Pillar 2: EU Extraterritorial regulatory power in the Standard of EU Tax Good Governance

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Role EU

EU role in the formation of international law – proactive co-shaping of the international legal order alongside other actors (*Kochenov and Amtenbrink, 2013*)

In taxation

- Standard: Improve international tax cooperation and facilitate the collection of legitimate tax revenues. ***To promote fair taxation***: central to the EU's social and economic model and its sustainability. EU as a major political and economic player internationally: To ***support BEPS (smooth and timely implementation) in the single market and internationally***
- The EU needs a robust, efficient and fair business tax framework that supports the post-COVID-19 recovery, removes obstacles to cross-border investment and creates an environment conducive to fair and sustainable growth.

EU and standard of good governance in tax matters

"The Parties recognise and commit themselves to implement the principles of good governance in the tax area, including the global standards on transparency and exchange of information, fair taxation, and the minimum standards against Base Erosion and Profit Shifting (BEPS). The Parties will promote good governance in tax matters, improve international cooperation in the tax area and facilitate the collection of legitimate tax revenues".

Council of the European Union, Council Conclusions on the 'EU Standard Provision on Good Governance in Tax Matters for Agreements with Third Countries, FISC 180, ECOFIN 364 (26 Apr. 2018), http://data.consilium.europa.eu/doc/document/ST-8344-2018-INIT/en/pdf

EU and standard of good governance in tax matters

Standard can be introduced in:

- For third (non-EU countries) strategic partnership agreement**:** Legally binding framework for cooperation

- For third (non-EU countries) a coordinated tax clause that should be included in free trade agreements that the EU concludes with third countries

- For third (non-EU countries) relevant agreements, without prejudice to their respective competences. Thus trade and strategic partnership but also other areas (aid, cooperation)

EU Standard of good governance in tax matters

*The Commission has since tabled the **updated clause in all relevant new and ongoing negotiations, several of which are in the process of being successfully concluded.***

The Commission will continue to insist on the inclusion of the tax good governance clause in all relevant future negotiations on international agreements.

In the event that a third country refuses to accept the clause, or insists on changing it to the extent that it no longer serves the intended purpose, the Commission and Member States must consider the appropriate response. Such countries could be scrutinised under the EU listing exercise.

EU Standard of good governance in tax matters

- **2020 [Tax Good Governance in the EU and beyond]**

> *Tax good governance is the foundation on which fair taxation is built. Broadly, tax good governance encompasses tax transparency, fair tax competition, the absence of harmful tax measures and the application of internationally agreed standards.*

EU Standard of good governance in tax matters

- **Pillar 2 in the EU Standard of good governance in Tax Matters?**
- Approved in December 2022: The profit of the large multinational and domestic groups or companies with a combined annual turnover of at least €750 million will be taxed at a minimum rate of 15%.
- The directive has to be transposed into member states' national law by the end of 2023.
- This will still result in the ***EU being a front-runner in applying the G20/OECD global agreement*** on Pillar 2.

EU Standard of good governance in tax matters

Questions legitimacy, inclusiveness, fairness on Pillar 2

- Political agreement 137 of 141 tax jurisdictions (now 142)
- Regional Organizations (ATAF, CARICOM, developing countries) Global fair deal?
- UN Resolution approved GA- UN cooperation or instrument for international tax cooperation

IF PILLAR 2 IN THE EU STANDARD, then.

Use of the black list of non-cooperative jurisdictions to raise pressure to comply with international tax standards. Until now transparency, exchange of information, fair taxation, BEPS. And now also countries to adopt Pillar 2 and the 15% Global Minimum Tax Rate? Fairness, threshold high-necessary, legitimacy?

EU Standard of good governance in tax matters

- Summary discussions Pillar 2 at EU Platform for Tax Good Governance (8 December 2021).
- Discussion Members of the Platform:

  "It was enquired what are the implications of the Inclusive Framework agreement vis-à-vis countries that expressed their dissent such as Kenya, Nigeria, Pakistan and Sri Lanka. ***It is difficult to understand whether the Inclusive Framework works on the basis of consensus among its members or not.***

  International fora such as the United Nations proved that you can reach remarkable goals if you follow processes that are more transparent and more inclusive than the one undertaken by the OECD". (at 3)

EU Standard of good governance in tax matters

- Summary discussions Pillar 2 at EU Platform for Tax Good Governance (cont.)
- Chair reply: ***It is true that not every State actively approved these rules but the Inclusive Framework operates by consensus and not by unanimity***. Technically speaking, this serves as a common framework to adopt unilateral measures. In terms of the agreement's implementation, EU Member States will be legally bound by the Pillar 2 Directive whilst non-EU Member States will not be legally bound to implement the global agreement as this is not an international convention (unlike Pillar 1). At 4.
- ***But if still included in the EU Standard? and the consequence is the blacklisting? Are countries still free to implement or not?***

EU Standard in Agreements 2018: Philippines

Article 12

Good Governance in the Tax Area

- With a view to strengthening and developing economic activities while taking into account the need to develop an appropriate regulatory framework, the Parties recognise and will implement the principles of **good governance in the tax area**. To that effect, and in accordance with their respective competences, the Parties will improve international cooperation in the tax area, facilitate the collection of legitimate tax revenues, and develop measures for the effective implementation of the abovementioned principles.
- The Parties agree that the implementation of these principles takes place notably within the framework of existing or future bilateral tax agreements between the Philippines and Member States.

EU Standard in Agreements

EU-ACP

The EU and OACPS chief negotiators concluded their negotiations on 15 April 2021. Negotiated agreement

Art. 12 Good Governance

*6. The Parties recognise and commit themselves to implement the principles of **good governance in the tax area**, including the global standards on transparency and exchange of information, fair taxation and the minimum standards against Base Erosion and Profit Shifting (BEPS). They shall promote good governance in tax matters, improve international cooperation in the tax area and facilitate the collection of tax revenues. They shall cooperate to enhance capacity to comply with these principles and standards and reap the benefits of a thriving rulesbased financial sector. They agree to engage in timely partnership dialogue at bilateral and international levels on tax matters.*

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