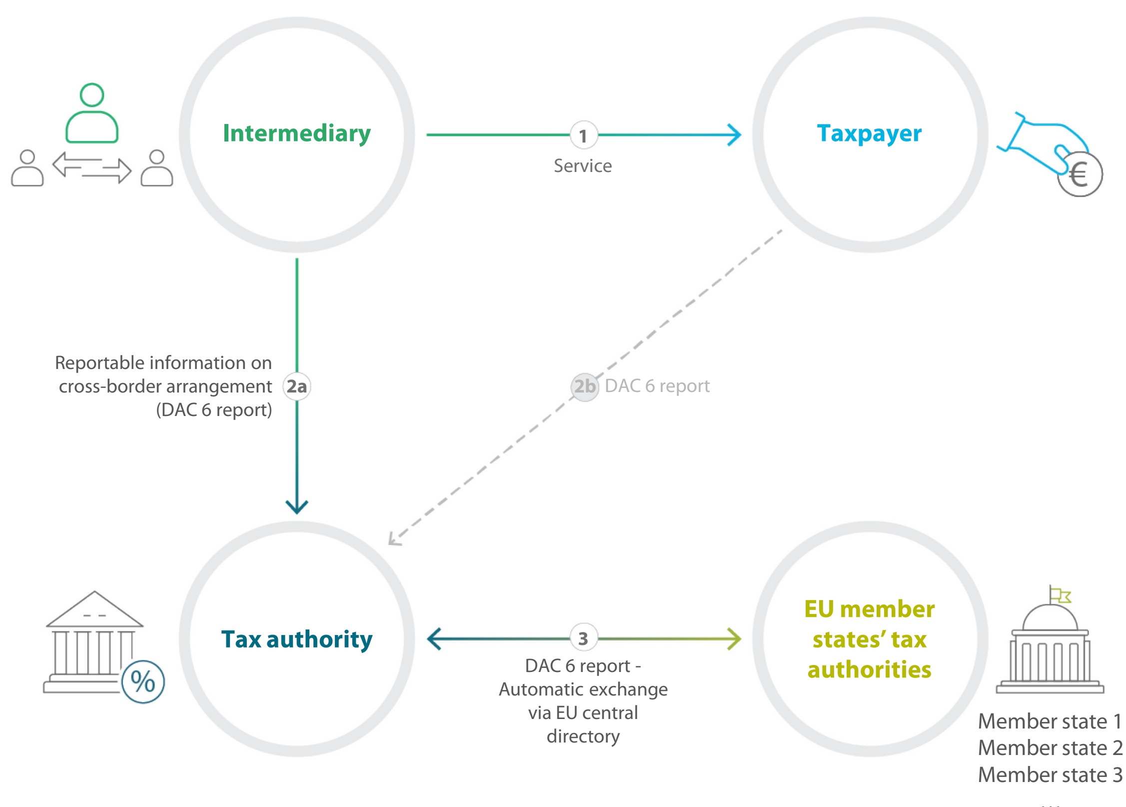
[6] COM(2020) 383 final.

therefore prompted member states to introduce either comprehensive new rules or amend their existing rules to comply with the ATAD provisions.

The DAC 6

37 The DAC 6 aims to promote tax transparency and should thereby prevent aggressive tax planning and help protect the tax base of EU member states. The directive covers BEPS Action 12, which focuses on mandatory disclosure rules for aggressive tax planning arrangements. The directive primarily requires intermediaries, including tax advisors, public notaries and accountants, to report information on potentially harmful cross-border tax arrangements to the tax authorities. A cross-border arrangement only becomes reportable when certain characteristics or features, termed "hallmarks", are present (listed in ***Annex IV*** to the DAC 6) and it involves either more than one EU member state or a member state and a non-EU country. In some cases, the reporting obligation may fall on the taxpayer. A DAC 6 report on the arrangement is then exchanged automatically with the other member states by entering it in the EU central directory (see ***Figure 2***).

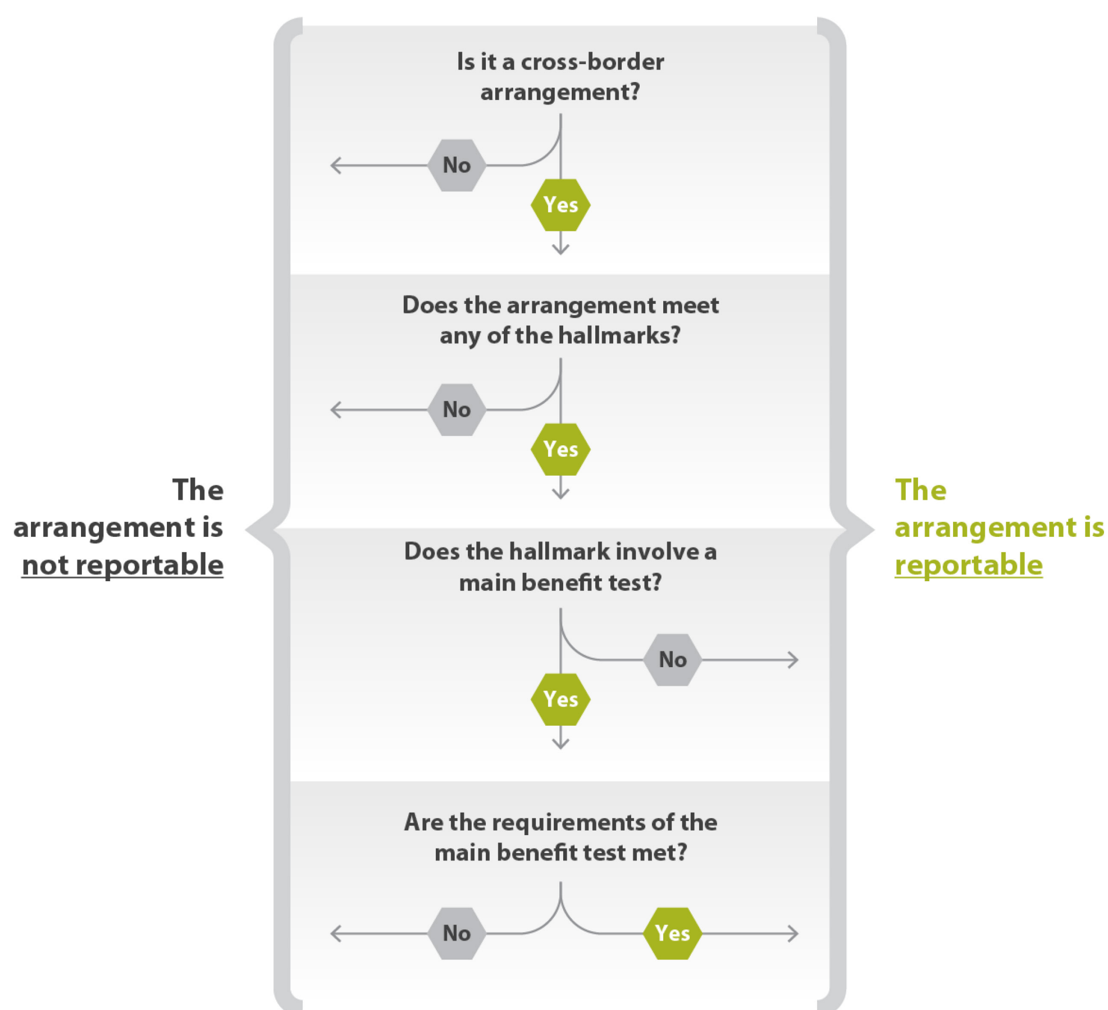
Figure 2 – How DAC 6 reporting works



Source: ECA, based on data and visual material from PwC Switzerland.

38 We noticed different interpretations of the legislation in the five member states visited, especially with regard to the application of the main benefit test and the hallmarks on whose basis a cross-border arrangement is considered reportable (see *Figure 3*). The main benefit test is intended to verify whether obtaining the tax advantage is the main or one of the main benefits of an arrangement. For example, the member states considered that there was a need to specify whether a quantitative approach should be applied. This would involve a comparison of the arrangement with and without taking into consideration the tax rules leading to the (supposed) tax advantage (see *Annex V*).

Figure 3 – Application of the main benefit test and hallmarks



Source: ECA, based on data and visual material from the Finnish Tax Administration.

39 During our audit visits to the member states, we also noted that the interpretation of specific DAC 6 provisions pointed to uncertainty with regard to, among other things, the triggering date, when reporting was actually due (because of the terms “made available” and “ready for implementation” in Article 8ab) and the disclosure of secret information (Article 8ab(14) point (c)).

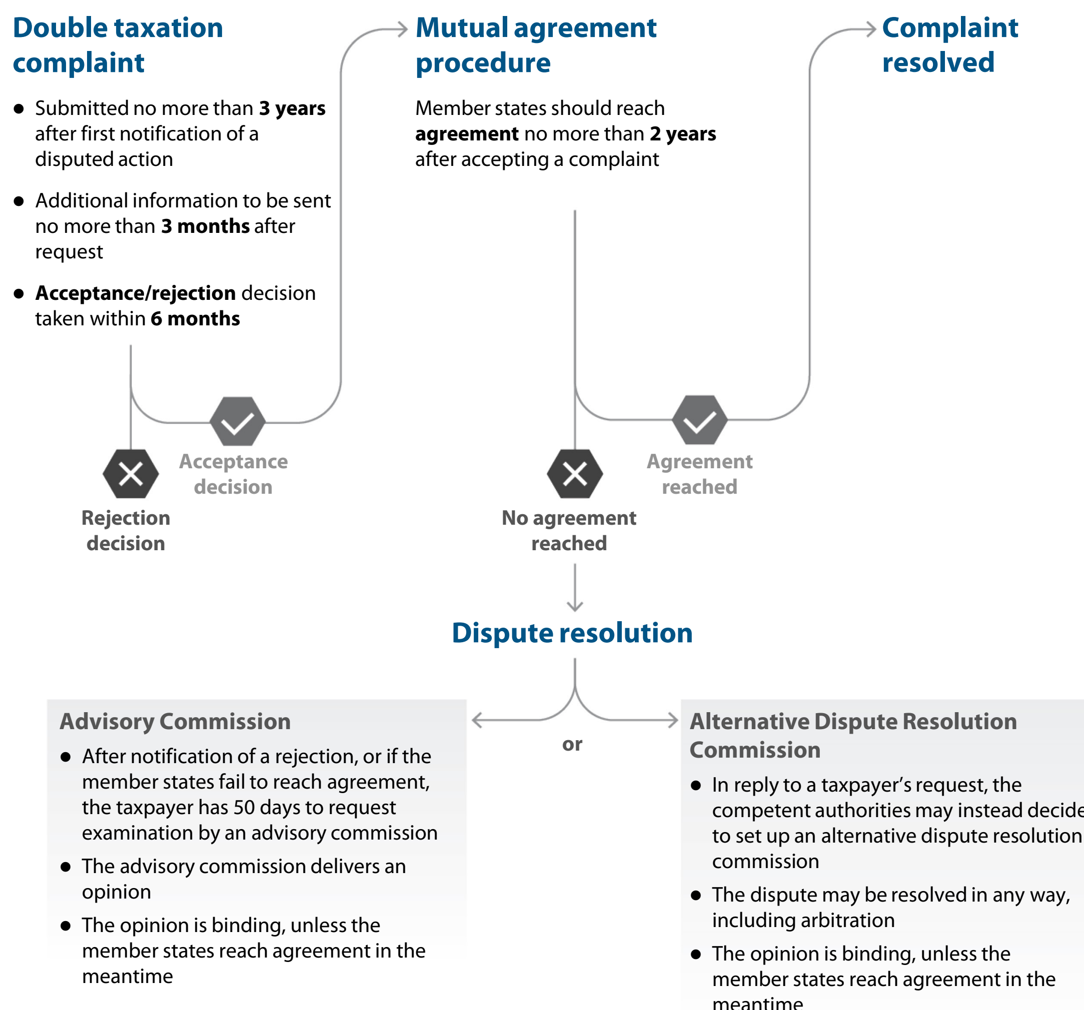
40 However, some of the interpretation issues, such as the clarity of several terms and deadlines (e.g. “arrangement”, “intermediary”, “participant”, “reporting deadline”, etc.), were the subject of a request for a preliminary ruling submitted by the Belgian *Cour constitutionnelle* (Case C-623/22). On 29 July 2024, the Court of Justice of the European Union delivered its judgement, which concluded that none of the concerns raised by the referring court impacted the validity of the DAC 6. Although the terms at issue were acknowledged as broad, the Court of Justice held that they were sufficiently clear and precise and did not breach of the Charter of Fundamental Rights of the European Union. Despite the recent judgement, the uncertainties and varying interpretations of specific DAC 6 provisions, which we confirmed in the member states visited, remain a relevant issue in practice, as they can lead to an inconsistent application of the reporting obligations. This creates the risk of cross-border tax arrangements not being reported in some member states, while similar arrangements are reported in others.

41 Annex IV to the DAC 6 has not yet been comprehensively evaluated. Such an evaluation could indicate the reasons for the diverging interpretations and the difficulties in practical implementation faced by member states, as well as enable the Commission to provide appropriate clarifications in the form of guidelines. At the time of the audit the Commission was carrying out its second DAC evaluation (which will include the DAC 6 and its Annex IV). The report is expected to be published in early 2025 (see paragraph ***52***).

The TDRD

42 The TDRD covers issues related to double taxation, which occurs when two or more member states claim the right to tax the same income or profits of a company or individual, and is aligned with the objectives of BEPS Action 14. Such a situation may stem from, among other things, a mismatch between national rules or different interpretations of the rules contained in a bilateral tax treaty. In such cases, taxpayers may ask that a mutual agreement procedure be launched, which is an administrative procedure conducted between the competent authorities of the member states engaged in the tax dispute (see ***Figure 4***).

Figure 4 – The tax dispute resolution mechanisms as set out in the TDRD



Source: ECA, based on data and visual material from Accountancy Europe.

43 We identified obstacles with regard to the practical application of the TDRD (see ***Annex VII***). For example, there is a lack of clarity regarding the division of responsibilities between the competent authorities in certain cases when a complaint is filed, as well as the procedures to be followed when an incomplete complaint is submitted. Furthermore, the possibility of submitting a complaint may be prevented for several years in the event of prolonged, ongoing audits by national tax authorities. Such issues may hinder the effective operation of the dispute resolution mechanism.

Guidelines on how to implement and apply the legislative acts are lacking

44 In the case of the three legislative acts we examined, the Commission had not provided any guidelines, while we found that the member states' interpretations of both the DAC 6 (see paragraphs ***38***-***40***, ***61*** and ***Annex V***) and the TDRD diverged to some extent (see paragraph ***43*** and ***Annex VII***).

45 With regard to the DAC, we note that the Commission and the member states are jointly responsible for issuing guidelines. The "Better regulation" framework recognises the added value of guidelines on interpreting and implementing EU law. In the absence of adequate guidelines, the operations of taxpayers from different member states may be subject to different or ambiguous tax treatment. The Court of Justice's recent judgement (see paragraph ***40***) stating that the terms of the directive submitted for its consideration were sufficiently clear (albeit broad) further underlines the importance of the Commission providing guidance and aids to interpretation as a tool for ensuring consistent application of the DAC 6.

46 The multiannual Fiscalis programme supports member states' tax authorities in working together to fight tax fraud, tax evasion and aggressive tax planning (see ***Annex VIII***). The Commission organised several events under the Fiscalis programmes throughout the implementation phase of the directives.

47 Article 15 of the DAC requires the Commission and member states to share their experience of administrative cooperation. The Commission places various forums at the disposal of member states to allow them to exchange the details of good regimes identified among the national tax administrations. Furthermore, the Commission organised a meeting with the member states in September 2018 to address their questions, and later supported a Fiscalis project group working on the interpretation of the DAC 6 hallmarks. The project group's conclusions were not published, owing to lack of agreement on the part of member states.

48 Both the Commission and the tax authorities in the member states we visited expressed a desire for more exchanges concerning good regimes (i.e. through project groups, workshops and working visits, etc.) and guidelines, especially on the analysis and use of DAC 6 information.

The Commission oversees the incorporation of EU law into national legislation adequately, but comprehensive evaluations are overdue

49 The Commission has an obligation to both check that member states incorporate EU directives into national law and open infringement proceedings in the event of non-compliance. By the time of the audit, all member states had implemented all three directives. Two infringement proceedings on the grounds of incorrect transposition, initiated by the Commission, were still pending:

- With regard to the implementation of the ATAD, the Commission has opened 36 infringement cases since 2018. The infringements comprised cases of non-communication and non-conformity. Two cases remained open as at June 2024 (Belgium and Luxembourg).
- The Commission opened 15 infringement cases for non-communication of DAC 6 implementation measures. All the cases had been closed by June 2024.
- The Commission opened 20 infringement proceedings for failure to communicate and one for non-conformity regarding the implementation of the TDRD. All the cases had been closed by June 2024.

50 In the five member states we visited, the Commission had opened infringement proceedings in respect of each case of non-communication or incomplete (partial) transposition of the relevant legislation, and had carried out comprehensive checks while the proceedings were underway.

51 The ATAD required the Commission to evaluate the directive four years after its entry into force, and its amendment ("ATAD 2") was to be evaluated five years after its entry into force. The Commission performed only a limited evaluation exercise, describing how the ATAD measures had been incorporated into member states' legislation, and published it in August 2020. No comprehensive evaluation report was issued by September 2024, but work is now underway, and the evaluation is expected to be completed by late 2025.

52 The DAC 6 required the Commission and member states to evaluate the relevance of Annex IV (definition of hallmarks) to the directive every two years after 1 July 2020. The Commission has not performed any such evaluation, even though it was due on 1 July 2022. The obligation to perform a bi-annual assessment of Annex IV was cancelled by the DAC 8 and transferred to form part of the DAC's broader evaluation process. The Commission was also required to evaluate the DAC and its amendments every five years after 1 January 2013. The first DAC evaluation was

published in 2019, and at the time of the audit the Commission was carrying out its second DAC evaluation (which will include the DAC 6 and its Annex IV). The report is expected to be published in early 2025.

53 Finally, the Commission has also not yet assessed the application of the TDRD, which should have been completed by 30 June 2024. According to the current planning, an implementation report is expected to be submitted to the Council by the end of 2024.

Member states exchange DAC 6 information automatically, but use it to a limited extent

54 To ensure that the system for the exchange of information laid down by the DAC 6 functions correctly, the reportable information on cross-border arrangements that member states exchange automatically (DAC 6 reports) should be accurate, complete and sent when it can be most useful. We, therefore assessed whether the exchange of reports in the five member states audited had been organised appropriately and whether the quality of the DAC 6 information was adequate. We also reviewed the Commission's support for the DAC 6 information exchange process via the EU central directory.

DAC 6 reporting processes are in place, but quality checks are not consistent in the member states visited

55 The Commission provided tax administrations with an EU XML schema for reportable cross-border arrangements. It also published a user guide which clarified what information must be included before the DAC 6 report is uploaded to the EU central directory. Furthermore, the Commission made various tools available for member states to exchange information and expertise in the field of taxation. Actions funded under the Fiscalis programme (the main cooperation programme) include IT support and financial support for workshops, working visits, and project groups (see ***Annex VIII***). There are currently two active working groups dealing with the improvement of DAC 6 data analysis for direct taxation.

56 All five member states that we visited had processes in place for exchanging reportable information on cross-border arrangements. They also provided reporting entities with IT platforms where they can report individual or multiple cross-border arrangements, or to which they can connect their IT systems for an easier reporting process. The member states had also adopted procedures to ensure that reporting

entities (i.e. intermediaries and relevant taxpayers) can fulfil their reporting obligations adequately. They include guidelines on technical specifications (reporting formats and processes) for the intermediaries and taxpayers, who are required to report the arrangements.

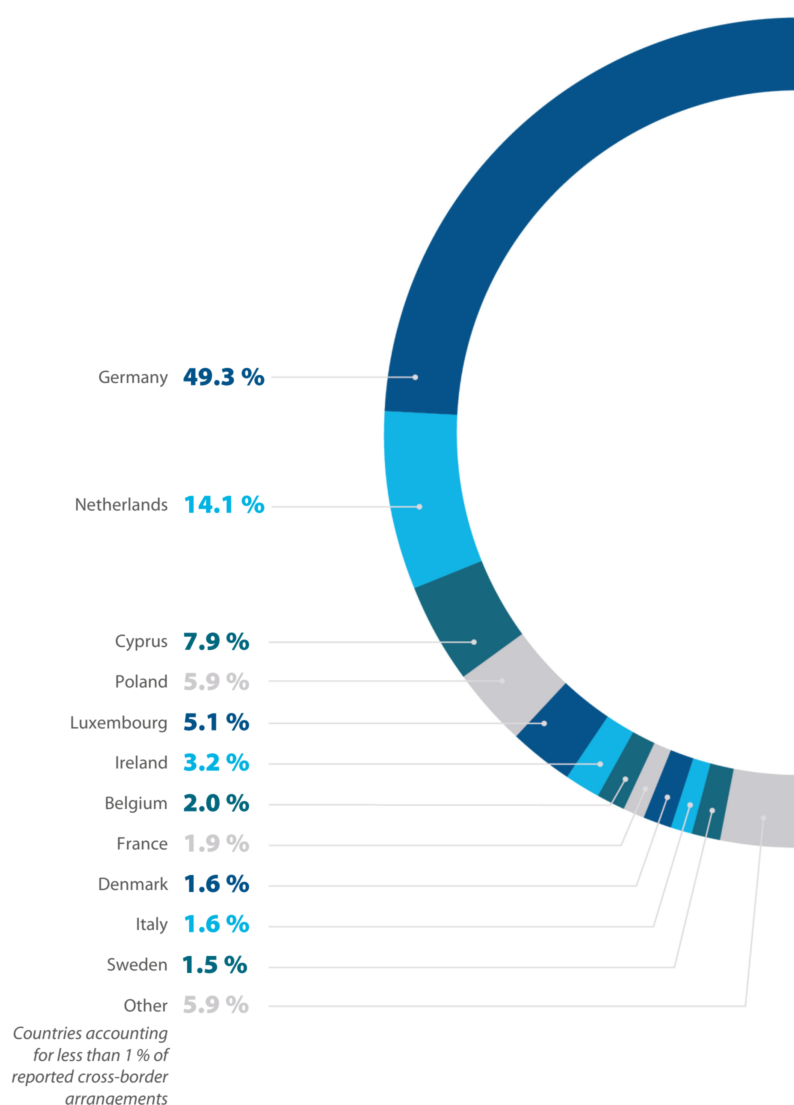
57 Three of the five member states visited performed no quality checks on the DAC 6 information reported, as submitted by the reporting entities, other than verification of the completeness of the information in relation to the EU XML schema. The Netherlands went one step further and performed manual checks on samples of DAC 6 reports to verify the quality of the information sent (uploaded to the EU central directory). Luxembourg uses a checklist to thoroughly check the completeness of every DAC 6 report submitted.

58 In addition, tax authorities in four of the five member states visited did not envisage including any audits in their national audit plans to check reporting intermediaries' reporting procedures and processes. Only Luxembourg performed desk audits of some of its reporting entities to check the existence or coherence of the reporting processes for cross-border arrangements.

There are weaknesses in the quality of the DAC 6 information exchanged automatically

59 The tax authorities in the five member states visited could demonstrate that they uploaded the DAC 6 reports to the EU central directory in a timely manner. Between the launch of the DAC 6 in mid-2020 and the end of 2023, over 53 000 reportable cross-border arrangements were sent, i.e. DAC 6 reports uploaded to the EU central directory, by member states, and thereby exchanged automatically. As of 2021, all member states had uploaded DAC 6 reports to the EU central directory (see ***Figure 5***). Only a few had done so in 2020, owing to a deferral linked to the COVID-19 pandemic.

Figure 5 – Percentage of cross-border arrangements reported per member state 2020-2023



Source: ECA, based on data provided by the Commission.

60 The obligation to report cross-border arrangements to the tax authorities may be affected by various legislative waivers granted by some member states. All five member states visited granted waivers to certain professions for which the reporting obligation would involve breaching the relevant rules on legal professional privilege (e.g. lawyers, accountants, etc.). These waivers may ultimately lead to arrangements not being reported, especially if they concern companies residing in the member state in question and non-EU countries, but not in any other EU member state (see ***Box 2*** illustrating such potential scenarios).

Box 2

Potential scenarios of avoiding DAC 6 reporting obligations

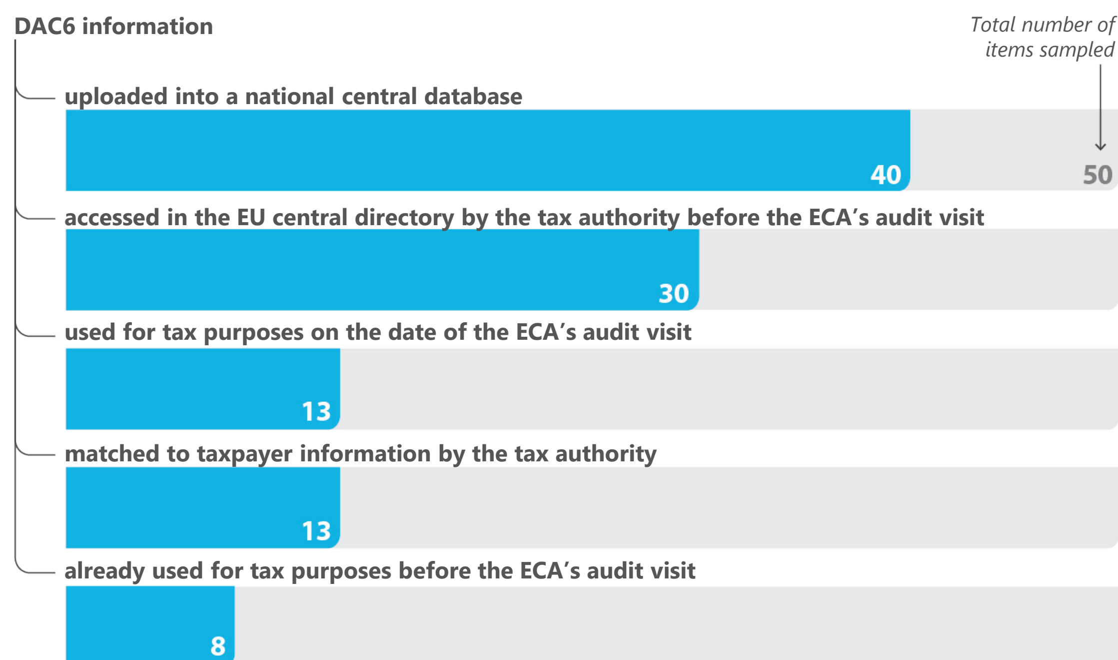
A taxpayer in member state A concludes a cross-border arrangement with a company in a non-EU country through an intermediary in member state B. The intermediary waives its reporting obligation to the relevant taxpayer in member state A, but, in any case, the latter has no reporting obligation in member state A due to diverging interpretations of the DAC 6 provisions. The arrangement is not reported, although it should have been, and the tax authorities in both member states receive no information.

Certain reporting entities, primarily intermediaries with multiple branches across the member states, can choose in which of the EU member states involved they wish to disclose the reportable arrangement. Due to diverging interpretations of terms, hallmarks and reporting obligations across the member states, intermediaries can choose to report a transaction in a member state that considers the cross-border arrangement non-reportable.

61 In each of the five member states visited, we took a sample of 10 DAC 6 reports submitted and uploaded to the EU central directory over the 2021-2023 period. Through this review we identified several horizontal issues related to either the reporting schema or different interpretations of DAC 6 information requirements that could affect the quality of DAC 6 reports. In particular, there is no mandatory data field in the XML schema in which to indicate the names of the non-EU countries involved. Therefore, given the current design of the schema, it is difficult for member states to identify whether/which non-EU countries are involved in a reported cross-border arrangement. Furthermore, due to different interpretations of the main benefit test and hallmarks, confirmed in the member states visited, there is a risk that the number of arrangements reported in the EU central directory is inaccurate (see ***Annex V***-***Annex VI***).

62 In each of the five member states visited, we took another sample of 10 DAC 6 reports from the 2018-2023 period and downloaded from the EU central directory, that involved the member state being visited in order to check how each of them had used the received DAC 6 information on cross-border arrangements. Of the 50 items sampled, only 16 % had been used by the tax administrations for further proceedings (see ***Figure 6***). Furthermore, in the sample across all member states visited, we found shortcomings in the quality of the exchanged DAC 6.

Figure 6 – Use of DAC 6 information in the member states visited



Source: ECA.

63 To ensure that the DAC 6 provisions have an impact, national tax administrations should make use of the received DAC 6 information on potentially harmful cross-border arrangements (for tax control purposes, risk analysis, etc.). Four of the five member states we visited did not carry out systematic risk analyses using the information available in the EU central directory, but instead used it on an ad hoc basis, at the request of tax inspectors. In 2023, the Netherlands introduced a system supported by dedicated software and staff (see ***Box 3***).

Box 3

Systematic risk analysis – example of the Dutch tax administration

The Dutch tax administration implemented a rule-based model designed to detect DAC 6 reports with the highest degree of risk. A dedicated team within the tax administration ("DAC 6 team") can then manually review and further analyse such cases.

The model allocates points to each DAC 6 report in accordance with both general rules (e.g. value of the tax arrangement, size of the taxpayer, etc.) and specific rules (such as certain hallmarks). The DAC 6 team can also manually select more arrangements for analysis based on external signs (e.g. new tax structures, requests from tax inspectors, etc.).

The member states audited have designed penalty systems for non-compliance with the DAC 6 but not yet applied them

64 According to Article 25a of the DAC, member states should implement effective, proportionate and dissuasive penalties for non-compliance with DAC 6 reporting obligations. The Commission assessed member states' penalty systems in its impact assessment of the DAC 8 and proposed new provisions aimed at ensuring penalties were effective. The legislators did not approve the Commission's proposal.

65 All five member states visited implemented a system of penalties for non-compliance with DAC 6 reporting obligations, e.g. for reporting omissions and incomplete or incorrect reporting. However, the penalties in the member states visited varied widely, ranging from a maximum of €20 000 per year in Cyprus to a maximum of €900 000 in the Netherlands (increased to €1 030 000 since 1 January 2024). In some instances, the minimum penalties are manifestly low and risk having little deterrent effect. An intermediary that has several branches may strategically choose a specific member state to disclose reportable information in order to minimise the risk of higher penalties in case of non-compliance with the reporting obligations.

66 None of the member states visited had imposed any penalties by the time of the audit. Uncertainties regarding the interpretation of certain DAC 6 provisions may be preventing the effective imposition of penalties (see paragraphs ***38***-***40***, and ***Annex V***). Furthermore, the administrative steps required to set penalties vary significantly across member states, as does the likelihood of penalties being imposed.

The work of the Code of Conduct Group leads to legislative changes, but the results are limited

67 Established in 1997, the EU Code of Conduct for business taxation (the "Code"), represents a political commitment to tackle harmful tax competition, tax avoidance and tax evasion in the EU. By adopting the Code, the member states committed to abolishing existing preferential tax regimes that constitute harmful tax competition ("rollback") and to refrain from introducing new ones in the future ("standstill"). To do this, member states should notify the Code of Conduct Group (the "Group") of existing and proposed tax measures which might fall within the scope of the Code (see ***Annex IX***). Member states also agreed to take legislative and administrative measures with regard to non-EU countries included on the EU list of non-cooperative jurisdictions.

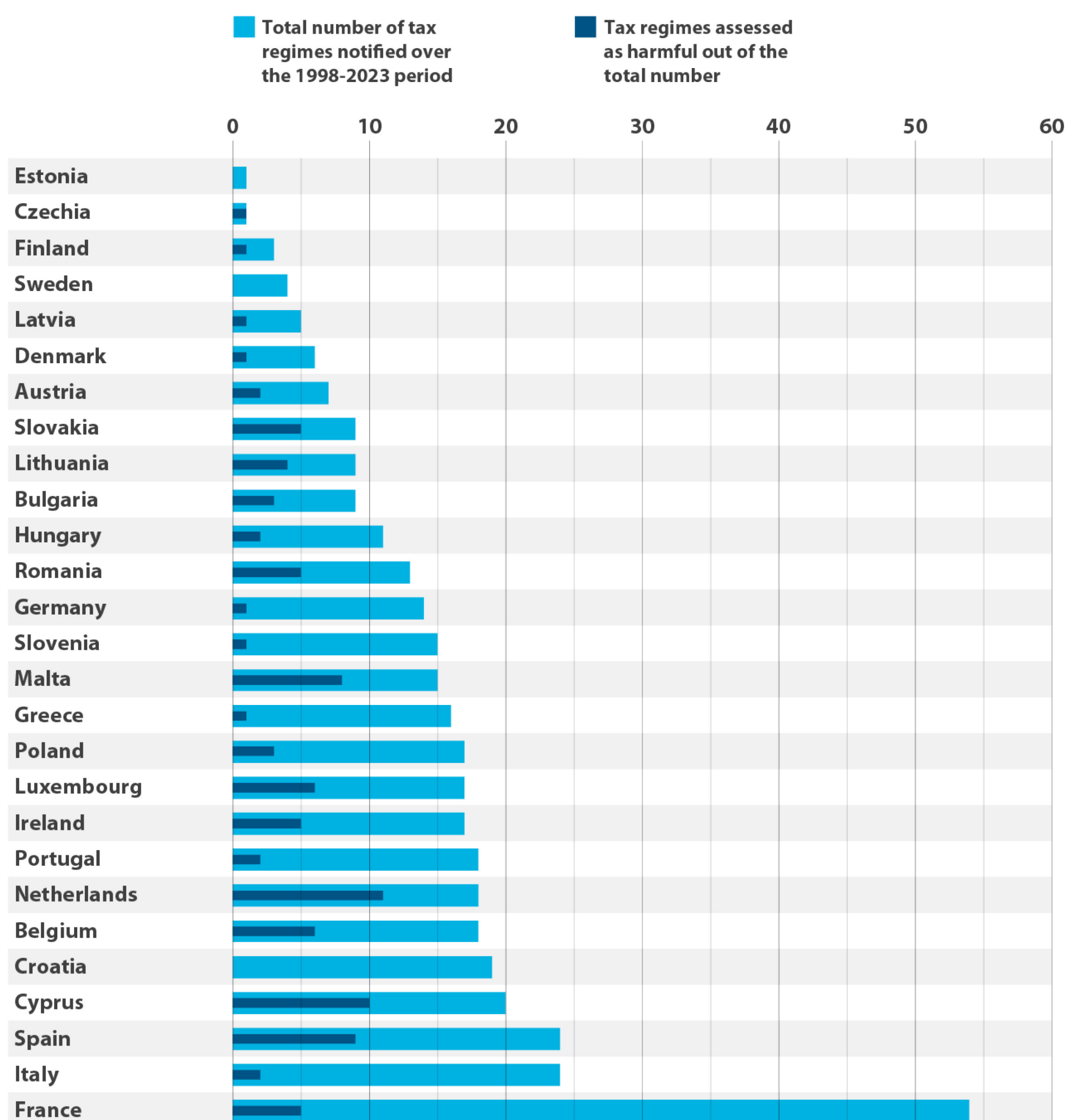
68 The Group oversees member states' compliance with the Code and mainly deals with assessing the tax measures notified, on the basis of a technical analysis conducted by the Commission. When the process of reviewing a notified measure begins, the Commission should work with the member state concerned to provide a description of the tax measure (see ***Annex X***). Based on the Commission's preparatory work, the tax regime in question is then discussed in the Group. The members of the Group decide by consensus whether to accept or reject the Commission's assessment. Due to the Group's political nature, the underlying details are not disclosed to the public. Its recommendations are also not legally binding.

69 We analysed whether the member states and the Commission fulfilled their roles and whether their actions brought the intended results.

The Commission fulfils its limited role in supporting the Code of Conduct Group

70 Since the Group was established in 1998, EU member states have notified the Group of 384 preferential tax regimes (see ***Figure 7***). The Group has deemed 95 of the regimes to be harmful.

Figure 7 – Number of tax regimes notified to the Code of Conduct Group per member state 1998-2023



Source: ECA, based on publicly available data.

71 The number of potentially harmful tax regimes reported has varied considerably over time and across the EU member states. The maximum number of notifications coincided with the accession of new member states, since the Commission needs to assess all the tax regimes of a candidate country, based on a preparatory list of regimes it has drawn up, at the time of its accession to the EU. We note that once the accession process was over, the number of notifications tended to decrease. In 2023, the Commission started the initiative of improving the Group's notification process, which resulted in a revision of the “agreed guidance” on the notification of preferential

regimes. The five member states visited had procedures in place to screen legislation and check its compliance with the Code (to notify the Group if necessary).

72 We examined the drafting process of the descriptions of potentially harmful tax regimes performed by the Commission for the Group. We reviewed two cases where the Commission had drafted the agreed description together with the relevant member states, and presented its conclusions and recommendations to the Group. We found that the Commission's working procedures properly support the work of the Group, and that the Commission's analysis was sound and justified.

73 In 2022, the Council approved a revised Code, broadening its scope. Applicable since 1 January 2024, it now also covers tax features of general application, which were introduced as of 1 January 2023, such as transfer pricing legislation. However, as the Commission stated in its communication to the European Parliament, member states already use the general structures of their tax systems to engage in tax competition (e.g. by instituting particular tax residency rules that may actually result in double non-taxation). This indicates a risk that there are already established harmful tax regimes that are not covered by the revised Code. In addition, even under the amended mandate, the Code does not cover special citizenship schemes or measures to attract expatriates or high-net-worth individuals, even though they are often a means to attract business and investment from other countries unfairly.

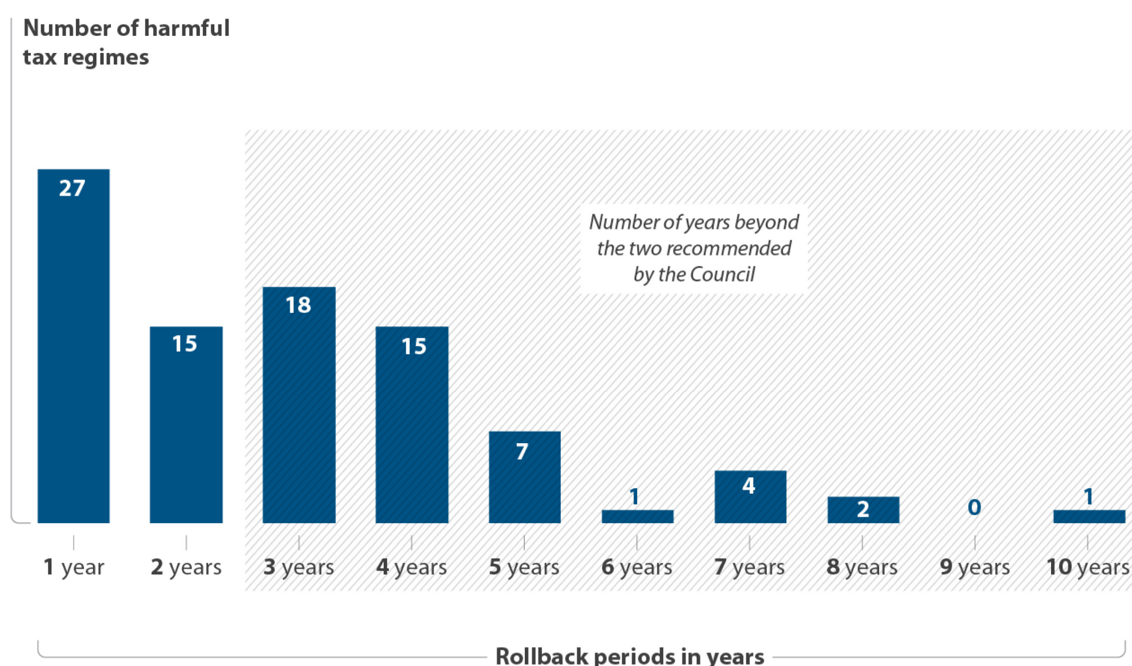
74 Up to January 2024, it was the member states who notified the Group of planned or newly introduced potentially harmful tax regimes. Hence, the identification of a harmful tax regime in an EU member state was not based on a systematic analysis conducted by the Commission. The new mandate grants the Commission extended rights and it can now, in its own right, notify the Group of any potentially harmful tax regimes introduced by a member state. This has expanded the Commission's role in the Group's work, but the relevant procedures were not covered by our audit, as they were launched after our work had been finalised.

Member states implemented recommendations to remove harmful tax regimes, although rollback and grandfathering periods were lengthy in some cases

75 When the Group considers a tax regime to be harmful, the member state concerned has to roll back the measures to comply with the Code. Based on the General Secretariat of the Council's December 2023 overview of the period from 1998 to 2023, the EU member states rolled back 95 preferential tax regimes that the Group considered harmful.

76 The Council conclusions on the implementation of the Code recommended a two-year time limit for member states to roll back any tax measure identified as harmful. In practice, the rollback periods agreed by the Group for the regimes it had assessed ranged from one to 10 years, with more than half of them being implemented after the recommended two years (see ***Figure 8***).

Figure 8 – Agreed rollback periods for harmful tax regimes 1998-2023

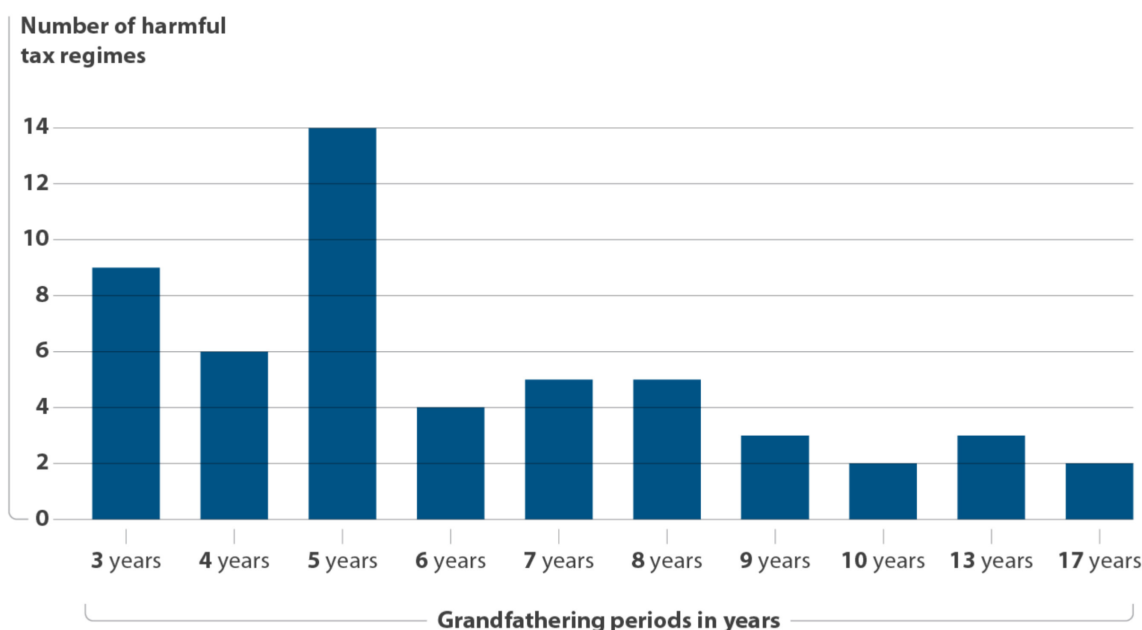


Source: ECA, based on publicly available data.

77 To protect taxpayers benefiting from existing regimes assessed as harmful by the Group, member states are allowed to introduce grandfathering rules when they roll back their harmful tax regimes. Under such rules, all taxpayers benefiting from an existing regime may keep those entitlements until a second specific date ("abolition date"). The Group has no agreed guidance on how such grandfathering periods should be decided, other than in the case of "old" patent box or intellectual property regimes.

78 In the case of the 53 harmful tax regimes for which grandfathering was allowed, between 1998 and 2023, the grandfathering periods ranged from three to 17 years (the latter relating to two cases in the Netherlands Antilles, see ***Figure 9***). As a consequence, taxpayers already enrolled in the tax regimes concerned could benefit from the tax advantages for lengthy periods, despite the harmful consequences.

Figure 9 – Grandfathering periods for harmful tax regimes 1998-2023



Source: ECA, based on publicly available data.

79 Moreover, we note that the Group's November 2021 report to the Council[7] identified a case where a member state had allowed taxpayers to enter a tax regime that the Group had already assessed as harmful. However, since the regime in question and the associated tax benefits were no longer in place after 1 July 2021, there was no further action that the Group could take against its harmfulness.

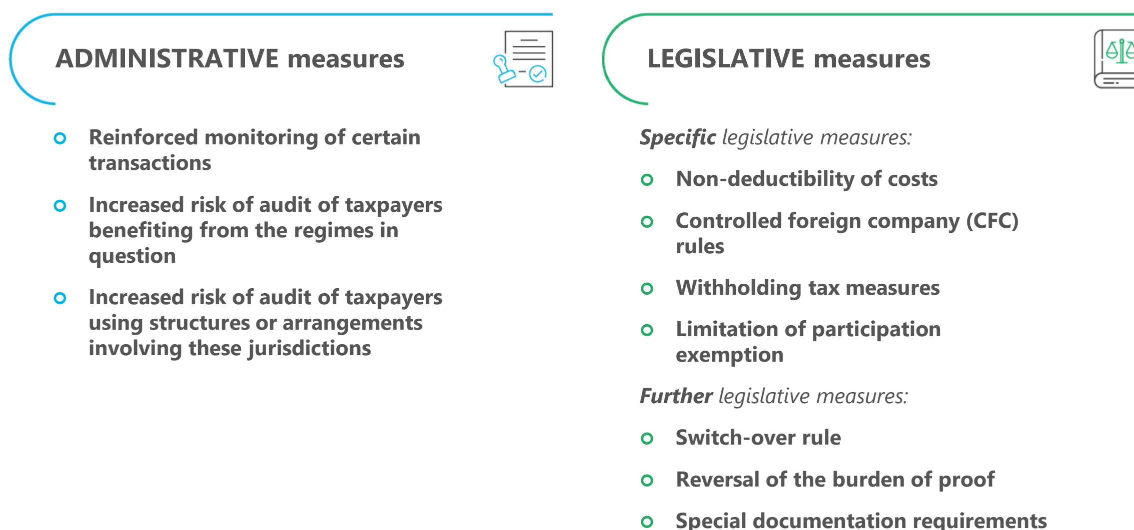
Member states take defensive measures against non-cooperative jurisdictions, but there is no uniform approach

80 The European Union maintains an EU list of non-cooperative jurisdictions for tax purposes. The Commission, together with experts from the member states, screens all the jurisdictions in question. The EU list is used to address and discourage harmful tax practices and promote tax good governance mechanisms on a global scale. The Council adopted the latest updated EU list on 8 October 2024, which currently contains 11 non-EU countries.

81 In accordance with the Council conclusions of December 2017, in order to protect their tax base, member states should apply effective defensive measures to the non-EU countries on the EU list (see ***Figure 10***).

[7] Code of Conduct Group – Report to the Council, 26 November 2021, ST 14230 2021 ADD 5.

Figure 10 – Defensive measures



Source: Council conclusions, 5 December 2017, 15429/17.

82 In 2019, member states agreed to apply at least one of the three administrative defensive measures in the tax area as listed in Annex III of the Council conclusions of 5 December 2017. As of 31 January 2023, 26 of the 27 member states have applied at least one administrative measure, and 11 of those applied at least two.

83 In November 2019, member states also committed to applying at least one of four specific legislative measures (non-deductibility of costs, controlled foreign company rules, withholding tax measures, and limitation of participation exemption) as of 1 January 2021[8]. As of 31 January 2023, all member states applied at least one legislative measure, but only seven applied all four (see ***Figure 11***).

[8] Code of Conduct Group – Report to the Council, 25 November 2019, 14114/19.

Figure 11 – Legislative defensive measures in place

	Non-deductibility of costs	Controlled foreign company rules (CFC)	Withholding tax measures	Limitation of participation exemption
Austria		✓		
Belgium	✓	✓		✓
Bulgaria	✓		✓	
Croatia		✓	✓	
Cyprus			✓	
Czechia		✓		
Denmark	✓		✓	
Estonia	✓		✓	✓
Finland		✓		
France	✓	✓	✓	✓
Germany	✓	✓	✓	✓
Greece	✓			
Hungary		✓		
Ireland		✓		
Italy	✓			
Latvia	✓	✓	✓	✓
Lithuania	✓	✓	✓	✓
Luxembourg	✓			
Malta				✓
Netherlands		✓	✓	
Poland		✓		
Portugal	✓	✓	✓	✓
Romania	✓			
Slovakia	✓		✓	✓
Slovenia	✓	✓	✓	✓
Spain	✓	✓	✓	✓
Sweden	✓	✓		

Source: Code of Conduct Group, report to the Council, 2 June 2023.

84 The high level of flexibility of this approach may limit the deterrent effect of the defensive measures and engenders the risk that companies will set up their businesses in member states that apply fewer legislative measures (especially when designing businesses dealing specifically with non-cooperative jurisdictions for tax purposes) and where profits can be moved to low-tax jurisdictions more easily.

No appropriate performance monitoring framework is in place to check the effects of the EU measures taken

85 Tax authorities need to have reliable estimates of the revenue lost to tax avoidance and evasion and take appropriate corrective measures. We assessed how the EU and member states gather information on the volume of unpaid corporate income tax and the impact of the instruments that are in place to fight harmful tax regimes and corporate tax avoidance. We took into consideration the fact that measuring any tax gap is a complex task, and no single method can capture all aspects of non-compliance. Combining multiple approaches and leveraging advancements in technology can contribute to a more comprehensive understanding of the various tax gaps in the EU.

On a one-off basis, EU projects estimated the impact of tax avoidance and evasion, but there is no common EU performance monitoring framework

86 A common performance monitoring framework is key to allowing tax authorities to have a better view of the areas most affected by tax avoidance and evasion and allocate the necessary resources to take appropriate steps. This reflects the weaknesses identified in the OECD BEPS Action 11 report (2015).

87 The Commission and the member states introduced some initiatives to estimate tax avoidance and evasion in specific areas. In 2018, the Commission and 15 member states published a study on corporate income tax revenue shortfalls[9]. The study concluded that calculating corporate income tax gap estimates is complex, partly due to the complexity of corporate income tax systems, but also to several other reasons, ranging from deliberate actions by taxpayers (such as fraud, evasion or avoidance) to omissions and errors in interpretations, or bankruptcy. Thus, estimates at a national level would often capture tax evasion and non-deliberate actions but fail to reflect tax avoidance adequately. Consequently, many parties involved consider that a harmonised methodology may not be feasible, given the differences in the corporate income tax systems, the statistical uncertainty and the complex methodology. Further to the previous study, in 2021, a project was launched under the Tax Administration EU Summit (TADEUS) framework to explore methodologies for estimating the direct tax gap, with a subgroup focusing on the corporate income tax gap.

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[9] The Concept of Tax Gaps Report II: Corporate Income Tax Gap Estimation Methodologies, Fiscalis Tax Gap Project Group (FPG/041).

88 The Commission also published studies on tax evasion by individuals in 2019 and 2021 that showed the detrimental effects of wealth hidden in international financial centres[10]. Although this audit focused on corporate taxation, these studies remain relevant because individuals may use corporate vehicles (e.g., companies, trusts, etc.) to hide wealth. However, they do not provide a comprehensive assessment of the measures taken against harmful tax regimes and corporate tax avoidance.

89 In 2023, the Commission, together with several member states, launched two project groups through the Fiscalis programme. One of the project groups aims to implement realistic indicators to measure the impact of the exchange of information efficiently and the other to explore ways to improve the use of DAC data (see ***Annex VIII***).

90 Apart from these initiatives, which have a limited scope, there is no single set of performance indicators used throughout the EU to measure and monitor the effectiveness of the existing framework for fighting harmful tax regimes and corporate tax avoidance.

Only one of the five member states visited had a performance framework in place to assess the measures' effectiveness

91 Of the five member states we visited, only the Netherlands had set up a performance framework for measuring the effectiveness of the tools introduced to fight harmful tax regimes and corporate tax avoidance. Further to this, the Dutch authorities published a report in October 2023 in which they assessed the effectiveness of a number of measures, based on figures provided by the Dutch Central Bank.

92 The Dutch authorities' report concluded that several of the measures introduced to combat tax avoidance had reduced the flow of money from the Netherlands to countries with a low tax rate. The total outflow to such countries fell by almost 85 % from €38 billion in 2019 to €6 billion in 2022 (see ***Figure 12***).

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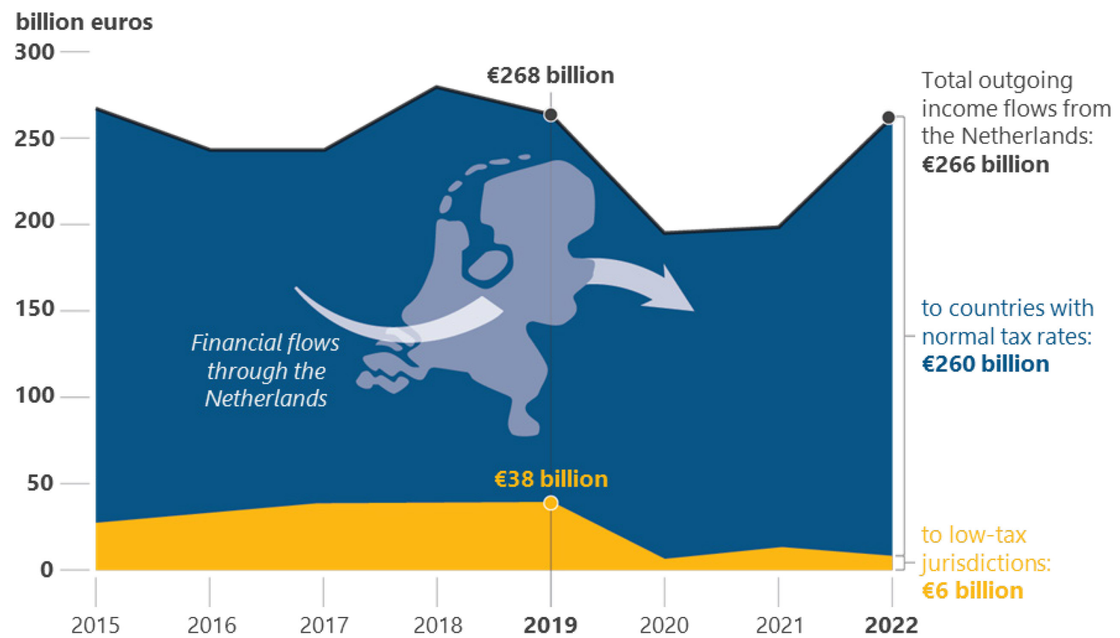
[10] DG TAXUD: "Estimating International Tax Evasion by Individuals", Taxation Paper No 76, 2019; "Monitoring the amount of wealth hidden by individuals in international financial centres and impact of recent internationally agreed standards on tax transparency on the fight against tax evasion", Final report, 2021.

Figure 12 – Decreased flow of taxable payments from the Netherlands to low tax jurisdictions



Source: ECA, based on data and visual material from the Ministry of Finance of the Netherlands.

Conclusions and recommendations

93 Our overall conclusion is that the established EU framework serves as a necessary first line of defence to support the fight against harmful tax regimes and corporate tax avoidance within the limited scope of the EU's competences. However, we found shortcomings in the way the legislation and other measures had been drawn up and implemented. There was no appropriate performance monitoring system at either EU or member state level to assess their effectiveness.

94 The Commission has proposed a common EU regulatory framework for fighting harmful tax regimes and corporate tax avoidance in the EU. The directives within the scope of this audit (the Anti-Tax Avoidance Directive (ATAD), the 5th amendment to the Directive on administrative cooperation in the field of taxation (DAC 6) and the Directive on Tax Dispute Resolution Mechanisms (TDRD)) set general standards and introduce supporting tools within the scope of their application, since the EU does not have the competences to determine specific tax policy solutions for the member states. We noted that certain definitions and terms in the EU legislation are posing interpretative challenges for member states, leading to different interpretations across them (especially the DAC 6 hallmarks and the main benefit test). This affects the accuracy of the DAC 6 information exchanged, making the fight against revenue escaping taxation less effective (see paragraphs ***32***-***43***).

95 Moreover, there are generally no Commission guidelines on interpreting and implementing the EU legislation we audited, resulting in differing interpretations by the member states (see paragraphs ***44***-***48***). The Commission oversees the incorporation of EU legislation into national law effectively and opens infringement proceedings when needed but performs its evaluations too late in some instances. As a result, over seven years after the introduction of the ATAD, it is still unclear whether it will achieve its objectives. Given the delays in evaluations, neither the public nor the lawmakers have an accurate picture of the robustness or effectiveness of the measures the EU has deployed to fight harmful tax regimes and corporate tax avoidance (see paragraphs ***49***-***53***).

Recommendation 1 – Clarify the EU legislative framework

To ensure consistent application of the EU legislation by member states, the Commission should:

(a) in cooperation with the member states, develop its guidance, and in particular provide guidelines for member states on interpreting the EU legislation aimed at fighting harmful tax regimes and corporate tax avoidance, as well as on performing risk analyses and using the tax information received;

(b) assess the need for possible amendments to the DAC 6 based on the results of the ongoing evaluation and litigation;

(c) take into account in the preparation for its future evaluation the issues in the design of the TDRD, as identified in this report, to ensure that the tax dispute resolution mechanisms operate effectively.

Timeframe: (a) and (b) by the end of 2026; (c) by the end of 2028.

96 With regard to the exchange of tax information under the DAC 6, we found that the five member states visited have national reporting processes in place and exchange reportable cross-border arrangements as required. However, they perform few quality checks on DAC 6 reports before uploading them to the EU central directory. As a result, there is a risk that DAC 6 information reported is incomplete or inaccurate. Moreover, the extent to which the member states audited use the DAC 6 information on cross-border arrangements that they receive is limited. This limits the added value of the automatic exchange of information under the DAC 6 (see paragraphs ***55***-***58***).

97 We also identified technical issues related to the reporting schema designed by the Commission, extensive reporting waivers, and different interpretations of the reporting requirements. These issues could affect the quality of DAC 6 reports and encourage taxpayers to opt for jurisdictions where the rules are most lenient. One of the major weaknesses in the reporting schema is the fact that the data field to indicate the names of non-EU countries involved in a cross-border arrangement is not mandatory. As a result, it is difficult for the five member states visited to identify whether/which non-EU countries are involved (see paragraphs ***59***-***63***).

98 In addition, there is a risk that in some of the member states visited the penalty systems for non-compliance with the DAC 6 reporting obligations may not have a dissuasive effect due to the manifestly low level of the penalties. Furthermore, at the

time of the audit, none of the member states visited had imposed any penalties (see paragraphs ***64***-***66***).

Recommendation 2 – Improve the quality of DAC 6 reports

To maximise the benefits of the automatic exchange of DAC 6 information with other member states, the Commission should make the data field for non-EU countries involved in cross-border arrangements mandatory in the reporting schema (if needed by a legislative proposal). Moreover, the Commission should update the DAC 6 central directory architecture to make this information available to member states for every arrangement concerned.

Timeframe: by the end of 2027.

Recommendation 3 – Ensure that the impact of penalties for non-compliance with DAC 6 reporting obligations is adequate

To ensure that member states implement effective, proportionate and dissuasive penalties for non-compliance with DAC 6 reporting obligations, the Commission should initiate infringement proceedings in those cases where there is sufficient evidence that member states are implementing a manifestly inadequate penalty system for breaches of the DAC 6.

Timeframe: by the end of 2026.

99 The Code of Conduct Group is a vital component of the EU's efforts to promote fair business taxation regimes, although its recommendations are not legally binding. The Commission provides adequate assistance to the Group in assessing potentially harmful tax regimes notified by member states, but its role had been very limited up to the time of the audit (see paragraphs ***70***-***74***).

100 As a result of the Group’s recommendations, member states withdrew 95 harmful tax regimes over the period from 1998 to 2023. However, the agreed periods for the rollback of harmful regimes in several member states were significantly longer than the two years recommended by the Council. Furthermore, the Group does not follow clear rules when deciding on the grandfathering periods for the harmful regimes identified and they are therefore very lengthy in certain cases. This gives rise to the risk that companies benefit from unfair tax advantages for longer and that distortions of competition within the EU’s internal market also last longer. In addition, member

states choose to apply only a limited number of the defensive measures that may be applied to transactions with non-cooperative countries. These factors limit the impact of the Group's work (see paragraphs *75*-*84*).

Recommendation 4 – Enhance support to the Code of Conduct Group

To support the Code of Conduct Group more effectively, with a view to maximising the deterrent effect of its actions, the Commission should:

(a) propose to the Group to agree on clear rules and limitations on grandfathering and rollback periods and – if agreed by the Group – to monitor compliance with them;

(b) given its extended mandate, perform a yearly analysis of preferential tax measures and tax features of general application that are newly introduced by member states, and notify the Group of any that are potentially harmful, based on risk analysis.

Timeframe: (a) by the end of 2026, (b) annually as of 2025.

101 The Commission and member states do very little in terms of measuring the performance of the tools used to fight harmful tax regimes and corporate tax avoidance in the EU. The Commission has not established quantitative targets and objectives and does not monitor their effectiveness. The lack of effective performance monitoring frameworks prevents the Commission and member states from assessing their efforts and deploying resources where they are most needed (see paragraphs *85*-*92*).

Recommendation 5 – Monitor the results and impact of the fight against harmful tax regimes and corporate tax avoidance

The Commission should encourage and support member states in adopting a common performance monitoring framework, including performance indicators and quantitative targets, for measuring the level of achievement of specific objectives in the fight against harmful tax regimes and corporate tax avoidance.

Timeframe: by the end of 2026.

This report was adopted by Chamber IV, headed by Mr Mihails Kozlovs, Member of the Court of Auditors, in Luxembourg at its meeting of 22 October 2024.

For the Court of Auditors

Tony Murphy
President

Annexes

Annex I – Our audit approach at Commission level

We reviewed the legislation and mechanisms relating to the ATAD, DAC 6 and TDRD for fighting harmful tax regimes and corporate tax avoidance and examined how the Commission (DG TAXUD) monitored their implementation by the member states. In particular, we looked at:

- relevant legislation, whether the Commission verified the way in which member states applied the EU rules through national law, and whether the Commission took the necessary action to address any delays in implementation;
- the existence and quality of guidelines and information relating to the implementation of the legislation and soft law instruments, and how the Commission shared that information with member states;
- how the Commission implemented and handles the EU central directory for the DAC 6;
- whether the Commission had put in place a common EU performance monitoring framework for the system to ensure that it provided the intended results;
- how the Commission cooperates with member states (exchange of information, reporting, etc.) and other relevant stakeholders (such as the OECD);
- the work performed by the Commission to assist the Code of Conduct Group in its decision-making process.

At the preparatory stage, we organised several hybrid meetings with DG TAXUD to collect information and data that could be useful for the audit fieldwork in the member states. During the audit fieldwork, we sent a general questionnaire to the Commission. We also carried out an audit visit to clarify pending issues and inspect specific Commission documents.

Annex II – Our audit approach in member states

The role of member states in the fight against harmful tax regimes and corporate tax avoidance is to create a level playing field for businesses and prevent tax avoidance and evasion, ultimately safeguarding public finances and ensuring that governments can provide essential services.

We assessed how member states:

- implemented the legislation selected, namely the ATAD, DAC 6 and TDRD;
- ensure that the DAC 6 reports exchanged through the EU central directory are accurate, complete and on time, and how member states use the DAC 6 information they receive;
- measure the effectiveness of their actions to fight harmful tax regimes and corporate tax avoidance and whether they use such measurements to better tackle the existing risks and allocate resources;
- inform the Code of Conduct Group about potentially harmful tax regimes and implement its recommendations if the Group considers a preferential tax regime to be harmful.

We selected five member states – Ireland, Cyprus, Luxembourg, Malta and the Netherlands – based on the following risk criteria:

- number of countermeasures against countries on the EU list of non-cooperative jurisdictions;
- number of mutual agreement procedures in tax disputes;
- number of harmful tax regimes identified by the Code of Conduct Group;
- corporate income tax gap estimates.

To determine whether member states have implemented the EU provisions properly, we sent a questionnaire to the five member states selected. During the audit visits, we discussed their replies with the experts from the national tax authorities and inspected documents. In addition, we selected risk-based samples to verify:

- 10 cross-border tax arrangements uploaded to the EU central directory;
- 10 cross-border tax arrangements downloaded from the EU central directory;
- five tax dispute cases submitted under the TDRD;

- five recommendations, based on the preferential tax regimes most recently assessed by the Code of Conduct Group.

Annex III – EU legislation compared with OECD/G20 BEPS standards

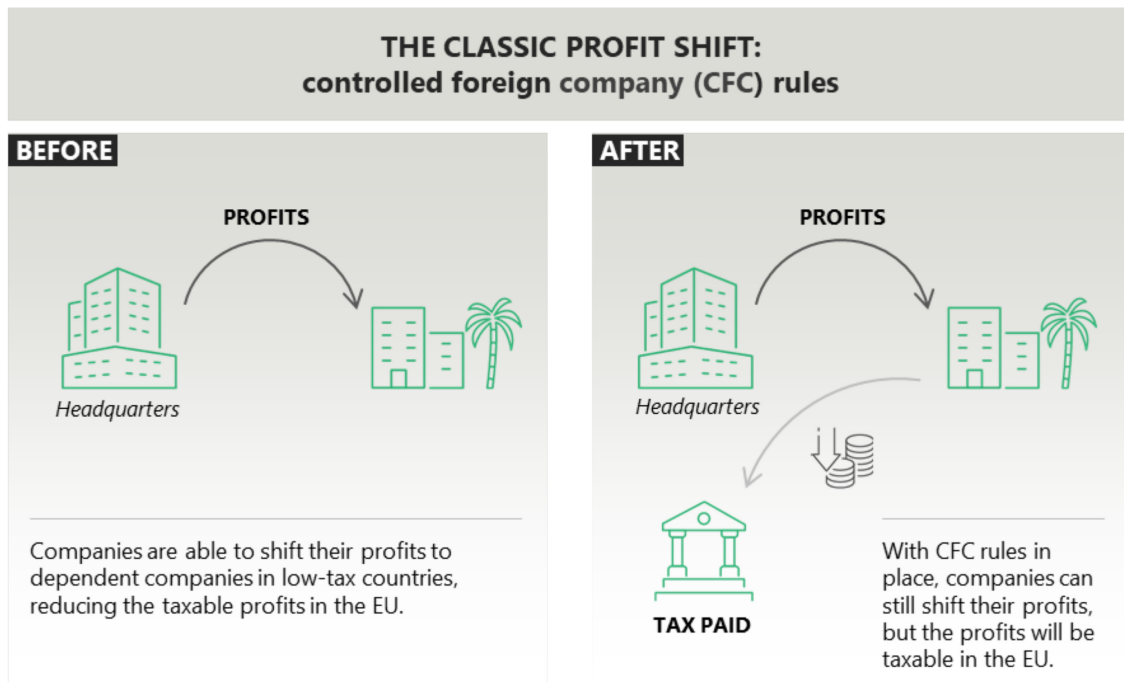
EU legislation	Adoption date	Short description (legislation)	Corresponding OECD standard	Publication date	Short description (standard)
ATAD 1	12 July 2016	Lays down rules against tax avoidance regimes that affect the functioning of the internal market directly.	BEPS Action 2 BEPS Action 3 BEPS Action 4 BEPS Action 5 BEPS Action 6	5 October 2015	Counters harmful tax regimes more effectively by taking into account transparency, coherence, and substance.
ATAD 2	29 May 2017	Extends the scope of ATAD 1 to further prevent tax avoidance, including hybrid mismatches involving non-EU countries.	BEPS Action 2	5 October 2015	Recommendations for domestic rules to neutralise the effect of hybrid mismatch arrangements.
DAC 6	25 May 2018	Introduces a tax disclosure regime requiring the reporting and exchange of cross-border arrangements to combat aggressive tax planning.	BEPS Action 12	5 October 2015	Recommendations regarding the design of mandatory disclosure rules for aggressive tax planning schemes.

EU legislation	Adoption date	Short description (legislation)	Corresponding OECD standard	Publication date	Short description (standard)
TDRD	10 October 2017	Aims to improve dispute resolution mechanisms in the EU for tax-related issues.	BEPS Action 14	5 October 2015	Seeks to improve the resolution of tax-related disputes between jurisdictions.

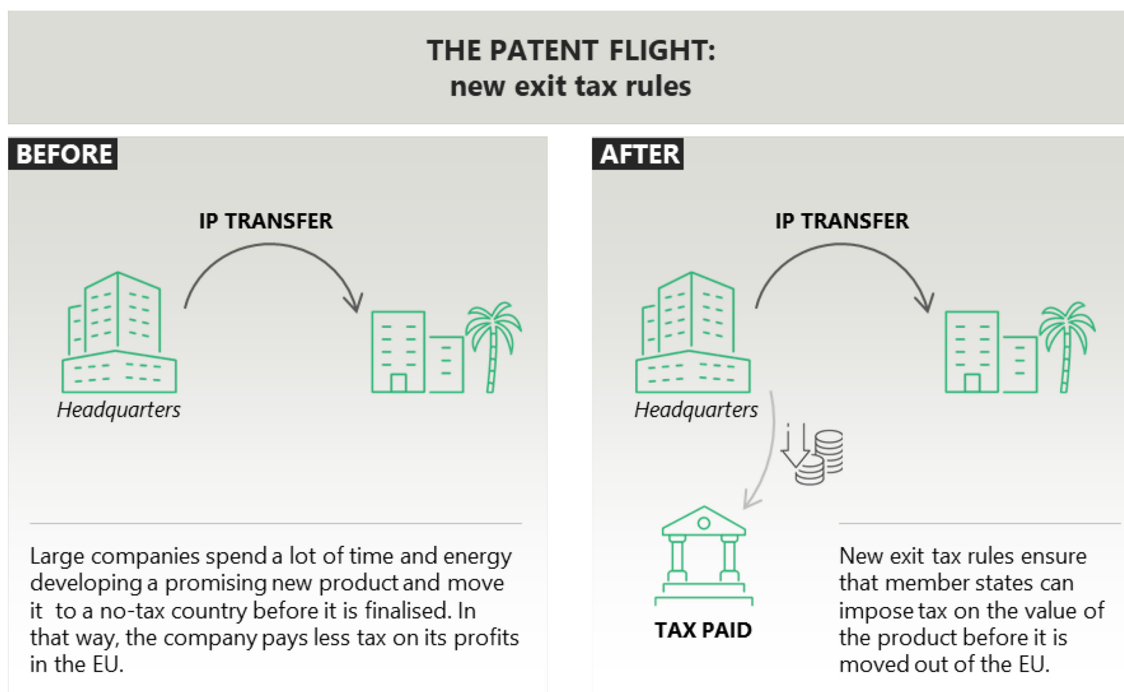
Source: ECA, based on publicly available data.

Annex IV – Anti-tax avoidance measures introduced by the ATAD

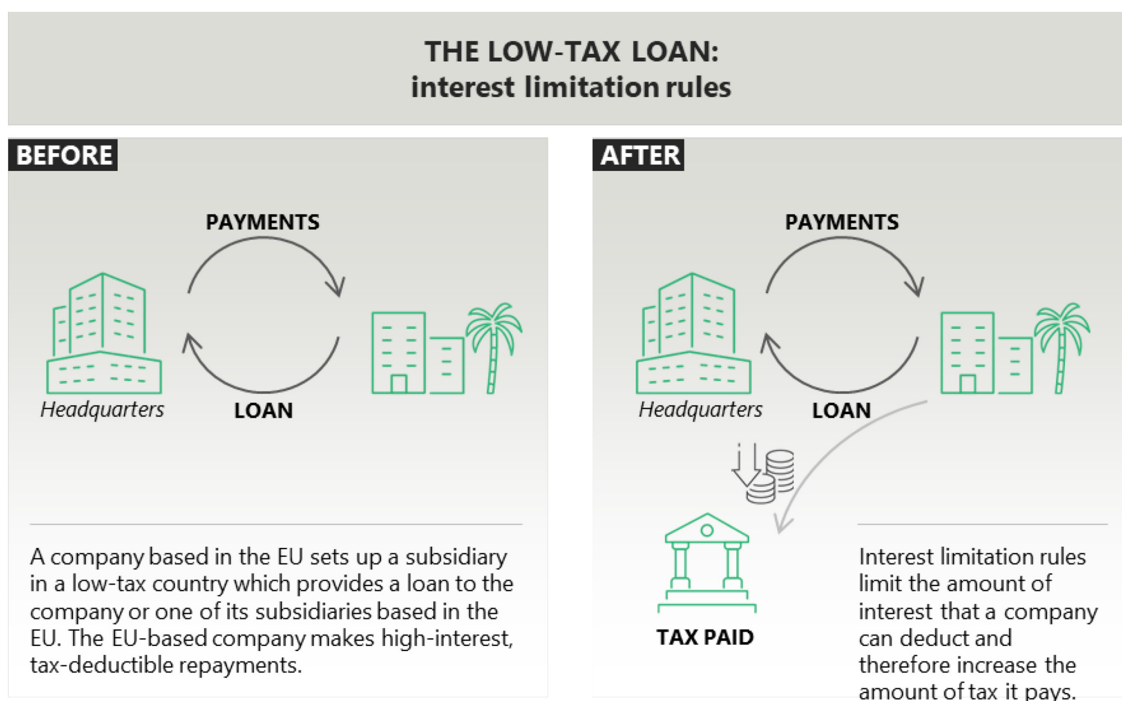
Controlled foreign company (CFC) rule: to deter profit shifting to a low or no-tax country



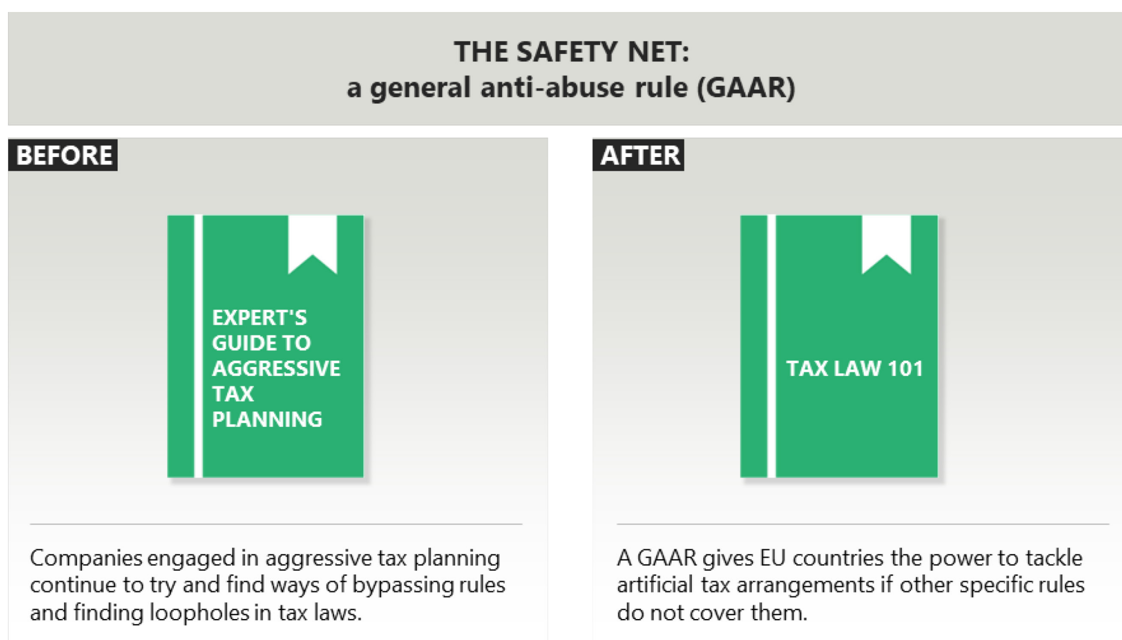
Exit taxation rule: to prevent companies from avoiding tax when re-locating assets



Interest limitation rule: to discourage artificial debt arrangements designed to minimise taxes



General anti-abuse rule: to counteract aggressive tax planning when other rules do not apply



Source: ECA, based on data and visual material from the Commission (DG TAXUD).

Annex V – Risk of different interpretations of DAC 6 provisions on the main benefit test and hallmarks (Annex IV of the Directive)

The **main benefit test** applies when it can be established that the main benefit or one of the main benefits which, considering all relevant facts and circumstances, a person may expect to derive from a cross-border arrangement is a tax advantage. We observed that the member states visited encountered interpretation challenges in the areas listed below. These visits took place prior to the Court of Justice's judgement in Case C-623/22, where it addressed the interpretation of certain terms and concepts. Challenges mentioned by the member states included, but were not limited to:

- How to determine whether the tax advantage is the main benefit or one of the main benefits of an arrangement is unclear. It is also not clear whether the approach of the assessment should be quantitative, e.g. compare the arrangement by first applying and then not applying the tax rules giving rise to the (supposed) tax advantage.
- Another question is whether the main benefit test also applies in situations where – in line with the spirit of the directive – the result of a tax regime leading to the tax advantage is intended and/or provided for under the regime in question or by the legislator (also called “policy intent”).

Hallmarks:

- **Hallmark A3** applies to arrangements that use standardised documentation and/or a standardised structure. There is a risk that while some member states consider a wide range of documentation and structures to be standardised, others rarely do because they require adjustments to adapt to the specific taxpayers concerned. As a result, intermediaries and taxpayers may potentially not report arrangements under hallmark A3.
- **Hallmark B2** refers to arrangements that convert income into capital, gifts or other categories of revenue that are taxed at a lower rate or are exempt from tax. However, the circumstances under which this conversion may take place are unclear. Some ambiguous scenarios could be, for example:
    - when receiving (the same type of) income from another member state, but the income is taxed at a lower rate or exempt from tax (e.g. due to the application of a tax treaty or regime of the country in which the income originates). In this case, there is no change in the type of income (e.g. if the income was in the form of dividends, it remains as dividends);

  - when repurchasing a company's own shares, especially when dividend distributions took place regularly prior to the repurchase of the shares.

    Furthermore, it is unclear whether hallmark B2 can be applied to newly set-up arrangements or only applies when already existing revenue is converted into a different income category that is taxed at a lower rate. There is a risk that differing views among member states could lead to inconsistent filing of DAC 6 reports.

    In addition, there is a risk that the manner in which hallmark B2 is to apply to personal income tax, wage tax, and gift/inheritance tax arrangements is unclear. As a result, intermediaries and taxpayers may consider that income conversion should take place at the level of the income recipient, whereas in many arrangements this conversion occurs at various levels.

- **Hallmark B3** concerns arrangements involving circular transactions leading to the round-tripping of funds, typically through the involvement of interposed entities in the absence of any other primary commercial functions or transactions that either offset or cancel each other out, or possess similar features. In practice, both the connection between these elements and the specific conditions for applying this hallmark are unclear.

  - It is unclear whether hallmark B3 applies when there is no full circular transaction. For instance, in cases of income diversion due to entity interposition.

  - It is unclear whether situations involving income diversion by interposed entities and the offsetting of transactions are necessary conditions for the application of hallmark B3, or whether they are merely examples of circular transactions.

- **Hallmark C1** relates to arrangements involving deductible cross-border payments among two or more associated enterprises. It remains unclear whether a permanent establishment should be treated as a distinct (payment receiving) entity for hallmark C1 purposes. This ambiguity also impacts the requirement to report an arrangement under the DAC 6.

  Furthermore, hallmark C1 applies to arrangements involving cross-border payments among associated enterprises where there is little or no tax at the recipient's level. However, there is no subcategory under hallmark C1 specifically covering arrangements where the recipient benefits from a subject exemption. Hallmark C1, point (c), solely addresses arrangements where payments benefit

from an object exemption, resulting in arrangements resembling those falling under hallmark C1 not being reported.

Annex VI – Operational issues related to DAC 6 reporting using the EU XML schema

We identified four main operational issues related to DAC 6 reporting and confirmed them during the visits to the five member states:

— a lack of guidance for intermediaries and taxpayers on how to clearly indicate the involvement of non-EU countries in a cross-border arrangement, given that country codes for non-EU countries are missing from the template;

— the presence of optional fields – such as tax identification number (TIN), country of residence, arrangement implementation date, first name, or reasons for disclosure – in respect of which there is no obligation for the disclosing entity to explain why the fields have not been filled in, where relevant. This also applies to the "amount" data field, in which "unknown" may be entered in the absence of any disclosure of the circumstances;

— there is no specified minimum length for the descriptions of reportable hallmarks or the arrangements themselves, leading to potential inconsistencies in reporting among the EU member states;

— the upload of a "marketable" cross-border arrangement to the EU central directory is always treated as a new arrangement, although it may just be an update of an existing one (a marketable arrangement must be updated every three months by the reporting entity if circumstances have changed).

Annex VII – Risk of different interpretations of TDRD design issues

TDRD provision	Issue	Consequences
Article 3(3), point (e)(iv), of the TDRD requires the taxpayer's complaint to include complete documentation, including a “**copy of the final tax assessment decision**”.	The issue pertains to the requirement for all tax authorities involved in the dispute to issue the “final tax assessment decision”.	Taxpayers may postpone filing a TDRD complaint until all the relevant member states have audited the applicable tax period, a process that can take up to seven years. The competent authority may defer acceptance until all documentation is complete.
According to paragraphs 3 to 5 of Article 3 of the TDRD, **a complaint can only be accepted if the affected person provides the necessary information upon submission**. However, the directive lacks clarity on procedures for tax authorities and the timeframe for cases where initial submissions are missing requisite information.	It remains unclear what constitutes an “incomplete” complaint. The TDRD does not specify whether complainants can subsequently add to the complaints already submitted or whether it is the competent authorities who should notify them that their complaint is incomplete and request additional information.	The lack of a defined process and timeframe may lead to situations where complainants are unaware that their complaint is “incomplete” until the six-month period has elapsed and therefore do not provide the missing information within the deadline. Consequently, the competent authority may reject the complaint.

TDRD provision	Issue	Consequences
Article 17 of the TDRD provides exceptions to the general rule outlined in Article 3, which requires complaints to be filed with the competent authorities of all member states involved. Article 17 includes **special provisions for individuals and smaller undertakings** that allow them to submit complaints to the competent authority of the member state in which they are resident alone.	It is unclear whether each competent authority must communicate their decision regarding acceptance or rejection individually, or if the authority to which the complaint was submitted is responsible for all communication with the complainant. All the competent authorities involved must decide whether to accept or reject the complaint. If one or all of the authorities reject the complaint, further proceedings, such as court proceedings or arbitration, may be needed in order for a final decision to be reached. In either case, the decision of each competent authority must be communicated to the complainant.	If each competent authority must communicate its decision, then there is still interaction with all the authorities involved and, if the complaint is rejected, subsequent proceedings may need to be conducted in all the relevant member states. Several of the member states visited indicated that this provision may not be applied in a uniform way.

Annex VIII – Fiscalis programmes and the ATAD, DAC 6 and TDRD

The objectives of the multiannual Fiscalis programme are in line with those of the ATAD, DAC 6 and TDRD, aiming to enhance the functioning of the internal market, promote Union competitiveness and fair competition, safeguard financial and economic interests from tax fraud, evasion and avoidance, and improve tax collection. Specific programme objectives include supporting tax policy and EU tax law implementation, fostering cooperation between tax authorities (including exchange of tax information), and enhancing administrative capacity building and electronic systems development (Article 3 of Regulation (EU) 2021/847 (Fiscalis 2027)).

The following actions are funded under Fiscalis 2020 and Fiscalis 2027:

- joint actions such as seminars and workshops (e.g. "mandatory disclosure: DAC 6 implementation", ATAD 1 seminar, ATAD 2 working party IV meeting, TDRD working party IV meetings, etc.), project groups, bilateral or multilateral controls and other activities provided for in EU law on administrative cooperation, working visits to enable officials to acquire or increase their expertise or knowledge in tax matters, expert teams, public administration capacity-building and supporting actions, studies, communication projects and any other activity in support of the Fiscalis 2020 and Fiscalis 2027 objectives;
- building European Information Systems and joint training activities;
- meetings and similar ad hoc events, project-based structured collaboration, human competency building and other capacity-building actions.

Two Fiscalis-funded project groups have an impact on the DAC 6

- **Fiscalis project group 106** on "direct taxation data analysis tool on AEOI/DAC/CRS data" (May 2019): the results so far include the development of a direct taxation AEOI (automatic exchange of information) data analysis tool and a Programme Information and Collaboration Space on the topic.
- **Fiscalis project group 119** on "measuring the performance of administrative cooperation in the field of taxation": the project analysed the performance measurement processes for administrative cooperation activities and recommended developing a new monitoring and evaluation framework, including indicators, data, definitions, methodology, and operational options to better measure the benefits.

In 2023, the European Commission, together with selected EU member states, launched two further project groups under Fiscalis 2027 to improve the impact and use of DAC data:

- **Fiscalis project group 038** on “estimation of the impact of administrative cooperation”, which aims to implement realistic indicators for efficient measurement of the impact of the exchange of information: the indicators are currently being tested in the member states participating in the project group. The project began in May 2023 and its conclusions, including guidelines on how to use the indicators, are expected at the end of 2024;

- **Fiscalis project group 037** on “improving the use of DAC data”, which explores ways of enhancing the use of DAC data: it aims to propose concrete solutions that are relevant to tax authorities (focusing on the use of the tax identification number). The project group started work in June 2023 and is expected to present its conclusions in 2024.

Annex IX – EU Code of Conduct for business taxation – Criteria for assessing potentially harmful preferential tax measures

The EU Code embodies a political commitment of an intergovernmental nature that promotes fair tax competition and addresses harmful tax regimes, both within the EU and beyond. A revised version of the Code, applicable since 1 January 2024, strengthens the role of the Commission and also covers harmful tax features of general application introduced after 1 January 2023.

The Code sets out several criteria, which the Code of Conduct Group must take into account when assessing whether a preferential tax measure is harmful:

- only preferential tax measures affecting or potentially affecting the place of business activities ("general gateway criterion") fall under the Code;
- an effective level of taxation which is significantly lower than the general level of taxation in the member state in question (including zero taxation);
- tax benefits granted only to non-residents or in respect of transactions involving non-residents;
- tax incentives for activities which are ring-fenced from the domestic market, so they do not affect the national tax base;
- the granting of tax advantages even without any real economic activity or substantial economic presence in the member state offering them;
- rules for determining the profits of companies in a multinational group that deviate from internationally accepted principles, particularly those agreed by the OECD;
- preferential tax measures lacking transparency, including legal provisions relaxed at administrative level in a non-transparent way.

Annex X – Role of the Commission regarding the Code of Conduct Group

The Commission assists the Code of Conduct Group by analysing the potentially harmful preferential tax regimes submitted by the member states. Member states are committed through the Code of Conduct to notify the Group at the start of each year of any planned or newly introduced preferential tax regimes that might fall under the scope of the Code. As soon as the list of notifications, compiled by the General Secretariat of the Council (which also assists the Group), has been formally circulated among the members of the Group, the Commission starts looking into the measures.

The Commission must prepare a "**description of the measure**" with the member state concerned before it is discussed within the Group. The description can be either an "agreed description" (when the Commission considers that the measure is potentially harmful) or a "standstill analysis" (when preliminary findings suggest the measure does not need to be reviewed). The Commission drafts the description on the basis of the information received in the notification. The details and completeness of the notification then determine whether it promptly contacts the member state concerned to:

- submit the agreed description/standstill analysis for confirmation, where the information provided was sufficient, or
- request further information on the technical details of the measure (e.g. background, data, etc.) in order to finalise its draft description, where the information provided was insufficient.

This cooperation with member states is limited to the drafting of the factual description of the measure notified. The "legal analysis" – whether a regime is (potentially) harmful or not – is the prerogative of the Commission and does not require the member state's agreement.

The Commission uses an internal template for the draft "agreed description" to ensure that it, or indeed any standstill analysis, follows the same structure each time, and that the level of detail is similar for every measure that needs to be assessed. Once the draft is ready, it is sent to the member state concerned so it may confirm, correct or complement the factual description of the measure.

After the Commission's work is done, the tax regime concerned is discussed within the Group. The decision to accept or reject the Commission's assessment is taken by vote. Since there are no official minutes of the Group's meetings available, the details concerning the basis and result of the vote are not disclosed to the public.

Abbreviations

ATAD: Anti-Tax Avoidance Directive

BEPS: Base erosion and profit shifting

DAC 6: Directive (EU) 2018/822 – the fifth directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation

DG TAXUD: Directorate-General for Taxation and Customs Union

OECD: Organisation for Economic Co-operation and Development

TDRD: Tax Dispute Resolution Mechanisms Directive

TIN: Tax identification number

Glossary

Aggressive tax planning: Exploiting differences in countries’ tax systems to minimise or avoid tax liabilities.

Base erosion and profit shifting: Tax planning strategies used by multinational companies to reduce their tax burden by exploiting gaps and mismatches in different countries' tax systems, resulting in little or no overall corporate tax being paid.

Corporate income tax gap: Difference between corporate tax revenues as they “should be” collected and as they “are” collected, thus an indication of potential losses in corporate tax revenue.

European Semester: Annual cycle which provides a framework for coordinating the economic policies of EU member states and monitoring progress.

Hallmark: Characteristic of a cross-border tax arrangement that indicates a potential risk of tax avoidance.

Harmful tax regime: Fiscal policy characterised by a wide range of tax incentives and advantages to attract investment, and a lack of transparency and effective information exchange with other countries.

Intermediary: In the context of the DAC 6, any person involved in designing, setting up or implementing a reportable cross-border tax arrangement.

Main benefit test: Examination of whether a reduced tax liability is the main benefit (or one of the main benefits) a person may reasonably expect to derive from a cross-border tax arrangement.

Patent box regime: Taxation of profits earned from intellectual property at a rate below statutory corporate tax, in order to encourage local research and development.

Tax avoidance: Entering into a legal financial arrangement for the purpose of reducing the amount of tax payable.

Tax evasion: Using illegal or fraudulent means to avoid paying tax, for example by misrepresenting income to the tax authorities.

Replies of the Commission

https://www.eca.europa.eu/en/publications/sr-2024-27

Timeline

https://www.eca.europa.eu/en/publications/sr-2024-27

Audit team

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This performance audit was carried out by Audit Chamber IV – Regulation of markets and competitive economy, headed by ECA Member Mihails Kozlovs. The audit was led by ECA Member Ildikó Gáll-Pelcz, supported by Claudia Kinga Bara, Head of Private Office and Zsolt Varga, Private Office Attaché; Kamila Lepkowska, Principal Manager; Doris Boehler, Head of Task; Dan-George Danielescu, Head of Task; Wojciech Dudek, Mirko Gottmann and Christos Pouris, Auditors.

Ildikó Gáll-Pelcz

Claudia Kinga Bara

Zsolt Varga

Kamila Lepkowska

Doris Boehler

Dan Danielescu

Wojciech Dudek

Mirko Gottmann

Christos Pouris

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This report examines the EU efforts to combat harmful tax regimes and corporate tax avoidance, which can lead to significant tax losses for member states and distortions in the internal market. Within its limited competences in the area of direct taxation, the EU adopted a legal framework and uses supporting instruments as a first line of defence against systemic harmful tax practices. However, we identified shortcomings in how the rules were implemented and noted the absence of a common performance monitoring framework at EU and national level. We recommend ways to improve the Commission's oversight and close existing loopholes, thus helping it to tackle these harmful tax practices, and provide enhanced support to member states to ensure consistent application of the legislation.

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OF AUDITORS

Publications Office
of the European Union

EUROPEAN COURT OF AUDITORS
12, rue Alcide De Gasperi
1615 Luxembourg
LUXEMBOURG

Tel. +352 4398-1

Enquiries: eca.europa.eu/en/contact
Website: eca.europa.eu
Twitter: @EUAuditors