III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

558TH PLENARY SESSION OF THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE – INTERACTIO, 24.2.2021-25.2.2021

Opinion of the European Economic and Social Committee on:

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)

Communication from the Commission to the European Parliament and the Council on Tax Good Governance in the EU and beyond

(COM(2020) 313 final)

Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation

(COM(2020) 314 final – 2020/0148 (CNS))

(2021/C 155/02)

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1. **Conclusions and recommendations**

1.1. The EESC broadly supports the Commission's legislative proposals and praises their coordination with the global discussions carried out at the OECD/Inclusive Framework level in order to achieve a global consensus.

1.2. The EESC agrees with the Commission's approach that good tax governance, the basis for fair taxation, requires tax transparency through the exchange of information between tax authorities, fair tax competition, the absence of harmful tax measures, more efficient tax measures and the implementation of internationally agreed rules.

1.3. The EESC furthermore agrees with the Commission's acknowledgement that tax competition is not an issue in itself ([1]). At the same time, there is a concern about the existence of unfair tax competition within the EU which promotes tax avoidance. The Committee believes that an effective monetary union requires a coherent fiscal policy and consistency between the fiscal rules of its members.

1.4. The EESC supports the Commission initiative on reviewing the Code of Good Conduct and praises the fact that the Commission proposal takes the OECD's work and the importance of embracing internationally agreed standards into due consideration, especially with regard to global principles leading to a minimum effective corporate tax rate.

1.5. The EESC deems that the result and achievements of the Code of Conduct should be more regularly updated and publicly available to civil society, in line with the Commission objective of making the concrete activity and results of the Code more transparent.

1.6. The EESC supports the Commission decision to carry out a legislative intervention aimed at enhancing cooperation among tax authorities and increased harmonisation of procedural rules across the internal market.

1.7. The EESC shares the Commission's view that tax fraud and evasion remain a threat to public finances, especially in times of crisis, as clearly demonstrated by the most recent estimations by the Commission; revenue losses in the EU due to international tax evasion by individuals — covering personal income tax, capital income taxes, as well as wealth and inheritance taxes — have indeed been estimated at EUR 46 bn in its most recent estimate. The VAT gap is estimated at around EUR 140 bn, of which some EUR 50 bn is related to cross-border frauds ([2]).

1.8. The EESC notes the reduction of the estimated gap ([3]) due to corporate tax avoidance at some EUR 35 bn per year, according to several estimates, down from the previous Commission estimations of some EUR 50-70 bn before anti-BEPS measures were introduced and the correlation, explored by the Commission, between such an improvement and the legislative efforts on tax avoidance carried out by the previous Commission ([4]). However, it remains a cause for concern in a situation where public spending to sustain the economy and society is so important.

1.9. Efficiency cannot be achieved without an intensive fight against tax crime and tax evasion, which must be improved through enhanced administrative cooperation and a more harmonised legal framework. A fiscal framework cannot be seen as fair if some Member States have facilities to circumvent it easily, which discourages others and creates inefficiency.

1.10. Given the complexity currently generated by 27 different tax systems and considering how such a plurality of models creates burdens for businesses and individuals operating across borders, the EESC encourages Member States, while respecting tax sovereignty, to harmonise tax reporting requirements and to improve cooperation between tax administrations.

([1]) 'It [the Code of Conduct] works on the premise that, whilst tax competition among countries is not problematic *per se*, there need to be common principles on the extent to which they can use their tax regimes and policies to attract businesses and profits. This is particularly important in a Single Market, where the Treaty freedoms increase the mobility of profits and investment.' (COM(2020) 313 final, page 3).

([2]) See also VAT Gap: EU countries lost EUR 140 billion in VAT revenues in 2018, with a potential increase in 2020 due to coronavirus https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1579

([3]) COM(2020) 312 final, page 5. There are other estimations, for example by the European Parliament, with estimated losses from financial crime, tax evasion and tax avoidance amounting to EUR 190 bn. Based on the OECD's comprehensive work in the Base Erosion Profit Shifting report (BEPS), Action 11, global revenue losses before any of the anti-BEPS measures were decided amounted to some USD 100-240 bn or 0,35 per cent of global GDP. The EU Commission estimated that some EUR 50-70 bn was attributable to the EU before the Anti-Tax Avoidance Directives I and II were agreed on by Member States.

([4]) The Commission issued 20 major legislative proposals during its previous five-year mandate.

1.11. The 25 actions planned by the Commission seem reasonable. Most of them are related to VAT, which is appropriate due to the high level of revenue losses in the VAT area. However, they are described very briefly and it remains difficult, for the moment, to fully assess the specific impact of such actions on the everyday operability of European citizens and businesses.

1.12. The adoption of a single VAT registration is very welcome. It is an important step towards the creation of a deepened single market, reducing the uncertainty and costs for cross-border operations.

1.13. The EESC welcomes the European Commission's proposal to modernise and harmonise VAT reporting requirements through the increased use of transaction-based ('real time') reporting and e-invoicing.

1.14. The EESC also welcomes a review of whether VAT should be levied on financial services. A thorough impact assessment is required including the VAT treatment of financial services in non-EU countries.

1.15. The EESC supports the Commission initiative for an 'EU cooperative compliance framework', based on greater trust and cooperation among multiple tax administrations to solve cross-border corporate tax issues. It is important that SMEs are given equal treatment as larger businesses in this framework. The Committee notes the substantially higher compliance burden for SMEs than for large multinational firms and urges the Commission to take steps to reduce the burden on SMEs.

1.16. The EESC considers the issue of tax reimbursement crucial, in particular in times of crisis such as currently, which imply high risk in terms of scarce liquidity for both individuals and enterprises.

1.17. The EESC would urge the Commission to assess how a simpler, more harmonised VAT bad debt relief mechanism can be brought forward. This mechanism should ensure that VAT which businesses have not been able to collect from their customers but have already paid to the tax authorities can be claimed by businesses from the tax authorities in a swift and timely manner.

1.18. The EESC considers it very important to have clear and internationally coherent tax and employment rules for digital platforms. The EESC supports the effort to increase the transparency of digital platforms in order to prevent inconsistent declarations of income, which pose a high risk of tax evasion. Reporting requirements and tax forms should be the same across Member States.

1.19. The EESC underlines that joint audits, which are in principle a useful and effective tool, should be performed respecting the rights of taxpayers, including the Charter of Fundamental Rights of the European Union, especially with regard to the rights of defence and the predictability of both the procedural and substantial rules concerning them and the collection of evidence by the prosecuting tax authorities regarding possible sanctions.

1.20. Although there has been progress in the conduct of countries and jurisdictions that were on the list of those non-cooperative for tax purposes, the overall volume of money defrauded, evaded, eluded and laundered remains so high that increased efforts must be made.

1.21. The EESC embraces the Commission's view that it is time to review the listing and see how it can be more effective and fair, also considering the new challenges of a global digitalised economy. The EESC also supports the Commission's criterion of giving specific low risk and low capacity jurisdictions the opportunity to improve their tax good governance and transparency standards within a reasonable period of time when they are, or could be, put on the list.

1.22. The EESC has proposed ([5]) launching a European pact to effectively combat tax fraud, evasion and avoidance and money laundering. The EESC called on the European Commission to promote a political initiative involving national governments and the other European institutions in achieving this goal, fostering the consensus needed for this and involving civil society. Cooperation between Member States should be the main pillar of the pact.

1.23. The EESC stresses that cooperation between civil society organisations at large and governments could contribute to raising awareness regarding environmental taxes and contribute to development by creating more equitable and sustainable societies in developing and developed countries.

1.24. The EESC encourages the Commission to continue its evaluation of the effectiveness of earlier directives on administrative cooperation.

2. **Context and Commission proposals**

2.1. *Context*

2.1.1. Achieving fair and efficient taxation is one of the main objectives of the Commission ([6]) during the current legislature. Such an objective is even more strategic in the aftermath of the COVID-19 crisis. Tax rules are, according to the Treaty, the responsibility of Member States. Member States can, however, agree to adopt directives and regulations to enhance the functioning of the internal market. An effective monetary union requires a coherent fiscal policy and consistency between the fiscal rules of its members.

2.1.2. The COVID-19 outbreak has disrupted economies across the internal market. Moreover, the EU is facing the COVID-19 crisis during transformative times, characterised by environmental challenges, continuous digital innovation and growing inequality among citizens. Member States and the European institutions are therefore required to put forward an unprecedented response, using all the available resources and tools.

2.1.3. The Commission proposals ([7]) aim both at developing an appropriate response to the COVID-19 crisis and at managing the transition to a greener and more digital scenario, in line with the principles of a social market economy enshrined in the Treaties.

2.1.4. Fair and efficient taxation plays an important role in this respect. An effective response to the major challenges triggered by the crisis largely depends on the possibility for businesses to continue domestic and cross-border trade, on a level playing field, supported by an efficient and simple tax system, and on Member States, which need to secure the tax revenues needed to finance the recovery through fair taxation of citizens and businesses. The fight against tax fraud, tax avoidance and evasion as well as supporting European businesses in simplifying and harmonising their day-to-day tax administration are crucial in order to effectively cope with the current challenges ([8]).

2.1.5. Taxation is also a policy instrument to achieve climate neutrality by 2050 ([9]), as well as the other environmental objectives of the European Green Deal ([10]). Bringing adequate tax revenues to public budgets in order to support a green transition is therefore of paramount importance. At the same time an unfavourable demographic development with an ageing population must be recognised in economic policies.

([5]) See EESC Opinion on *Combatting tax fraud, tax avoidance and money laundering* (OJ C 429, 11.12.2020, p. 6).
([6]) Political Guidelines for the Next European Commission 2019-2024.
([7]) See COM(2020) 312 final, COM(2020) 313 final, COM(2020) 314 final.
([8]) See EESC Opinion on *Combatting tax fraud, tax avoidance and money laundering* (OJ C 429, 11.12.2020, p. 6).
([9]) See COM(2020) 312 final. See also EESC opinion *Taxation mechanisms for reducing CO_2 emissions* (OJ C 364, 28.10.2020, p. 21).
([10]) See COM(2019) 640 final.

2.1.6. The Commission proposal setting an action plan for more efficient and fair taxation is divided into three different parts. First, a Communication laying down measures aimed at reducing obstacles related to taxation for businesses in the single market. In particular, the Commission is pursuing tax simplification as a tool to improve the business environment. Second, a legislative proposal to revise the directive on administrative cooperation through an automatic exchange of information between tax authorities, able to allow adequate taxation of incomes generated by sellers on digital platforms. Third, the Commission issued a Communication on *Tax good governance in the EU and beyond* to improve tax good governance both in domestic and external jurisdictions.

2.1.7. The Commission notes that the Action Plan is part of a wider and more ambitious tax programme for the EU which, in the near future, will include initiatives on: (i) environmental taxation; (ii) a reform of corporate taxation aimed at realigning taxing rights with value creation and setting a minimum level of effective taxation on business profits; (iii) a recommendation that Member States make their financial support to EU companies conditional on the absence of links between these companies and the countries and territories ([11]) on the European Union's list of non-cooperative countries and territories; and (iv) determining how proposals on taxation are to be adopted under the ordinary legislative procedure of Article 116 of the TFEU.

2.1.8. The EESC has in numerous opinions expressed its views on measures needed to enhance the efficiency of the single market, increasing the EU's own resources and kick-starting a debate on qualified majority voting on tax matters. The EESC now asks for action on the Commission proposals on the package for fair and simple taxation as urgently as possible.

2.2. *Action Plan for Fair and Simple Taxation*

2.2.1. In its Communication on tax simplification, the Commission sets out a new approach, combining actions against tax fraud and tax evasion with measures aimed at simplifying the lives of taxpayers. The plan comprises 25 actions, whose implementation is progressively scheduled over the coming years until 2024 ([12]).

2.2.2. Specific actions have been planned with regard to registration duties (identification and VAT registration). Effective and efficient registration is considered crucial to ensure all taxpayers pay their fair share. As a consequence, the Commission promotes several actions to keep the databases holding taxpayers' data effectively working and constantly up do date. Simplicity in registration is also considered important, especially when taxpayers move across Member States.

2.2.3. Another set of specific actions is planned as far as reporting obligations are concerned. Reporting from taxpayers should be as efficient as possible and based on mutual collaboration with tax authorities. Tax returns should be simple and the data requested kept to a minimum and processed through straightforward procedures carried out via a one-stop-shop digital service. Many Member States have eased some payment rules for VAT as a response to the COVID-19 pandemic.

2.2.4. Additional actions are expected to make the payment of taxes easier, specifically by making electronic payment methods, for example, smartphone applications, available to taxpayers ([13]). The amount of tax due should be correct from the start to avoid burdensome refund procedures if possible. When refunds are expected, tax administrations should handle them quickly, in order to prevent cash flow problems for taxpayers.

2.2.5. Providing legal certainty to taxpayers is a primary objective of the Commission action plan, alongside effective management of disputes when they arise. Disputes should be prevented and, when they occur, swiftly resolved between Member States within their legal systems and European Union law.

([11]) This provision concerns jurisdictions featuring in Annex I of the relevant Council Conclusions. The list is regularly updated: https://ec.europa.eu/taxation_customs/tax-common-eu-list_en

([12]) These actions are listed in COM(2020) 312 final.

([13]) European Commission (2018). Study on tax compliance costs for SMEs.

2.2.6. The Commission deems it important to allow the opportunity to correct or clarify any misunderstandings in order to avoid the escalation of disputes. The prevention of litigation is therefore encouraged, together with the fast resolution of unsettled cases to save time and money for both taxpayers and tax authorities. Some stakeholders have already expressed their preference for further intervention at EU level to prevent and solve disputes ([14]).

2.3. *Administrative cooperation between tax authorities*

2.3.1. In the past years, the EU has focused its efforts on tackling tax fraud, tax evasion and aggressive tax planning, as well as on boosting transparency through adequate cooperation between tax authorities. Even though major improvements have been made in exchanging information, the Commission proposal underlines the need to further improve the existing provisions.

2.3.2. In particular, the Commission aims to better address the challenges posed by the digitalisation of the economy with particular regard to the digital platform, the use of which make the traceability and detection of taxable events by tax authorities difficult ([15]). The problem is intensified when such transactions are performed through the use of a digital platform established in another Member State or a jurisdiction outside of the EU ([16]).

2.3.3. There appears to be a consensus among the representatives of digital platform operators on the benefits of having a standardised EU legal framework for gathering information from platforms and on the possible advantages of a solution resembling the VAT one-stop-shop.

2.3.4. As for the matter of exchange of information on request, the Commission proposal focuses on the foreseeable relevance concept. Article 5a provides for a definition of the standard of foreseeable relevance that applies in case of a request for information, setting the standard and procedural requirements to be observed by the involved authority. The request for information can relate to one or more taxpayers, as long as they are individually identified. The standard of foreseeable relevance should not apply where request for information is sent as a follow up to the exchanged cross-border ruling or an advance pricing agreement.

2.3.5. Before requesting information, the tax authority is obliged to exhaust all the usual sources of information that it could have used for obtaining the information requested and pursue all the available means. However, if by doing so the requesting authority faces disproportionate difficulties and runs the risk of jeopardising the achievement of its objectives, the obligation does not apply. In case the requesting authority did not respect this obligation, the requested authority may refuse to provide the information.

2.3.6. Section IIa lays down a legal framework for the conduct of joint audits. A joint audit is thereby defined as an administrative enquiry jointly conducted by the competent authorities of two or more Member States. The competent authorities of the Member States involved proceed in coordination, in accordance with their legal systems, to examine a case related to one or more tax subjects of common or complementary interest to them.

2.4. *Tax Good Governance in the EU and beyond*

2.4.1. The European Commission's Communication on Good Tax Governance starts from the fact that fair taxation is central to the EU's social and economic model and that good tax governance is the basis for fair taxation and sustainable revenues to sustain that model ([17]). The Communication contains proposals to: (i) reform the Code of Conduct for business taxation; (ii) review the list of non-cooperative countries and territories; and (iii) promote good tax governance at international level.

([14]) Responses to the public consultation on the evaluation of the Directive on administrative cooperation in taxation, summarised in Annex 2 of Commission staff working document — Evaluation of the Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (SWD(2019) 328 final).

([15]) Demands for requiring registration in each Member State have been raised. It would increase the administrative burden and make it harder for SMEs to expand into new countries and areas.

([16]) Proposal for a Council Directive on administrative cooperation in the field of taxation (COM(2020) 314 final).

([17]) Communication on Tax Good Governance in the EU and beyond (COM(2020) 313 final).

2.4.2. Since its creation in 1997, the Code of Conduct for Business Taxation (henceforth 'Code') ([18]) has been the EU's primary instrument to prevent harmful tax competition, setting principles for fair tax competition and to determine whether a tax regime is harmful or not ([19]).

2.4.3. Despite its achievements, the Code needs to be modernised. The nature and form of tax competition have changed substantially in the last years, due to globalisation, digitalisation, the growing role of multinationals in the world economy and complex incentive schemes introduced by some Member States.

2.4.4. More specifically, the Commission aims to widen the scope of the Code to cover all measures which pose a risk of unfair tax competition. In addition, the Code should also be updated to ensure as many cases of very low taxation as possible are duly examined inside and outside the EU.

2.4.5. Principles set out in the Code are among the criteria used to assess third countries under the EU listing of non-cooperative tax jurisdictions. The Commission intends to review the geographical scope of the EU list, updating the original scoreboard used to select the most relevant jurisdictions to screen.

2.4.6. The reflections on the geographical scope of the EU list will also consider the criteria that selected jurisdictions must comply with. Removing any jurisdiction that is currently in the scope of the EU list would impact the level playing field and undermine the positive work that most of these jurisdictions have already done. However, there should be a reflection on whether the EU listing criteria could be applied in a more targeted way for certain jurisdictions.

2.4.7. In its dialogue with third countries — and consistently with the approach embraced within the EU — the Commission will also put emphasis on environmental objectives, as well as on the 'polluter- pays principle', which requires putting a price on negative environmental externalities. According to the Commission Communication, there is under-explored potential for environmental taxes to contribute to sustainable development globally and to more equitable societies in developing countries. Cooperation between civil society organisations at large could contribute to awareness raising in this area.

2.4.8. Based on the current application of a legally binding link between good governance standards and the use of EU funds, the Commission considers that such funds could be better used to reinforce tax good governance principles ([20]). In this respect, the Commission also urges Member States to reflect the EU requirements in their national funding policies and in the compliance rules applied by their promotional banks and development agencies.

([18]) Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 1 December 1997 on a code of conduct for business taxation (OJ C 2, 6.1.1998, p. 2).

([19]) The Commission view on harmful tax competition versus fair tax competition has over time been expressed in different ways. When the draft directive on the Common Consolidated Corporate Tax Base was presented, the Commission stressed that fair tax competition based on rates offered more transparency and was to be encouraged (COM(2011) 121 final, p. 4). In the Communication on Tax Good Governance, presented in 2020, tax competition is not seen as problematic per se, but common principles for how Member States use their tax regimes are deemed needed (COM(2020) 313 final, p. 3). It is reasonable to conclude that there is good tax competition and there is harmful, unfair tax competition. Member States decide tax regimes but are required to do so in an open, transparent manner adhering to the Treaty and refraining from harmful and discriminatory rules. The EU and Member States must ensure a well-functioning single market with a sufficient degree of convergence also including in the tax area.

([20]) Several funding instruments prevent funding projects that contribute to tax avoidance. See Financial Regulation, European Fund for Sustainable Development (EFSD), the European Fund for Strategic Investment (EFSI) and the External Lending Mandate (ELM). See the Commission Communication on new requirements against tax avoidance in EU legislation governing in particular financing and investment operations (C(2018) 1756, 21.3.2018).

2.4.9. The Commission also put forward a recommendation advising Member States to make their financial support conditional on the absence of links between the beneficiary undertakings and jurisdictions inserted into the list of non-cooperative jurisdictions for tax purposes. The Commission adds, however, that a carve-out should be available to those enterprises which have substantial economic presence (supported by staff, equipment, assets and premises) in the listed jurisdictions. The efforts of Member States in this field must be implemented consistently with the need to ensure international tax fairness.

3. **General and specific comments**

3.1. *Action Plan for Fair and Simple Taxation*

3.1.1. The EESC supports the Commission's legislative proposals and praises their coordination with the global discussions carried out at the OECD/Inclusive Framework level in order to achieve a global consensus ([21]). It draws particular attention to the urgency of reaching an agreement on uniform rules on how to allocate taxable profits among countries at OECD/Inclusive Framework level as a consequence of the ongoing rapid digitalisation of economies and the need to combat tax avoidance effectively.

3.1.2. The EESC also appreciates the regulatory approach embraced by the Commission in order to develop its proposals and throughout the legislative provisions under examination. The objective is to improve the general efficiency of taxation systems, so that they are fair systems which provide the revenue necessary for the conduct of public policy while at the same time providing job and growth opportunities.

3.1.3. The EESC shares the Commission's view that tax fraud and evasion remain a threat to public finances, especially in times of crisis, as clearly demonstrated by the most recent estimations recalled by the proposals. According to the Commission, revenue losses in the EU due to international tax evasion by individuals — covering personal income tax, capital income taxes, as well as wealth and inheritance taxes — have indeed been estimated at EUR 46 bn in 2016. The VAT gap, in turn, is estimated at around EUR 140 bn, of which some EUR 50 bn is related to cross-border fraud ([22]). Individual Member States must take significant steps to tackle their national VAT gap.

3.1.4. The EESC welcomes the reduction of the estimated gap due to corporate tax avoidance at around EUR 35 bn per year from the previous Commission estimations of EUR 50-70 bn and the correlation, explored by the Commission, between such an improvement and the legislative efforts on tax avoidance carried out by the previous Commission (more than 20 tax directives in five years) ([23]).

3.1.5. In order to fully support individuals and enterprises during the times of hardship brought about by the COVID-19 crisis, the EESC urges the Commission to further work on the reduction of compliance costs related to tax obligations. Estimated tax compliance costs for large companies amount to about 2 % of taxes paid, while for SMEs the estimate is about 30 % of taxes paid.

3.1.6. Given the complexity currently generated by 27 different fiscal systems and considering how such a plurality of models makes life difficult for businesses and individuals operating across borders, the EESC encourages Member States to harmonise tax reporting requirements and to improve cooperation between tax administrations. The renewed and expanded work of the Code of Conduct Group must eliminate harmful tax measures to create a level playing field and contribute, together with legislative reforms, to promote sufficient levels of tax convergence to avoid unfair tax competition.

([21]) See EESC Opinions on *Combatting tax fraud, tax avoidance and money laundering* (OJ C 429, 11.12.2020, p. 6); *Taxation in the digitalised economy* (OJ C 353, 18.10.2019, p. 17) and *Taxation of profits of multinationals in the digital economy* (OJ C 367, 10.10.2018, p. 73).

([22]) See also VAT Gap: EU countries lost EUR 140 billion in VAT revenues in 2018, with a potential increase in 2020 due to coronavirus https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1579.

([23]) There are other estimations, for example by the European Parliament, with estimated losses from financial crime, tax evasion and tax avoidance amounting to EUR 190 bn. Based on the OECD's comprehensive work in the Base Erosion Profit Shifting report (BEPS), Action 11, global revenue losses before any of the anti-BEPS measures were decided amounted to some USD 100-240 bn or 0,35 per cent of global GDP. The EU Commission estimated that some EUR 50-70 bn was attributable to the EU before the Anti-Tax Avoidance Directives I and II were agreed on by Member States.

3.1.7. The 25 actions planned by the Commission seem reasonable. The EESC broadly supports them. Most of them are related to VAT, which is appropriate due to the high level of revenue losses in the VAT area. However, the actions are described very briefly and it remains difficult, for the moment, to fully assess the specific impact of such actions on the everyday operability of European citizens and businesses. Member States have to act decisively to enforce their national rules and decrease national VAT problems and at the same time cooperate more firmly across borders.

3.1.8. The adoption of a single VAT registration, through a continued extension of the OSS, similar to the e-commerce package, is very welcome. Even though no more details are given on what sectors will be covered, an expansion of the OSS to Articles 36-39 of Council Directive 2006/112/EC ([24]) ('VAT directive'), covering B2C supplies of goods, can be considered a very significant step forward. For example, expanding the OSS to cross-border supplies of gas, electricity, heat or cooling energy (Article 39 of the VAT directive) could also be helpful in deepening the EU energy market and aiding the energy transition.

3.1.9. The EESC welcomes the European Commission's proposal to modernise and harmonise VAT reporting requirements through increased use of transaction-based ('real time') reporting and e-invoicing. Transaction-based reporting allows tax administrations to have a complete overview of the different supply chains in real time, leading to better targeted audits and much earlier detection of fraud and potentially risky traders. Reporting requirements must, however, be easy to abide by and not entail high administrative costs or costly investment spending, in particular for SMEs ([25]). Similarly, a greater use and harmonised standard of e-invoicing could lower storage and compliance costs for businesses and would improve the fight against VAT fraud.

3.1.10. The EESC also welcomes a review of whether VAT should be levied on financial services. Many businesses encounter extra costs since some firms or financial institutions are not liable for VAT. Furthermore, exempt entities cannot claim deductions for input VAT while the created value added is not taxed by VAT. It is a complex matter and the EESC expects comprehensive impact assessments to be conducted. The EESC notes that an increase in VAT revenues would also have a positive implication for the EU budget.

3.1.11. The EESC notes that Member States have the option of using a reverse charge system to combat VAT fraud. Such an option has been used to combat VAT carousel fraud. The EESC calls for a Commission assessment of which method is most effective and has the least administrative burden to address carousel fraud.

3.1.12. Tax administrations rely on taxpayers to provide them with the correct information, and some Member States have installed 'cooperative compliance' schemes to enhance this partnership. Unfortunately, these schemes are currently only working at the national level. In this light, the EESC supports the Commission initiative for a 'EU cooperative compliance framework', based on greater trust and cooperation among multiple tax administrations to solve cross-border corporate tax issues. It is important that SMEs are given equal treatment as larger businesses in this framework.

3.1.13. However, it is still not clear how this EU cooperative compliance framework will work in practice and the EESC is eager to evaluate such developments and to provide its constructive contribution during the development and implementation process.

3.1.14. On first evaluation, the preventive dialogue to solve cross-border tax disputes planned by the Commission seems a useful and positive development, also considering that it has been a long-standing request from the business community. A harmonised approach by several Member States would be strongly welcomed, even though it remains to be evaluated how such an approach can be concretely implemented, starting from the current heterogeneous regulatory scenario ([26]).

([24]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

([25]) There are many good examples of how countries have reduced their VAT gap. The reform in Estonia in 2014 has been mentioned as one such an example.

([26]) See EESC Opinion *Initiative on Improving double taxation dispute resolution mechanisms* (OJ C 173, 31.5.2017, p. 29).

3.1.15. The issue of tax reimbursement is always crucial, and especially in times of crisis such as currently, which imply high risk in terms of scarce liquidity for both individuals and enterprises. During the COVID-19 pandemic, several countries increased the speed with which VAT refunds and reimbursements in general were paid in order to ensure businesses had enough cash to cope with an unprecedented and disruptive economic situation.

3.1.16. Given that some businesses are already suffering liquidity issues, invoices might be going to be paid with a delay or even not at all in the end, with the consequence that businesses that charged VAT in their invoices have to submit the amount to the tax authorities in the relevant VAT return period without VAT having been received (so-called 'bad debt'). In this light, the EESC would also urge the European Commission to assess how a simpler, more harmonised VAT bad debt relief mechanism can be brought forward. This mechanism should ensure that VAT which businesses have not been able to collect from their customers but have already paid to the tax authorities can be reclaimed by businesses from the tax authorities in a swift and timely manner.

3.1.17. The EESC urges national tax administrations to continue such a swift management of reimbursement, both with regard to direct and indirect taxes, suggesting a harmonised administrative approach across Europe and noting that a common system of withholding taxes for cross-border portfolio investments would be an initial step forward.

3.1.18. Tax fraud, tax evasion and related offences are prosecuted by the national courts of the Member States under a wide variety of criminal laws. However, these tax offences have, in many cases, a transnational dimension. The Committee believes that it is important to take this and the penalty structure into account, in particular in the case of joint audits between Member States. An assessment of the implications of differing penalties among Member States should be undertaken.

3.1.19. The EESC welcomes the Commission's initiative regarding a recommendation on Taxpayer's Rights in the Single Market. Providing Member States with an overview of best-practices in the area of tax in terms of simplification and digitalisation can help smoothen the relationship between taxpayers and tax authorities across the EU, to strengthen citizens' tax awareness and improve the collection of revenue. The EESC considers this a good example of a soft-law initiative.

3.2. *Administrative cooperation between tax authorities*

3.2.1. The EESC supports the Commission decision to carry out a legislative intervention aimed at enhancing cooperation among tax authorities and increased harmonisation of procedural rules across the internal market.

3.2.2. The proposal is indeed fully in line with the principle of subsidiarity set forth by Article 5 TFEU, given that it envisages an intervention of the European legislator to address issues that cannot be adequately regulated by Member States.

3.2.3. The EESC supports the intention to strengthen Eurofisc's competences, so that it becomes a reference centre on cross-border tax crimes.

3.2.4. The application of existing provisions of the Directive has indeed proved that there are significant discrepancies among Member States, since some Member States are willing to fully cooperate and exchange information, while others apply a restrictive approach or even reject exchanges of information.

3.2.5. The EESC also supports the effort to increase the transparency of digital platforms in order to prevent inconsistent declarations of income, which pose a high risk of tax evasion. Although some Member States have imposed a reporting obligation in their national legal systems, experience shows that national provisions against tax evasion are not always fully effective, especially when targeting cross-border activities. Legal certainty and clarity can therefore be ensured by a single set of reporting requirements and tax forms applying to all Member States.

3.2.6. The proportionality of the Commission proposal with regard to the procedural cooperation among national tax authorities is also welcomed by the EESC, since the modifications put forward do not appear to go beyond what is necessary to achieve the objective of a more effective exchange of information and better administrative cooperation.

3.2.7. The system of sanctions for platform operators who do not respect their declaration obligations, as indicated in Article 25a of the proposal for the DAC 7 directive, even if it is a national competence, must be applied as homogeneously as possible in all states to ensure its effectiveness.

3.2.8. Considering that the identified distortions regarding platform operators in the functioning of the internal market go beyond the borders of single Member States, EU common rules represent the minimum intervention necessary for tackling the problems in an effective manner. In this line of reasoning, the EESC encourages the Commission to further develop its role and collaboration within the OECD on the digitalisation of the economies, in order to achieve a common international approach between tax authorities to tackle global issues.

3.2.9. Article 12a(6) determines that the joint audit shall be carried out in accordance with the procedural agreements applicable in the Member State where the actions of an audit take place. The evidence collected during the joint audit should be mutually recognised by all competent authorities of the participating Member States.

3.2.10. The EESC underlines that joint audits, which are in principle a useful and very effective tool, should be performed respecting the fundamental rights of taxpayers, rigorously observing the principles of the Charter of Fundamental Rights of the European Union ([27]) with regard to the rights of defence and the predictability of both the procedural and substantial rules concerning them and the collection of evidence by the prosecuting tax authorities regarding possible sanctions.

3.2.11. In particular, the set of data to be exchanged and transmitted by tax administrations should be defined in such a way as to capture only the minimum data necessary to detect non-compliant underreporting or non-reporting, in line with the GDPR obligations ([28]), which should be interpreted and applied rigorously. Any possible negative impact on personal data should be minimised by adequate IT and procedural measures with specific regard to their collection, elaboration and subsequent storage.

3.2.12. The EESC stresses that in line with GDPR rules, the use of Group requests must have a well-founded motivation and be carried out in a careful manner so as not to infringe upon the rights of natural and legal persons, and not lead to so-called 'fishing expeditions'.

3.2.13. The EESC encourages the Commission to continue its evaluation of the effectiveness of earlier directives on administrative cooperation ([29]).

3.3. *Tax Good Governance in the EU and beyond*

3.3.1. The EESC agrees with the Commission's approach that good tax governance, the basis for fair taxation, requires tax transparency through the exchange of information between tax authorities, avoiding unfair tax competition, the absence of harmful tax measures and the implementation of internationally agreed rules. It also agrees with the European Parliament that the EU should take decisive action to tackle harmful tax competition and aggressive tax planning, in particular in tax havens.

3.3.2. The EESC supports the Commission initiative on reviewing the Code of Good Conduct and praises the fact that the Commission proposal takes the OECD's work and the importance of embracing internationally agreed standards into due consideration, especially with regard to global principles leading to a minimum effective corporate tax rate.

3.3.3. The EESC deems that the result and achievements of the Code of Conduct should be more regularly updated and publicly available to civil society, in line with the Commission objective of making the concrete activity and results of the Code more transparent.

([27]) See Charter of Fundamental Rights of the European Union (OJ C 202, 7.6.2016, p. 389).

([28]) Commission staff working document — Evaluation of the Council Directive (EU) no 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (SWD(2019) 328 final) (OJ L 119, 4.5.2016, p. 1).

([29]) SWD(2019) 327 final.

3.3.4. The Commission's approach acknowledges that tax competition is not an issue in itself ([30]). At the same time, however, the Commission and the European Parliament have on numerous occasions expressed concern about the existence of unfair tax competition within the EU which promotes tax avoidance. The Committee believes that serious work is needed to resolve this complex problem. It has recently adopted an opinion ([31]), in which it proposes launching a European pact to effectively combat tax fraud, evasion and avoidance and money laundering. The EESC called on the European Commission to promote a political initiative involving governments and the other European institutions to achieve this goal fostering the consensus needed for this and involving civil society. Cooperation between Member States should be the main pillar of the pact.

3.3.5. Widening the scope of the Code of Conduct in the EU in order to cover other measures that affect tax competition is also a regulatory choice supported by the EESC. An update to ensure that regimes leading to very low or no taxation inside or outside the EU are examined is overdue. However, the Code is a non-binding instrument that must deal with those issues that are not regulated by European legislation.

3.3.6. The Commission argues there is also a need to make the listing process clearer to third countries, boosting transparency as to why a jurisdiction is put on the list or not. Enhanced harmonisation of the standards adopted by the EU Member States and better coordination between national lists and the EU list would be useful, since the EU and several Member States follow different standards, which may create confusion.

3.3.7. The Commission also assesses the so-called tax haven blacklist, which has been in place since 2017, and has examined hundreds of harmful tax regimes globally, with many listed jurisdictions having made commitments to the Council to address concerns regarding unfair tax competition and limited transparency. The EESC embraces the Commission's view that it is time to review the listing and see how it can be more effective and fair, considering the new challenges of a global digitalised economy. The EESC also supports the Commission's criterion of giving specific low risk and low capacity jurisdictions the opportunity to improve their tax good governance and transparency standards within a reasonable period of time when they are, or could be, put on the list.

Brussels, 24 February 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

([30]) It is obvious that the Commission, like the OECD, makes a distinction between good transparent tax competition and harmful, unfair tax competition.

([31]) See EESC Opinion on *Combatting tax fraud, tax avoidance and money laundering* (OJ C 429, 11.12.2020, p. 6).