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The European Union's Fight Against Tax Avoidance and Harmful Tax Competition: Quo Vadis?

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TABLE OF CONTENTS:

ABSTRACT: Tax base erosion is one of the most acute issues in tax policy worldwide. Within and in parallel to the OECD Tax Base Erosion and Profit Shifting (BEPS) project, in the last decade the European Union has issued a significant number of legal instruments with the explicit or indirect objective of tackling tax avoidance. The aim of this study is to provide a wider perspective of EU legislative actions on the subject. The paper critically examines the European framework on tax avoidance and focuses on three legal instruments: the Anti-Tax Avoidance Directive, the enforcement of state aid rules as a means of controlling state actions causing harmful tax competition, and the Minimum Tax Directive. In addition, pending and future legislative initiatives are discussed. It is concluded that the European Union is currently redefining its priorities on tax avoidance, and emphasis is placed on the simplification and effective enforcement of existing rules, rather than the introduction of new ones.

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1. Introduction

Corporate tax avoidance is often recognised as one of the major issues in tax policy, both globally and in the European Union. The definition of tax avoidance itself is a matter of debate; 'tax evasion' commonly refers to illegal forms of behaviour which entail criminal or administrative sanctions, while 'tax avoidance' or 'aggressive tax planning' is seen as a behaviour that is typically within the boundaries of law, but contrary to its spirit and results in unfair outcomes.[1] Both behaviours are often jointly examined, which further complicates their assessment. Furthermore, 'aggressive' tax avoidance is often distinguished from 'responsible' tax avoidance; the latter is perceived as corporate behaviour which takes advantage of legal frameworks, but, contrary to aggressive tax avoidance, is both within the letter and the spirit of the law.[2] This article will discuss aggressive tax avoidance, which is what the majority of regulators and scholars refer to when using the term 'tax avoidance'.[3]

Harmful tax competition is another term, profoundly interrelated with tax avoidance. While in the case of tax avoidance the subjects of the behaviour are the tax payers, in tax competition the subjects are the states; tax competition relates to the practices of states competing with each other through their tax systems to attract businesses or investments. The term is equally difficult to define, and differently perceived among jurisdictions.[4] For OECD, harmful tax competition encompasses tax havens and preferential tax regimes, i.e. regimes with no or very low tax rates and obscure rules.[5] A study for the European Parliament identifies seven strategies that constitute potentially harmful tax competition, namely: lowering of corporate tax rates; 'patent boxes'; shell companies; notional interest deduction regimes; foreign source income exemption regimes; special economic zones; and tax rulings.[6]

[1] See, for example, C Öner, 'Is Tax Avoidance the Theory of Everything in Tax Law? A Terminological Analysis of EU Legislation and Case Law' (2018) 27 *EC Tax Review* 96.

[2] H Lenz, 'Aggressive Tax Avoidance by Managers of Multinational Companies as a Violation of Their Moral Duty to Obey the Law: A Kantian Rationale' (2020) 165 *Journal of Business Ethics* 681.

[3] For example, the Proposal for the EU Anti-Tax Avoidance Directive aims to combat actions 'against the actual purpose of the law', i.e. aggressive tax avoidance: European Commission, 'Proposal for a Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market', COM/2016/026 final, 2016/011 (CNS), 3. See also the analysis of AP Dourado, 'Aggressive Tax Planning and Harmful Tax Competition' in C Panayi, W Haslehner and E Traversa (eds), *Research Handbook on European Union Taxation Law* (Edward Elgar 2020) 390, 394.

[4] R Mason, 'Tax Competition and State Aid' (2023) 42 *Yearbook of European* Law 262, 264-265.

[5] The term was used for the first time by OECD in 1998, in the Report entitled 'Harmful Tax Competition: A Global Issue', available at www.oecd.org.

[6] E van de Velde and F Cannas, 'Harmful Tax Practices within the EU: Definition, Identification and Recommendations' (European Parliament, Policy Department for Economic, Scientific and Quality of Life Policies, Directorate-General for Internal Policies, May 2021), at www.europarl.europa.eu.

Most of these issues are already addressed by European legislation, as it will be revealed by the present study. Anti-tax avoidance rules limit the possibilities of harmful tax competition, therefore the two issues are examined in parallel in this study.

A term similar to tax avoidance is 'Base Erosion and Profit Shifting', which, according to the OECD, 'relates to tax planning strategies that multinational enterprises use to exploit loopholes in tax rules to artificially shift profits to low or no-tax locations as a way to avoid paying tax'.[7] Tax base erosion and profit shifting may be described as the outcome of tax avoidance. The extent of revenue losses due to profit shifting is equally difficult to calculate: the latest Annual Report of the European Commission on taxation mentions that the EU lost approximately EUR 36 billion in corporate tax revenues annually due to profit shifting.[8] Another study estimates that profit shifted from the EU to tax havens amounts to over 186.5 billion EUR annually, and associated corporate income tax losses exceed 51 billion EUR.[9] A joint initiative by the EU Observatory and the Skatteforsk research institutions indicates that losses of corporate tax revenues due to profit shifting exceed 10% in 11 out of 27 EU Member States.[10]

This paper investigates the European legal framework on corporate tax avoidance and issues of harmful tax competition, focusing on the most significant institutional initiatives. The aim is to provide a wider perspective on the Union's regulatory responses to tax avoidance, in order to identify the areas of concern and the prospects of future reforms. The next Section provides a brief background of the European legislative action in the field of tax avoidance and harmful tax competition. Section 3 focuses on the Anti-Tax Avoidance Directive of 2016, and Section 4 reviews state aid enforcement efforts against national tax rulings related to tax avoidance and harmful tax competition. Section 5 examines the Minimum Tax Directive and its potential outcomes. Section 6 provides evidence on ongoing legislative initiatives, while the final Section summarizes the findings and concludes with final remarks.

[7] OECD, 'Base Erosion and Profit Shifting (BEPS)', at www.oecd.org. For a discussion on the determinants of BEPS, see inter alia A Vasilakis and V Vlachos, 'Country Level Determinants of Base Erosion and Profit Shifting (BEPS): A Systematic Literature Review' (2025) 255 *Hacienda Pública Española /Review of Public Economics* 1112 dx.doi.org.

[8] European Commission: Directorate-General for Taxation and Customs Union, 'Annual Report on Taxation 2025 – Review of Taxation Policies in the EU Member States' (Publications Office of the European Union 2025), at data.europa.eu 94.

[9] D Nerudova, M Dobranschi, V Solilová and M Litzman, 'Onshore and Offshore Profit Shifting and Tax Revenue Losses in the European Union' (2023) 119 *Economic Modelling* 13.

[10] Atlas of the Offshore World, available at atlas-offshore-world.org.

2. The evolvement of European Union intervention on tax avoidance

2.1. Initial coordination efforts on tax avoidance and harmful tax competition

The first efforts of the European Union to address 'harmful tax competition' may be traced in the 1990s, although discussions on removal of discriminations and a common tax base within the EU took place much earlier.[11] The first decisive step towards a coordinated approach was the Code of Conduct for Business Taxation of 1997, a soft law instrument based on Member States' cooperation and notification of harmful practices.[12] The critical element that renders national rules 'harmful' according to the Code is whether they depart from internationally accepted principles agreed within the auspices of the OECD. In order to assess national measures, a group of Member States' experts was established, assisted by the Council and the Commission. The first 'Code of Conduct Group', known as the 'Primarolo Group', published in 1999 a highly influential Report,[13] in which it evaluated 271 national tax measures and identified 66 of them as harmful from a tax competition perspective. The work of the 'Primarolo Group', despite being non-binding, served as the starting point for Commission and Council action in the field of tax competition.[14]

Throughout its years of operation, the Code of Conduct Group has successfully taken action to remove 'harmful' tax provisions from national regimes. Nonetheless, it has also been accused of lack of transparency[15] and of accommodating the priorities of larger Member States.[16] The Code was revised in 2022 in order to cover 'tax features of general application'.[17] A 2024 Report of the European Court of Auditors characterised the effect of the Code of Conduct as limited, and stressed the lengthy procedures for legislative reforms.[18] Due to the nature of the Code as a voluntary and political instrument, its dependence on political will and its opaque procedures are

[11] C Panayi, 'Corporate Tax Reform in the European Union: Are the Stars Finally Aligned?' (2023) 42 *Yearbook of European Law* 234 ff.

[12] D Kyriazis, 'Fiscal State Aid Law as a Tool Against Harmful Tax Competition in the EU: Déjà Vu?' (2022) 41 *Yearbook of European Law* 287.

[13] Council of the European Union, 'Report from the Code of Conduct Group (Business Taxation) to the ECOFIN Council on 29 November 1999' (23 November 1999) SN 4901/99.

[14] See C Pinto, *Tax Competition & EU Law* (Kluwer Law International 2003); Kyriazis (n 12) 287 ff.

[15] MF Nouwen, 'The European Code of Conduct Group Becomes Increasingly Important in the Fight Against Tax Avoidance: More Openness and Transparency is Necessary' (2017) 45 *Intertax* 138. See also V Moutarlier, 'Reforming the Code of Conduct for Business Taxation in the New Tax Competition Environment' in I Richelle, W Schön and E Traversa (eds), *State Aid Law and Business Taxation* (Springer 2016) 75.

[16] PJ Wattel, 'Comparing Criteria: State Aid, Free Movement, Harmful Tax Competition and Market Distorting Disparities' in Richelle, Schön and Traversa (n 15) 71.

[17] Council of the European Union, 'Council Conclusions on the Reform of the Code of Conduct for Business Taxation' (8 November 2022), at data.consilium.europa.eu.

[18] European Court of Auditors, 'Combatting Harmful Tax Regimes and Corporate Tax Avoidance' (Special Report 2024), at www.eca.europa.eu.

to a certain extent inevitable.[19] It is further notable that research on the Code of Conduct is significantly scarce in recent legal literature.

2.2. OECD action and its effect on European law

The OECD Action Plan on Base Erosion and Profit Shifting (BEPS) of 2013-2015 renewed the interest of the EU on tax avoidance and harmful tax competition and trigerred various legislative initiatives. The Plan, known as BEPS 1.0,[20] consists of 15 Actions which are a mixture of soft law instuments and vary from minimum standards for national legislation to the revision or introduction of OECD guidelines and model conventions. Action 5 of the OECD BEPS 1.0 Plan is particularly relevant for the issue of harmful tax competition; it concerns the assessment of potentially harmful national tax regimes by a dedicated OECD group, the 'Forum on Harmful Tax Practices (FHTP)', based on transparency and information exchange requirements between jurisdictions for the purposes of the review. A 2025 OECD Report finds that Action 5 efforts have had positive results with regard to transparency and reduction of harmful preferential regimes.[21]

A number of the OECD BEPS 1.0 Actions have inspired or were incorporated into European legislation, the most notable of which being the Anti-Tax Avoidance Directive of 2016, discussed in the following Section.[22] The Directive on Administrative Cooperation, also mentioned below in Section 3.3, was equally influenced by the BEPS Plan. Other important initiatives based on BEPS 1.0 include the Country by Country Reporting Directive[23] and a Commission Recommendation on the implementation of measures against tax treaty abuse.[24]

In 2021, the OECD/G20 reached a landmark political agreement on a Two-Pillar solution to 'Address the Tax Challenges Arising from the Digitalisation of the Economy', also known as 'BEPS 2.0', comprising of two Pillars.[25] Pillar One aims to the development of rules on the reallocation of taxing rights where value was created, in principle through a Multilateral Convention. The focus of the initiative is taxation of digital services, but negotiations have not yet reached a result. United States'

[19] G Perotto, 'The Fight Against Harmful Tax Competition in the EU: A Limit to National Fiscal Autonomy?' (2024) 9 *European Papers* 449.

[20] See OECD website at www.oecd.org.

[21] OECD, 'Recognising Progress and Reducing Burdens in the BEPS Minimum Standards' (OECD, 2025), at www.oecd.org.

[22] See inter alia S Douma, 'BEPS and European Union Law' (2017) 102a *Cahiers de droit fiscal international* 65.

[23] Council Directive (EU)2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

[24] Commission Recommendation (EU) 2016/136 of 28 January 2016 on the implementation of measures against tax treaty abuse (notified under document C(2016) 271).

[25] OECD/G20 Base Erosion and Profit Shifting Project, 'Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy' (8 October 2021), at www.oecd.org.

withdrawal from the global tax deal in early 2025 has induced doubts about its future. Pillar Two has resulted in the Global Anti-Base Erosion Model Rules (or GloBE rules), a set of provisions aiming to introduce a global minimum tax for large multinational enterprises. The rules have been incorporated in the European legal order through the Minimum Tax Directive, which introduced a minimum tax for the global income of very large multinational enterprises and is discussed in detail in Section 5, while they have also been adopted by a notable number of jurisdictions worldwide.

It is therefore evident that the last decade has marked a shift in European policy on tax avoidance and fair taxation of multinationals, which has been to a great extent generated by the OECD work at the international level. Political factors and developments, such as the economic crisis and NGOs plea for more fairness in taxation, have indisputably played their role towards the mobilisation of EU institutions.[26] Despite the lack of EU competence in direct taxation matters and the fact that taxation is one of the last resorts of Member States' national sovereignty, the developments in corporate taxation indicate that harmonisation in this field is showing signs of materialisation.[27] Notwithstanding, the issue of income tax integration within the European Union remains a deep political issue.[28] The following Sections critically examine the most influential EU initiatives in the field of corporate tax avoidance, namely the Anti-Tax Avoidance Directive, the efforts based on state aid rules, and the Minimum Tax Directive.

3. The Anti-Tax Avoidance Directive

3.1. The Directive and its general reception

The Anti-Tax Avoidance Directive (ATAD)[29] echoes the OECD 2015 BEPS Action Plan and introduces for the first time uniform rules on tax avoidance in the European legal order. The aims of the Directive are explicitly 'to strengthen the average level of protection against aggressive tax planning in the internal market' and 'lay down rules against the erosion of tax bases in the internal market'.[30] The legal basis of the Directive is Article 115 TFEU on measures directly affecting the functioning of the internal market.

The Directive establishes five rules to accomplish its objectives, namely *i)* an interest limitation rule, according to which borrowing costs deductible from the taxable income should not exceed 30% of tax payer's earnings before interest, tax, depreciation,

[26] A Roland and I Römgens, 'Policy Change in Times of Politicization: The Case of Corporate Taxation in the European Union' (2022) 60 *Journal of Common Market Studies* 355.

[27] Panayi (n 11).

[28] J Jaakkola, 'Taming the Leviathan or Dismantling Democratic Government? Evolving Political Ideas on Spontaneous Income Tax Integration in the European Union' (2023) 2 *European Law Open* 575.

[29] Council Directive (EU)2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market.

[30] Recitals 3 and 5 of the ATAD.

and amortization (EBITDA), which aims to discourage artificial arrangements, *ii)* an exit taxation rule, which prevents companies from reallocating their assets to other jurisdictions by taxing their capital gains created in the country they exit from, *iii)* a Controlled Foreign Company (CFC) rule, with the purpose of re-attributing income to the parent company when the parent company has artificially diverted income to its low-taxed subsidiaries, *iv)* rules on hybrid mismatches, which seek to remedy the situation where differences in characterization of financial instrument or other tax treatment between states result in double non-taxation of associated enterprises,[31] and, finally, *v)* a general anti-abuse rule, according to which Member States shall ignore arrangements which are not genuine and have been put into place with the main purpose of obtaining a tax advantage that defeats the object or purpose of the applicable tax law.

The Directive has been criticised for being incompatible with the general anti-abuse principle as developed by the Court of Justice of the European Union (CJEU), but also with the principles of subsidiarity and proportionality.[32] There have also been wider considerations on the relationship between the implementation of BEPS in EU hard law and the purposes of the internal market, which has been used as the legal basis of the Directive, and the extent to which BEPS seems to affect EU law interpretation;[33] due to the fact that BEPS is a soft law instrument outside the European legal order, its consideration during EU law enforcement is not well founded from a theoretical perspective. Furthermore, as it has been argued, although the Directive has been laid down as a tool for fostering the internal market, in fact it impedes the internal market by imposing obstacles to cross-border business activities and provides a new perspective for the protection of domestic tax bases.[34]

It has also been observed that, despite that the ATAD introduces a common framework on corporate tax avoidance, it does not impose an obligation of Member States to levy a corporate tax in the first place.[35] Apart from the fact that imposing such an obligation would be against the purposes of the Directive and the principle of tax sovereignty, the argument is purely theoretical, since all EU Member States have corporate income taxes in place, which in 2026 varied from 9 to 30%.[36] A zero tax rate would also be problematic from the perspective of the OECD.[37] Besides, the

[31] The provisions on hybrid mismatches were inserted with Council Directive (EU)2017/952 of 29 May 2017 amending Directive (EU)2016/1164 as regards hybrid mismatches with third countries.

[32] See, for example, S Govind and I Lazarov, 'Carpet-Bombing Tax Avoidance in Europe: Examining the Validity of the ATAD Under EU Law' (2019) 47 *Intertax* 852.

[33] W Schön, 'Interpreting European Law in the Light of the OECD/G20 Base Erosion and Profit Shifting Action Plan' (2020) 74 *Bulletin for International Taxation* 286. See also in this respect, N Traut and G Weiss de Resende, 'Anti-Avoidance Jurisprudence in Direct Taxation: The CJEU Between Politics and Certainty' (2024) 52 *Intertax* 226.

[34] M Caziero and I Lazarov, 'The Substantive Scope of the Anti-Tax- Avoidance Directive: The Remaining Leeway for National Tax Sovereignty' (2021) 58 *Common Market Law Review* 1789.

[35] Ibid.

[36] According to the data of Tax Foundation Europe, see C Enache, 'Corporate Income Tax Rates in Europe', at taxfoundation.org.

[37] Since zero tax rates constitute harmful tax competition, see OECD (n 5).

same commentators point out that the scope of application of the ATAD should be broadly interpreted to capture all types of corporate taxes, therefore its overall effect on corporate taxation is indisputable. All in all, the introduction of the ATAD has been accepted with skepticism in legal literature, despite apparent consensus on the appropriateness of its individual rules, which will be demonstrated in the following paragraphs.

3.2. The individual provisions of the ATAD

Despite the above-mentioned general criticism, the individual rules of the ATAD are seen as capable of making a difference in combatting tax avoidance. The rules on Controlled Foreign Companies (CFC-Articles 7 and 8) in brief mandate that, when a company taxed in a Member State controls another entity or establishment taxed in another jurisdiction where the actual tax paid is significantly lower, the income of this controlled entity or establishment may be taxed by the Member State of the controlling company. They have been generally accepted as a major step towards more transparency and fairness in corporate taxation, although commentators also point out that they include inconsistencies and leave a considerable degree of discretion to national legislators.[38]

The interest limitation rule (Article 4) aims at debt arrangements between associated companies designed to minimise taxation and provides that borrowing costs exceeding a certain maximum amount cannot be deducted from the taxpayer's income. The hybrid mismatches rules (Article 9) concern cases where the same financial instrument is taxed differently in two jurisdictions, which result in double deduction or income exclusion; Member States shall deny such deductions. Both aforementioned ATAD rules were found to have a positive harmonisation effect, although it was generally observed that the prescribed objectives of the Directive have not been successfully reached.[39]

According to the ATAD exit taxation rule (Article 5), when a company relocates assets to a permanent establishment or its head office in another state, or when it transfers its tax residence to another state, the Member State of exit shall impose a tax on the value of the assets transferred. The rule reflects previous case law on the right of states to tax unrealised capital gains of companies transferring their seat and it is also considered to be a revolutionary advancement for EU rules on direct taxation.[40] It has also been observed, though, that the exit tax rules cannot be seen as

[38] T Moser, 'The Provisions of the EU Anti-Tax Avoidance Directive Regarding Controlled Foreign Company Rules: A Critical Review Based on the Experience with the German CFC Legislation' (2017) 45 *Intertax* 606.

[39] G Ginevra, 'The EU Anti-Tax Avoidance Directive and the Base Erosion and Profit Shifting (BEPS) Action Plan: Necessity and Adequacy of the Measures at EU Level' (2017) 45 *Intertax* 120.

[40] S Peeters, 'Exit Taxation: From an Internal Market Barrier to a Tax Avoidance Prevention Tool' (2017) 26 *EC Tax Review* 122.

clearly connected to tax avoidance and are restrictive for fundamental freedoms in the internal market.[41]

The most discussed provision in the ATAD is by far the general anti-abuse rule (GAAR) of Article 6, which in brief provides that Member States may deny 'non-genuine' arrangements which aim at obtaining a tax advantage in contrast to the object and the purpose of applicable tax law. The rule is similar to anti-abuse clauses in national legislations and it is intended to 'fill in gaps' in tax avoidance rules, since it should only apply in cases that have not been dealt with other specific anti-abuse rules, including the ones set by the Directive.[42] Although this limitation of scope is well-established in theory, it appears to limit the reach of the rule in situations where specialised rules apply but do not capture the particular abusive transaction or action.[43] In addition, the fact that 12 out of 28 Member States did not implement the rule at the time – because they found that their national laws were already compliant with the GAAR – caused skepticism in literature, which, however, underlines the significant potential of the provision.[44] This potential, though, has yet to be defined, since the effectiveness and the reach of the rule will be greatly dependent on its interpretation by the CJEU, as well as its enforcement by national authorities within their domestic taxation regimes.[45]

The rule should be seen in context with CJEU case law on abuse of law in taxation, as well as other general anti-abuse rules found in related secondary EU legislation, but the ATAD GAAR has been criticised for being vague and inconsistent with previously developed concepts on abuse.[46] More specifically, the notion of 'non-genuine arrangements' is not clear, it may be interpreted differently in national legal orders and should be given an autonomous meaning in light of CJEU case law on abusive practices.[47] In any case, it is generally concluded that the ATAD establishes

[41] Govind and Lazarov (n 32).

[42] See recital 11 of the ATAD and A Navarro, 'The General Anti-Avoidance Rule of the EU Anti-Tax Avoidance Directive (ATAD GAAR): Interpretation and Implementation' (Working Paper of the Max Planck Institute for Tax Law and Public Finance 08-2024), at papers.ssrn.com.

[43] See W Haslehner and K Pantazatou, 'Assessment of Recent Anti-Tax Avoidance and Evasion Measures (ATAD & DAC 6)' (Publication for the Subcommittee on tax matters (FISC), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament 2022), at www.europarl.europa.eu.

[44] M Scherleitner and J Korving, 'Article 6 of the Anti Tax Avoidance Directive – Living a Life on Its Own?' (2023) 34 *European Business Law Review* 1069.

[45] Navarro (n 42) 38-39.

[46] See C Öner, 'Comparative Analysis of the General Anti-abuse Rule of the Antitax Avoidance Directive: An Effective Tool to Tackle Tax Avoidance?' (2020) 29 *EC Tax Review* 38; L De Broe and D Beckers, 'The General Anti-Abuse Rule of the Anti-Tax Avoidance Directive: An Analysis Against the Wider Perspective of the European Court of Justice's Case Law on Abuse of EU Law' (2017) 26 *EC Tax Review* 133; see also Navarro (n 42) 8 ff.

[47] R Iaia, 'Article 6 ATAD and 'Non-genuineness' of Arrangements' (2021) 30 *EC Tax Review* 242.

a duty of Member States to fight tax avoidance, even if other forms of tax competition, such as through income taxation, may remain unaffected.[48]

To sum up, the ATAD substantive provisions are seen as providing valuable and innovative tools for national authorities in the fight against tax avoidance. The general anti-abuse rule is the most problematic provision from a theoretical perspective, because of its open-ended nature and lack of interpretation guidelines, while the rest of the rules bring transparency and fairness in corporate taxation, despite their interpretation challenges. The following Sections will discuss the importance of administrative cooperation and dispute resolution in tackling tax avoidance, as well as evidence on the implementation of the ATAD.

3.3. The significance of enforcement-related Directives for the effectiveness of the ATAD

The fight against tax avoidance is not only a matter of substantive provisions, but must be accompanied by effective enforcement mechanisms; especially the importance of cross-border cooperation between national tax authorities cannot be overestimated. The Directive on Administrative Cooperation (DAC), issued in 2011[49] and amended eight times, should be seen inter alia as a means of achieving the objectives of the ATAD. The DAC introduces a mandatory and comprehensive framework of cooperation among Member States in the field of taxation, with the explicit aim of combatting tax evasion and tax avoidance. It provides mechanisms for automatic exchange of information between national tax authorities on a wide range of issues, such as financial account information, tax rulings and crypto-assets, both spontaneously and upon request. The latest amendment (DAC9)[50] introduces provisions to facilitate the application of the Minimum Tax Directive. The recent evaluation of DAC indicates that it is a robust and relatively agile legal framework that has greatly contributed to the fight against tax avoidance, although some disparities and inefficiencies in its application may be improved.[51] The DAC is thus a significant element of the European framework on direct taxation, which complements, inter alia, the application of the ATAD.

[48] D de Charette, 'The Anti-Tax Avoidance Directive General Anti-Abuse Rule: A Legal Basis for a Duty on Member States to Fight Tax Abuse in EU Corporate Direct Tax Law' (2019) 28 *EC Tax Review* 176; see also Caziero and Lazarov (n 34) 1793.

[49] Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (DAC).

[50] Council Directive (EU) 2025/872 of 14 April 2025 amending Directive 2011/16/EU on administrative cooperation in the field of taxation.

[51] European Commission, 'Report from the Commission to the European Parliament and the Council on the evaluation of Council Directive 2011/16/EU on administrative cooperation in the field of taxation', SWD (2025) 365 final, at taxation-customs.ec.europa.eu.

The Directive on Tax Dispute Resolution Mechanisms is an additional instrument which complements the anti-tax avoidance rules.[52] The Directive was introduced as a response to OECD BEPS Action 14, with the aim of providing effective and swift settlement of disputes arising from the different interpretation and application of international tax treaties. It introduces a uniform mechanism of complaint handling and cooperation between Member States, which may result to a 'mutual agreement procedure' effectively resolving the dispute in all states involved.

3.4. Evidence on the application and effectiveness of the ATAD

The previous paragraphs have presented the theoretical debate on the ATAD, its individual provisions, as well as the provisions on administrative cooperation and dispute resolution that may be seen as supplementary to its operation. It has become evident that the ATAD has introduced a novel European framework on tax avoidance, and this advancement may be attributed to a great extent to the influence of OECD action. This Section will investigate whether the ATAD has been effective in providing tangible results against tax avoidance in the EU.

It is noteworthy that, beyond the theoretical discussion, evidence on the application of the ATAD is scarce, despite the fact that several years have passed since its incorporation into national laws.[53] Similarly, CJEU case law on the interpretation and implementation of the ATAD is remarkably missing, a fact that has been also highlighted in literature; jurisprudence by the Court of Justice would clarify the limits of the ATAD and significantly contribute to its harmonised interpretation in national legal orders.[54] It is also notable that, despite the extraordinary and far-reaching provisions of the ATAD, discussions on national cases involving its application are equally absent from academic literature.

The Special Report by the European Court of Auditors in 2024 on the effectiveness of European legislation on harmful tax regimes and corporate tax avoidance[55] focused on the ATAD, the Directives on Administrative Cooperation (DAC) and the Directive on Tax Dispute Resolution Mechanisms. The report concludes that, although the instruments serve as a first line of defense against tax avoidance, their provisions are unclear and inconsistently understood among Member States. What is more, there is no sufficient guidance and evaluation of the Directives, nor even a

[52] Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.

[53] An interesting exception is a recent study on southeastern EU and non-EU countries, which concludes that EU countries do not show robust compliance. See A Maksimovska Stojkova and M Stefanovska Petrovska, 'Legal Analysis of GAAR under ATAD: Are SEE non-EU States Outpacing the EU?' (2025) 34 *EC Tax Review* 160.

[54] Navarro (n 42).

[55] European Court of Auditors (n 18).

common framework to measure tax avoidance.[56] An earlier study prepared for the European Parliament[57] equally pointed to the uncertainties in the interpretation of the ATAD, as well as the disparities in Member States' implementation, which was to certain degree expected, given the different options provided by the Directive. Evidence on the ATAD from EU focused economic studies are equally scarce, with the exception of a study focusing on the CFC rules which highlights the differences in the rules' implementation, but also their effectiveness in curbing profit shifting to offshore tax havens.[58]

In July 2026 the Commission published its long-awaited evaluation of the Anti-Tax Avoidance Directive,[59] which had begun in 2024. The Document concludes that the ATAD introduced for the first time a common EU minimum standard, reduced opportunities for corporate tax avoidance, and is very likely to have had an additional deterrent effect. Nonetheless, the report also highlights the insufficiency of data regarding the implementation of the Directive, disparities in implementation among Member States and different interpretation approaches, which have led to fragmentation and legal uncertainty, as well as potential tax barriers in the internal market. A few days earlier, the Commission had announced its Taxation Omnibus Directive Proposal, which amends and simplifies inter alia the ATAD and the DAC Directives and will be further discussed in Section 6.

In conclusion, the ATAD has introduced a new common set of rules on corporate tax avoidance throughout the EU. There is, however, a lack of interpretation guidance and case law, which has resulted in what appears to be a fragmented and uneven implementation landscape among Member States. In a similar vein, limited evidence is available in literature regarding its application. Taking into consideration the calls for simplification of legal frameworks and enhancement of competitiveness -such as the ones by the Letta Report[60] and the European Parliament,[61] the European Union now focuses on the effectiveness of existing rules rather than the introduction of new rules focused on tax avoidance.

[56] Ibid 37.

[57] Haslehner and Pantazatou (n 43).

[58] NA Paulus, 'The Anti-Tax-Avoidance Directive: An Initiative to Successfully Curb Profit Shifting? (2022) 24 *Journal of Public Economic Theory* 529.

[59] European Commission, 'Evaluation of Council Directive (EU) 2016/1164, as amended by Council Directive (EU) 2017/952, laying down rules against tax avoidance practices that directly affect the functioning of the internal market', SWD(2026) 168 final, at taxation-customs.ec.europa.eu.

[60] E Letta, 'Much More than a Market' (April 2024), at www.consilium.europa.eu.

[61] European Parliament Resolution 2024/2118(INI) of 9 October 2025 on the role of simple tax rules and tax fragmentation in European competitiveness, at www.europarl.europa.eu. The Resolution emphasises the significance of simplification and further harmonisation on tax matters for the competitiveness of European enterprises and the functioning of the internal market.

4. State aid control as a means of tackling tax avoidance and harmful tax competition

4.1. The interrelation between measures against tax avoidance and harmful tax practices

As already mentioned, tax avoidance relates to the actions of tax payers, while harmful tax competition refers to actions of states. The two concepts are closely intertwined, in the sense that anti-tax avoidance provisions set limits to the states' capabilities of providing preferential tax treatment, or tax incentives which are incompatible with the aims and the spirit of the anti-tax avoidance rules. Harmful tax regimes and tax avoidance both produce similar results, namely revenue losses for states, unfair burdens for tax payers, and uneven level playing field for businesses.[62] This interrelation is also evident in the European legal order; for example, the Anti-Tax Avoidance Directive established a minimum standard of what constitutes an abusive practice and prevents Member States from introducing or maintaining provisions that could have been used for harmful tax competition purposes.[63] In addition, the Court of Justice interpretation in the state aid cases discussed in this Section may be used to inform the assessment of Member States' implementation of the ATAD, and particularly its general anti-abuse rule.[64]

The interrelation between tax avoidance and harmful tax competition is also manifested by the OECD BEPS Action Plan. Most actions concern obligations of states to introduce anti-tax avoidance rules or other related measures, which restricts their ability to engage in tax competition. In addition, Action 5 explicitly addresses 'harmful tax practices' by introducing a peer-review system of assessing national regimes that facilitate unfair tax base erosion of other jurisdictions. As already mentioned in Section 2, the 1997 Code of Conduct on Business Taxation identified OECD guidelines as a standard for Member States' tax rules, deviation from which may constitute harmful tax competition. State action, whether by law or administrative practice, that confers a selective advantage to certain undertakings is in principle prohibited under European state aid law and therefore state aid rules became relevant, as it will be discussed in the present Section.

4.2. Enforcement of state aid rules by the Commission and evaluation by the General Court

The possibility of using EU state aid rules to assess harmful tax competition regimes begun to become apparent in the 2000s. The 1997 Code of Conduct for Business Taxation, along with other institutional initiatives, have caused what has been described

[62] See the European Court of Auditors Report (n 18) 8.
[63] Caziero and Lazarov (n 34) 1793.
[64] Scherleitner and Korving (n 44).

as the 'first wave' of Commission enforcement in the field of business taxation in relation to harmful tax regimes.[65] These first cases included the assessment of a Belgian scheme on company 'coordination centers' resulting in reduced income taxation, which ended with the CJEU judgment in *Belgium and Forum 187* declaring the scheme incompatible with state aid rules.[66] In addition, in its 2011 judgment in *Gibraltar*,[67] the CJEU found that even apparently neutral national legislation may confer advantages to certain undertakings, and thus paved the way for the evaluation of potentially harmful national tax competition measures under state aid rules.[68]

In 2014 the Commission began investigations on tax rulings[69] which could constitute illegal state aid, predominantly with regard to application of transfer pricing rules. The background of these investigations may be traced back to preceding soft law instruments, such as the Code of Conduct, but also to political priorities of the time,[70] in combination with European and global renewed interest in combatting tax avoidance because of the BEPS 2013-2015 Action Plan.[71] A new approach was followed by the Commission in these cases, which focused on individual companies and took into consideration the OECD standards and guidelines.[72] This new interpretation of state aid rules by the Commission raised a lot of skepticism in legal literature.[73] The 2014-2019 investigations led to a large number of Commission's infringement decisions against large multinationals, and, eventually, to a number of very high-profile cases before the CJEU, which, for the sake of concision, will be only briefly mentioned in the following paragraphs.

In *Fiat I*,[74] the General Court affirmed the Commission's decision, while in *Starbucks*[75] and *Amazon I*,[76] the infringement decisions of the Commission were

[65] Kyriazis (n 12) 288-291. See also E Traversa and PM Sabbadini, 'Anti-avoidance Measures and State Aid in a Post-BEPS Context: An Attempt at Reconciliation' in I Richelle, W Schön, and E Traversa (eds), *State Aid Law and Business Taxation* (Springer 2016) 86, 96.

[66] Joined Cases C-182/03 and C-217/03 *Belgium and Forum 187 ASBL v Commission*, EU:C:2006:416.

[67] Joined Cases C-106/09 P and C-107/09 P *Gibraltar*, EU:C:2011:732

[68] See Mason (n 4) 273-274.

[69] Tax rulings are in essence letters of administrative authorities to undertakings specifying the way in which their corporate income will be calculated and taxed.

[70] Kyriazis (n 12) 307-309.

[71] S Moreno González, 'State Aid and Tax Competition: Comments on the European Commission's Decisions on Transfer Pricing Rulings' (2016) 15 *European State Aid Law Quarterly* 556-557.

[72] See ibid 560 and E Traversa and A Flamini, 'Fighting Harmful Tax Competition through EU State Aid Law: Will the Hardening of Soft Law Suffice?' (2015) 14 *European State Aid Law Quarterly* 323, 330.

[73] See for example ibid, Gonzales (n 71) as well as L Lovdahl Gormsen, 'EU State Aid Law and Transfer Pricing: A Critical Introduction to a New Saga' (2016) 7 *Journal of European Competition Law & Practice* 369.

[74] Joined Cases T-755/15 and T-759/15 *Luxembourg v Commission*, EU:T:2019:670 (*Fiat I*).

[75] Joined Cases T-760/15 and T-636/16 *Netherlands and Others v Commission*, EU:T:2019:669 (*Starbucks*).

[76] Case T-816/17 *Luxembourg and Amazon v Commission*, EU:T:2021:252.

annulled. The common ground arising from these cases, regardless of the final outcome, is that the General Court accepted the Commission's approach regarding the existence of a European 'arm's length principle',[77] based on OECD related guidance.[78] The Arm's Length Principle (or ALP) is intended to regulate transfer pricing between undertakings and, in brief, maintains that transactions between intra-group companies should be remunerated as if they had been agreed to by independent companies negotiating under comparable circumstances. *Engie*[79] was a slightly different case, in which the General Court upheld the Commission's decisions and found that Luxembourg granted unlawful state aid to the company by misinterpreting its national anti-avoidance rules.[80] *Apple I*,[81] decided in 2020, was a case similar to *Fiat I* and *Starbucks*, involving the arm's length principle, in which, however, according to the General Court, the Commission had failed to prove the conditions of state aid to the required standard.[82] In *Belgian Excess Profit* ruling cases[83] the issue at stake was whether Belgium had deviated from its reference framework (i.e. its national income tax rules) on profit adjustments. After being resend to the General Court by the Court of Justice, the final decision was published in 2024 and upheld the Commission's findings that Belgium granted an unlawful selective advantage to various different companies through its 'Excess Profit Ruling' scheme.[84]

4.3. Fiscal state aid cases before the Court of Justice

The above-mentioned General Court judgments lining with the Commission's apparently innovative approach on the interpretation of state aid law as a means of addressing aggressive tax planning were criticised in legal literature. As observed, the novel interpretation does not reflect a well-founded and consolidated approach, which could have been possibly acknowledged by Member States and tax payers at the time when the alleged aid was granted, and therefore raises legal certainty

[77] See D Pelekis, 'The Burden and Standard of Proof in the Tax Ruling Cases: A Practical Limit to the EU's Arm's Length Principle?' (2021) 12 *Journal of European Competition Law & Practice* 669.

[78] In particular, the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD 2010), at www.oecd.org.

[79] Joined Cases T-516/18 and T-525/18 *Luxemburg and Others v Commission*, EU:T:2021:251 (*Engie I*).

[80] For a comment on *Amazon I* and *Engie I* see G Bellenghi, 'The General Court in Amazon and Engie: A New Effect-based Approach Aimed at the Endorsement of the "Vestager Doctrine"?' (2021) 6 *European Papers* 1097.

[81] Joined Cases T-778/16 and T-892/16 *Ireland v Commission*, EU:T:2020:338.

[82] For the discussion on the burden of proof in *Apple*, *Starbucks* and *Fiat*, see Pelekis (n 77).

[83] The final judgment is Case T-131/16 RENV *Belgium v Commission*, EU:T:2023:561.

[84] J Leroy, 'The Belgian Excess Profit Ruling-Saga: Another One Bites the Dust: Annotation of the Judgment of the General Court (Second Chamber, Extended Composition) of 20 September 2023 in Case T-131/16 RENV Belgium v Commission' (2024) 23 *European State Aid Law Quarterly* 206.

issues.[85] Despite the fact that tackling harmful tax competition is a legitimate aim, stretching state aid rules to their boundaries is not a desirable option to achieve it.[86] In addition, the approach of the Commission and its endorsement by the General Court raised wider doctrinal issues in relation to the goals of state aid policy, the constraint of Member States' tax sovereignty and the powers of the Commission.[87]

The main reasoning of the General Court and the Commission was subsequently overturned upon appeal by the Court of Justice: the first related case was *Fiat II*, [88] decided in the end of 2022, where the Court disagreed with the existence of an 'EU arm's length principle' and the reference to the OECD guidance, and annulled the General Court's decision for not defining a proper 'reference system' based solely on Luxembourgish law, in order to establish the selective advantage. A similar reasoning was put forward in *Amazon II* one year later,[89] in which the judgment of the General Court was equally annulled. In a similar vein, in *Engie II* the Court of Justice found that the Commission had misinterpreted national tax provisions, repeating that each Member State is competent to determine the characteristics of tax according to its national law and the principle of fiscal autonomy.[90] These cases have been seen as a blow to the Commission's attempt to challenge favourable tax rulings to individual MNEs, although it appears that certain options to use state aid rules based on alternative reasoning remain.[91]

4.4. The *Apple* judgement and the prospects of further enforcement

Given the previous rulings, the *Apple* judgment[92] in September 2024 came as a big surprise. The Court of Justice annulled the General Court's decision in favour of Apple, and ruled that Ireland's approach to the intra-group allocation of profits of Apple constituted unlawful state aid. The Court found that the Commission had sufficiently proved the selective advantage of Apple based on Irish rules on transfer

[85] G Allevato, 'Judicial Review of the State Aid Decisions on Advance Tax Rulings: A Last Resort to Safeguard the Rule of Law' (2022) 62 *European Taxation* 1.

[86] Kyriazis (n 12) 313.

[87] Mason (n 4) 262-285.

[88] Joined Cases C-885/19 P and C-898/19 P *Fiat Chrysler Finance Europe and Ireland v Commission*, EU:C:2022:859.

[89] Case C-457/21 P *Commission v Luxembourg and Amazon*, EU:C:2023:985.

[90] Joined Cases C-451/21 P and C-454/21 P *Luxembourg and Engie v Commission*, EU:C:2023:948.

[91] See the comments of S Daly, 'Fiat v Commission: A Misconception at the Heart of the Tax Ruling Cases' (2023) 86 *Modern Law Review* 1489, and S Daly, 'Commission v Luxembourg and Engie – (Another?) Mortal Wound in the Commission's Campaign' (2024) *British Tax Review* 91. An additional case on alleged state aid in breach of UK Controlled Foreign Company rules was decided in September 2024 and similarly rejected the Commission's interpretation of the UK national reference framework. See Joined Cases C-555/22 P, C-556/22 P and C-564/22 P *UK and others v Commission*, EU:C:2024:763.

[92] Case C-465/20 P *European Commission v Ireland and Apple*, EU:C:2024:724.

pricing. The decision has sparked severe criticism in literature for many reasons: from a strictly technical perspective, the decision appears to blur the lines already set by previous judgments, because it implicitly endorses the Commission's approach regarding the 'arm's length principle' and the clarity of transfer pricing rules, but also adds further uncertainties to the burden of proof rules.[93] Furthermore, it has been argued that it compromises the rule of law, Member States' tax sovereignty, separation of powers, and the principle of legality.[94]

As highlighted by commentators, the decision should be put in context with the general problem of transfer pricing rules, which remain flawed and bring distortions among Member States' tax policies. The judgment appears to recognise transfer pricing as a legal standard, when it is generally acknowledged, within and outside the EU, that the regime is outdated and should be revisited.[95] At the same time, a Proposal for an EU transfer pricing Directive was pending since 2023.[96] Nonetheless, it should also be noted that the majority of the literature see the *Apple* judgment as a case heavily reliant on technicalities and factual specificities that could not easily be repeated.

The question that arises after nearly a decade of legal developments is whether there is any room left for tax avoidance scrutiny under state aid rules. Given the lengthy procedures, the judicial outcomes and the theoretical debate, the answer appears to be that the options of the European Commission are minimal. The CJEU judgments have clarified many important legal questions and provided guidance on how fiscal state aid should be evaluated in cases of tax competition and aggressive tax planning: the benchmark should rely on national law and the standard of proof for the Commission is high.

Based on the new case law, the literature has begun to offer new insights on how state aid rules should be applied in the context of preferential fiscal measures. The notion of discrimination in the interpretation of state aid rules has been examined and a structured framework for assessment has been proposed.[97] Conditions for establishing illegal state aid as a derogation from the 'arm's length principle' on transfer pricing have also been developed, which emphasise that domestic regulations should act as the primary reference framework.[98] These findings, along with previous literature on the

[93] L Parada, 'Breaking Down the CJEU's Decision in Apple: An Unsatisfactory Outcome' (2025) 1 *Highlights and Insights on European Taxation*, at ssrn.com.

[94] R Mason and S Daly, 'What Went Wrong in the Apple State Aid Case and How to Fix It : Part 2 Suggested Reforms' (Virginia Public Law and Legal Theory Research Paper No. 2025-57, Virginia Law and Economics Research Paper No. 2025-16), at papers.ssrn.com.

[95] P Saint-Amans, 'One Bad Apple Decision: EU Tax Ruling Entrenches Distortions' (Bruegel, 19 November 2024), at www.bruegel.org.

[96] European Commission, 'Proposal for a Council Directive on transfer pricing', COM(2023) 529 final, 2023/0322(CNS), at eur-lex.europa.eu.

[97] C McMahon, 'Selectivity as Discrimination: Lessons from the Case Law on Fiscal Measures for Identifying State Aid' (2024) 43 *Yearbook of European Law* 261.

[98] H López and A Navarro, 'EU State Aid and the Tax Allocation of Multinationals' Profits' (2024) 61 *Common Market Law Review* 1255.

goals of state aid rules[99] and the need for a new deferential standard[100] to assess Member States' actions should inform future judicial practice. It is remarkable, though, that no new cases have been pursued by the European Commission in the last years, and this may be seen as a further indication that the EU institutions have changed their focus with regard to anti-tax avoidance enforcement, from preventing harmful tax competition through state aid rules to enforcing the common anti-tax avoidance rules, in parallel to examining the prospects of introducing further European rules on direct taxation.

5. The prospects of the Minimum Tax Directive

5.1. The core provisions of the Minimum Tax Directive

The Minimum Tax Directive[101] was published at the end of 2022 in order to incorporate the OECD/G20 Pillar Two rules in the European legal order. Although the introduction of a minimum corporate income tax in the European Union appears extraordinary, it may be explained by global developments in the field of tax avoidance and aggressive tax planning[102] as previously discussed. The legal basis of the Directive is Article 115 TFEU on the internal market, which has been used repeatedly in the past for legislation affecting direct taxation and requires unanimity.

The main idea of the Pillar Two rules and the Directive is at first sight simple: when a multinational undertaking is taxed with an effective tax rate of less than 15%, a top-up tax will apply to reach 15%. This will be achieved in principle through the Income Inclusion Rule (IIR), according to which each Member State shall apply a top-up tax to parent entities located in its territory on the undertaxed profits of their groups worldwide. When the IIR is not applied, the Under-Taxed Payments Rule (UTPR) acts as 'backstop' and allows the Member State to apply the minimum tax to any undertaking operating in its jurisdiction on its group's undertaxed profits worldwide. In addition, each Member State enjoys the discretion to collect the tax from domestic operations of any domestic or foreign MNE within its jurisdiction (Qualified Domestic Minimum Top-Up Tax – QDMTT). The Directive applies to MNEs with a total income of more than EUR 750 million annually, but also to large domestic groups; the inclusion of domestic groups, although not required by the

[99] Such as Mason (n 4) and Daly 2024 (n 91) 102.

[100] See Daly 2024 (n 91).

[101] Council Directive No 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.

[102] See, inter alia, M Scherleitner, 'The EU Minimum Tax Directive – A Conceptual Discussion of a Bold Policy Move' (2024) 30 *European Law Journal* 653; L Hakelberg, 'Forced Exit from the Joint-Decision Trap: US Power and the Harmonisation of Company Taxation in the EU' (2024) *Journal of European Public Policy* 1.

OECD rules, was deemed necessary for reasons of equal treatment, but also for cohesion purposes.[103]

The effective tax rate, which acts as the benchmark for the application of the minimum tax, is calculated according to complex rules within the Directive and requires prior calculation of the 'adjusted cover taxes' and the 'net qualifying income'.[104] The rules are notoriously complicated and the OECD continues to issue guidance on their implementation. The exact effect of this guidance is uncertain; could it be made binding, in order to ensure a uniform implementation of the Directive? Overall, the fact that the Directive is based on a soft law instrument and its amendment requires unanimity is one of the biggest challenges for its effective implementation.[105] There are no Commission guidelines so far, while the significance of guidance and uniform interpretation is particularly evident in the case of the QDMTT rule.[106]

5.2. Critical assessment of the Directive

The global minimum tax itself has been the object of severe criticism, especially in legal literature. Authors point to the difficulties of effectively implementing the Pillar Two rules because of state interests, legitimacy concerns and administrative restraints.[107] It is further argued that the rules are destined to have a restricted impact due to the design of the policy itself, not due to its implementation, but also because of the peculiarities of the global system of business taxation.[108] The Pillar Two international agreement may also raise wider issues of fairness, because it is likely to benefit richer countries to the detriment of poorer and developing countries.[109] It should not be disregarded that the United States have withdrawn their support to the OECD rules.

Apart from the above-mentioned wider considerations, the literature has also pointed to concrete issues on the implementation of the Pillar Two rules in the context of the Directive and the European legal order. The Directive may raise discrimination issues, especially with regard to its transitional rules, but it appears that such

[103] AP Dourado, 'Pillar Two from the Perspective of the European Union' (2022) *British Tax Review* 573.

[104] L De Broe, 'Some EU and Tax Treaty Law Considerations on the draft EU Directive on Global Minimum Taxation for Multinationals in the Union' (2022) 50 *Intertax* 874, 876.

[105] Scherleitner (n 102).

[106] L Hrdlicka, 'The Pillar 2 Directive and the Qualified Domestic (Minimum) Top-up Tax Puzzle' (2024) 52 *Intertax* 620.

[107] C Noonan and V Plekhanova, 'Compliance Challenges of the BEPS Two-Pillar Solution' (2022) 5 *British Tax Review* 512. See also C Peters, 'The Legitimacy of the OECD's Work on Pillar Two: An Analysis of the Overconfidence in a "Devilish Logic"' (2023) 51 *Intertax* 554.

[108] J Vella, 'The Global Minimum Tax and The Future of International Taxation' (University of Oxford/ Said Business School Working Paper 2025-08), at oxfordtax.sbs.ox.ac.uk.

[109] R de la Feria, 'The Perceived (Un)Fairness of the Global Minimum Corporate Tax Rate' in W Haslehner, G Kofler, K Pantazatou and A Rust (eds), *The "Pillar Two" Global Minimum Tax* (Edward Elgar Publishing 2024).

allegations would be easily dismissed.[110] The most significant problem of the Directive from a European law perspective appears to be the lack of dispute resolution mechanisms within the OECD rules or the Directive, which may raise fundamental rights issues.[111] An amendment of the Directive and the related international tax treaties is therefore deemed necessary to overcome this problem.[112]

In addition, further 'loopholes' are identified in the rules that may undermine the aim of the Directive to ensure a minimum level of corporate taxation.[113] The substance carve-out rules are seen as such a loophole; these rules allow for certain percentages of payroll costs and value of tangible assets in the jurisdiction to be excluded from taxable income.[114] Despite the fact that the above-mentioned rules are obviously set to encourage investment and provide a relief to undertakings with a real economic activity in a jurisdiction, it is argued that they do not favor innovation[115] and they may be abused by MNEs displacing their assets and personnel in order to minimise the effect of the minimum tax.[116] There is also evidence from economic literature showing that the effect of the substance carve-out rules will be very heterogeneous across countries and will significantly reduce the intended effective tax rate of 15%.[117]

The possibility of states differentiating their policies in order to evade the rules of the Directive and maintain their tax competition through other measures is also highlighted in literature.[118] States use tax incentives and tax credits for different purposes, such as research and development, attraction of foreign investment or support to certain industries. The effect of the Pillar Two rules on different types of tax incentives is highly dependent on the design of the initiative and firm characteristics,[119] a fact that may allow states to continue to offer tax incentives which are minimally

[110] De Broe (n 104) 878. See also Panayi (n 11) 250-252.

[111] De Broe (n 104); Panayi (n 11).

[112] De Broe (n 104).

[113] A Alstadsæter, S Godar, P Nicolaides and G Zucman, 'Global Tax Evasion Report 2024' (EU Tax Observatory 2023), at www.taxobservatory.eu.

[114] In the Minimum Tax Directive this rule is included in Art 28.

[115] De Broe (n 104) 879.

[116] Y Biondi, 'Corporate Control and Exceptions to Minimum Corporate Taxation: A Step Toward Fairness or Financialisation?' (2022) 13 *Accounting, Economics, and Law: A Convivium* 407, 413; Panayi (n 11) 251.

[117] See for example G Schjelderup and F Stähler, 'The Economics of the Global Minimum Tax' (2023) 31 *International Tax and Public Finance* 935; MP Devereux, J Paraknewitz, and M Simmler, 'Empirical Evidence on the Global Minimum Tax: What Is a Critical Mass and How Large is the Substance-Based Income Exclusion?' (2023) 44 *Fiscal Studies* 9.

[118] Alstadsæter, Godar, Nicolaides and Zucman (n 113) 53.

[119] As shown by a study on R&D initiatives for the European Parliament, see H Heckemeyer, K Nicolay, C Spengel, D Steinbrenner and S Wickel, 'Tax Incentives and Investments in the EU: Best Practices and Ways to Stimulate Private Investments and Prevent Harmful Tax Practices' (May 2025), at www.europarl.europa.eu.

affected by the minimum tax.[120] Qualified Refundable Tax Credits (QRTC) are a type of incentive which is treated in a beneficial manner under Pillar Two rules.[121] In addition, the substance carve-out rules may also provide options for maintenance of tax incentives and tax competition.[122] Economic studies examining the impact of OECD Pillar Two rules on tax competition also conclude that the effectiveness of the global minimum tax may be significantly lower than expected, because of the different effect that various types of tax incentives and other subsidies have on the effective tax rate.[123]

To sum up, the introduction of a corporate minimum tax is a revolutionary development which could make a difference on tax avoidance. Apart from doctrinal issues on its legitimacy and interpretation, it appears that there are several options to evade its results, both from an undertaking and from a state perspective. Taking also into account that the framework is novel, its effectiveness will be greatly dependent on uniform application guidance and monitoring of enforcement on behalf of the EU, as well as on a Member State's willingness to pursue its objectives through the actions of its national authorities.

6. Pending and future legislative initiatives on tax avoidance

Since 2021, the European Commission has proposed a number of EU Directives on direct taxation which are directly or indirectly connected to tax avoidance. The 'Unshell' Directive proposal aimed to provide a framework against entities without substantive activity in the jurisdiction, created only for aggressive tax planning purposes ('shell' entities).[124] The proposal has been heavily criticised in literature for lack of legal certainty and for placing unjustifiable heavy burdens on affected undertakings.[125]

[120] See V Chand and K Romanovska, 'The Impact of Pillar Two on Corporate Tax Incentives and Incentives Post Pillar Two: The Potential Rise of Tax Credits and Subsidies' (2023) 6 *International Tax Studies* 56.

[121] A 'Qualified Refundable Tax Credit' is a tax credit which becomes refundable within four years, as a cash payment or cash equivalent, see Arts 3 (38) and 16 (5) of the Minimum Tax Directive. These credits are treated as income and therefore do not increase the effective tax rate in the same manner as it would be increased if they were treated as reductions to the amount of tax.

[122] N Bammens and D Bettens, 'The Potential Impact of Pillar Two on Tax Incentives' (2023) 51 *Intertax* 155.

[123] E Janeba and G Schjelderup, 'The Global Minimum Tax Raises more Revenues than You Think, or Much Less' (2023) *Journal of International Economics* 103837; J Vella, MP Devereux, and H Wardell-Burrus, 'Pillar 2's Impact on Tax Competition' (Oxford University Centre for Business Taxation, Working Paper 11-2022), at oxfordtax.sbs.ox.ac.uk.

[124] Proposal for a Council Directive of 22 December 2021 laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU, COM(2021) 565 final.

[125] See, inter alia, Panayi (n 11) 253-256, P Pistone, JF Pinto Nogueira, A Turina and I Lazarov, 'Abuse, Shell Entities and Right of Establishment: A Plea for Refocusing Current Proposals and Achieving Deeper Coordination within the Internal Market' (2022) *World Tax Journal* 187.

In addition, the Transfer Pricing Directive Proposal[126] aimed to introduce harmonised rules on transfer pricing in intra-group transactions, clarifying at the same time the status of the OECD guidance on the 'arms' length principle'. Transfer pricing is a major issue in tax base erosion and profit shifting, as indicated by the CJEU case law discussed in Section 4, but harmonisation of national rules is an almost unfeasible task, because of the flexible nature of the rules and the disparities in national regimes.[127] Another proposal on the Debt Equity Bias Ratio Allowance (DEBRA), regulating the tax advantages for debt and equity payments, was launched in 2022.[128] The abovementioned proposals, along with other initiatives discussed below, raised doubts about their coherence, complexity and actual harmonisation results.[129]

Despite the ambitious character of the initiatives, in its 2026 work programme published in October 2025, the European Commission revealed its intention to formally withdraw all three abovementioned proposals within six months.[130] These developments may be attributed to the urgent need for simplification of the taxation system, as recently highlighted by various sources, including the European Parliament.[131] At the same time, the Commission confirmed as pending the following initiatives: the 2023 Directive proposal named 'Business in Europe: Framework for Income Taxation (BEFIT),[132] the 2022 Directive proposal for a Head Office Tax (HOT) system for micro, small and medium sized enterprises[133] and the 2018 proposals for Directives on a Digital Services Tax[134] and on 'corporate taxation of a significant digital presence'.[135]

[126] Proposal for a Council Directive of 12 September 2023 on transfer pricing, COM(2023) 529 final, 2023/0322(CNS).

[127] For the discussion see F Lo Bianco, 'Need to Revisit the Arm's Length Range in the Proposal for EU Directive on Transfer Pricing' (2025) 53 *Intertax* 284; R Doeleman, 'In Principle, (Im)possible: Harmonizing an EU Arm's Length Principle' (2023) 32 *EC Tax Review* 93.

[128] Proposal for a Council Directive of 11 May 2022 on laying down rules on a debt-equity bias reduction allowance and on limiting the deductibility of interest for corporate income tax purposes, COM/2022/216 final, 2022/0154(CNS).

[129] J Korving, '"BEFIT and HOT: FASTER and SAFE!" EU Law or Slogan for Slimming Pills?'(2024) 63 *European Taxation* 513, at www.ibfd.org.

[130] European Commission, 'Commission Work Programme 2026', at commission.europa.eu.

[131] See European Parliament Resolution (n 61).

[132] Proposal for a Council Directive of 12 September 2023 on Business in Europe, 'Framework for Income Taxation (BEFIT)', COM(2023)532 final 2023/0321 (CNS).

[133] Proposal for a Council Directive of 12 September 2023 establishing a Head Office Tax system for micro, small and medium sized enterprises, and amending Directive 2011/16/EU, COM(2023)528 final, 2023/0320 (CNS). The proposal in principle establishes an optional regime of taxation to the benefit of cross-border SMEs and it is therefore marginally connected to tax avoidance.

[134] Proposal for a Council Directive of 21 March 2018 on the common system of a digital services tax on revenues resulting from the provision of certain digital services, COM (2018)148 final, 2018/0073 (CNS).

[135] Proposal for a Council Directive of 21 March 2018 laying down rules relating to the corporate taxation of a significant digital presence, COM(2018)147 final, 2018/0072 (CNS).

The BEFIT proposal is perhaps the most significant legislative initiative, capable of having a tangible effect on tax base erosion.[136] The proposed Directive introduces uniform rules for calculation of corporate income for European groups and adheres to international accounting standards as well as Pillar Two rules. The introduction of a common European tax base via a binding framework is envisaged as a revolutionary development,[137] which, apart from contributing to fairer taxation within the internal market, indicates a change in mindset with regard to the effect of EU action on Member States' tax sovereignty.[138] The proposal is based on Article 115 TFEU, which again brings to the surface the problem of unanimity for decision-making in direct taxation matters.[139]

Taxation of digital services is another major issue affecting corporate taxation and tax avoidance. The lack of physical presence and the difficulties of profit allocation for digital giants challenge traditional tax regimes. OECD Pillar One rules aim at the reallocation of taxing rights to limit tax base erosion by digital companies, but, as already mentioned, the prospects of an international agreement seem at present very limited. Meanwhile, a number of EU Member States have introduced some form of national digital services tax.[140] The lack of global progress on taxation of digital services has revived the discussion on the benefits and the potential design of an 'EU digital levy', which would be compatible to European Union principles and would contribute to the increase of EU public revenues.[141] A new interpretation of existing income taxation regimes has also been proposed to address digital taxation challenges.[142] Nonetheless, since negotiations on the 2018 Proposals do not seem to advance, the issue may be expected to be readdressed in future legislative initiatives.

Finally, at the time of writing of this study, on June 24, 2026, the Commission announced two landmark Directive proposals. The first one is the taxation 'Omnibus' Directive proposal,[143] which aims at the simplification of direct taxation

[136] Panayi (n 11). For an early empirical assessment of the proposed BEFIT methodology see J Andrade Vicente, 'Rethinking Corporate Taxation in the European Union: How and Where to Tax Multinational Enterprises?' (2025) 28 *Journal of Economic Policy Reform* 281.

[137] C Peeters, 'A Governance Analysis of BEFIT: How the Member States' Wish to Obtain more Regulatory Authority is Driving a Revolution' (2023) 32 *EC Tax Review* 195.

[138] Panayi (n 11) 243.

[139] Perotto (n 19) 457.

[140] Namely Austria, Denmark, France, Hungary, Italy, Poland, Portugal and Spain. See TD Magalhães and A Christians, 'Taxing Data when the United States Disagrees' (2024) 3 *European Law Open* 939, 941.

[141] See K Pantazatou, 'Why EU Revenue Matters: A Case for an EU Digital Levy' (2024) 3 *European Law Open* 919. For an earlier assessment see also N Pinto, F João, P Pistone, and A Turina, 'Digital Services Tax: Assessing the Policy Reasons for its Introduction in the European Union: Feedback to the EU Consultation on the Introduction of a Digital Levy' (2021) 3 *International Tax Studies* 3.

[142] See Magalhães and Christians (n 140).

[143] European Commission, 'Proposal for a Council Directive amending Directives 2003/49/EC, 2009/133/EC, 2011/96/EU, (EU) 2016/1164, (EU)2017/1852, (EU) 2025/50 as regards the

provisions and amends, inter alia, the Anti-Tax Avoidance Directive and the Dispute Resolution Mechanism Directive. With regard to the ATAD, the proposed Directive brings more harmonisation to some of its individual rules, while it also resolves the issue of potential overlaps between the ATAD and the Minimum Tax Directive – an issue which had been highlighted by some commentators –[144] by clarifying that companies falling under the Minimum Tax Directive will not be subject to the Controlled Foreign Companies rules of the ATAD. The second Directive proposal, released on the same day, concerns the recast of the Directive on Administrative Cooperation (DAC) and aims at the reduction and simplification of reporting obligations for businesses.[145]

In conclusion, there is an ongoing redefinition of EU priorities in the field of corporate taxation, which is directly linked to the fight against tax avoidance. The need for simplification of the legal framework, as well as political developments worldwide and especially in the United States, have shifted the focus on the overall reassessment of European taxation regulation through the 'Omnibus' Directive Proposal. Discussions on a common corporate tax base under the BEFIT proposal and on alternatives for the taxation of digital services may be expected to bring forward further radical advances.

7. Conclusions

Within the European institutional framework, corporate tax avoidance and harmful tax competition is seen in principle as an impediment to the internal market. The lack of EU competence in direct taxation matters limits the options of EU institutions, as any effort to harmonise tax provisions may be subject to scrutiny under the principle of tax sovereignty. Nonetheless, the last decade has marked an unprecedented legislative activity in the field of corporate direct taxation and tax avoidance, which may be attributed to a great extent to the financial crisis and the developments at the international level.

The Anti-Tax Avoidance Directive, in effect since 2019, introduced for the first time a common European framework for tackling tax avoidance. There is a consensus on its theoretical and practical significance and its potential effects. Nonetheless, fragmentation within the EU remains. What is more, guidance on its interpretation, either by the Commission or the Court of Justice, as well as evidence on its application, is missing. This has begun to become apparent for EU institutions, thus an evaluation and amendment proposal of the ATAD have recently been published. A

simplification of the Union framework on direct taxation and supporting growth and competitiveness of the EU', COM(2026) 560 final, 2026/0163 (CNS).

[144] For example Accountancy Europe, 'The Accountancy Profession's Recommendations to Streamline the EU Tax System' (Briefing paper, September 2025), at accountancyeurope.eu.

[145] European Commission, 'Proposal for a Council Directive on administrative cooperation in the field of taxation (recast)', COM(2026) 308 final, 2026/0168 (CNS).

radical amendment of the ATAD framework does not appear possible for the time being, but emphasis shall and will be placed on strong and uniform enforcement.

Combatting harmful tax practices on behalf of states through state aid control remains a viable option within the European legal order. The potential of this practice is limited, because of the different aims pursued by state aid rules in relation to taxation regimes, and because of the need to prove in each case that the treatment of a certain undertaking deviated from what is considered 'normal' in a Member State's national taxation system. Therefore, generalised EU action based on state aid rules does not appear probable in the near future, but scrutiny of individual cases may be anticipated.

The Minimum Tax Directive is a landmark development which introduces a minimum floor for taxation of large corporations, whose effect has not yet become visible. Despite the options for evading its effects and its dependence on enforcement, it remains a valuable tool in fighting tax avoidance and minimising tax base erosion. The European instruments adhere to its potential and follow up on its application, despite the unfavourable international environment and it can be argued that it will be of major significance in the future.

The European Union is currently reexamining and reforming its legal regime on taxation matters. Simplification of tax provisions and restoring competitiveness of European undertakings are currently seen as the principal priorities of the European instruments. Nonetheless, it is at the same time recognised that a transparent, fair and – as much as possible – uniform taxation system is an essential element of the internal market, which necessitates a level-playing field for European businesses. Thus, the fight against corporate tax avoidance remains topical and at the core of European policies. Further integration of direct taxation rules, which will have a profound impact on tax avoidance, will depend on political will, but remains on the table for the EU. Given the uncertainties regarding the interpretation and effectiveness of European rules, as well as the unstable international circumstances, there is an evident shift towards effective enforcement of existing rules rather than the introduction of new legislation.