

Towards a Simpler and More Efficient EU Anti-Tax Avoidance Framework: Key Priorities for Future Reform

Update created: 15 May 2025

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On 15 May 2022, the European Parliament's FISC Subcommittee held a [public hearing](#) on "*The Future of EU Anti-Avoidance Tax Rules, Including Simplification*". This policy note builds upon the statement delivered by the author on behalf of IBFD. It begins by outlining the EU policy objectives that underpin a revision of the EU's current anti-tax avoidance framework. Then, the author examines selected design challenges within the existing anti-abuse rules, as well as broader issues contributing to regulatory complexity in the Single Market. Finally, a set of guiding principles is indicated to inform future reform efforts.

1. Setting the Framework: Tax Decluttering

Enhancing the [competitiveness](#) of the Single Market has emerged as a key priority for the European Union in its pursuit of economic growth and sustainable prosperity. Simplifying the regulatory landscape appears to be an essential step toward achieving this goal.

In the area of taxation, the [2025 Commission Work Programme](#) called for simpler and more sustainable corporate tax rules, emphasizing that high compliance costs and heterogeneous national regulations are significant barriers preventing companies from fully benefiting from a true Single Market. Similarly, the Council's [Conclusions on a Tax Decluttering and Simplification Agenda](#) urged the removal of disproportionate compliance burdens and the streamlining of outdated and overlapping tax rules.

This framework prompts a reassessment of the existing EU anti-tax avoidance rules and future initiatives to ensure alignment with these policy objectives.

2. EU Anti-Tax Avoidance Rules: Possible Improvements and Simplification Options

ATAD

In line with these policy ambitions, the European Commission has already initiated a review of the main components of the EU anti-tax avoidance architecture. Notably, in 2024, the Commission launched a call for evidence on the [Anti-Tax Avoidance Directive \(2016/1164\) \(ATAD\)](#) (as amended by the [Amending Directive to the 2016 Anti-Tax Avoidance Directive \(2017/952\) \(ATAD 2\)](#)).

As a preliminary observation, it is worthwhile considering the relationship between the ATAD and the [Minimum Taxation Directive \(2022/2523\)](#). Stakeholders responding to the call for evidence, along with several voices in the technical debate, have repeatedly highlighted the partial overlap between these two directives, suggesting that certain ATAD measures may

have become redundant. While it is true that the global minimum tax could neutralize some concerns addressed by the ATAD, the two directives pursue different policy objectives and have different scopes of application. More importantly, the global minimum tax may mitigate those concerns only if implemented consistently worldwide and if it functions in practice as designed. At this stage, it remains too early to determine whether these conditions are being met. Therefore, in the author's view, revisiting the ATAD on the basis of its interplay with the Minimum Taxation Directive seems premature.

Nevertheless, the feedback from stakeholders highlighted several critical issues and potential areas for improvement that warrant careful consideration. For example, the broad formulation of the general anti-abuse rule (GAAR), which relies on the subjective element of the main abusive purpose, creates legal uncertainty for taxpayers. As such, it would benefit from further practical guidance, particularly regarding the burden of proof, better alignment with ECJ case law on tax avoidance, and rationalization in relation to GAARs provided by other EU legislation.

Additionally, the EBITDA-based cap on interest deductibility could be periodically adjusted to reflect significant fluctuations in interest rates or replaced with sector-specific benchmarks.

Finally, the phasing out of the transactional approach to determine CFC income (the so-called CFC Model B) could be explored, as such an approach seems to overlap with the correct application of transfer pricing rules to intra-group transactions. A broader review of the CFC rules could also introduce simplifications in calculating the low-tax test and attributing CFC income to the parent entity, while addressing issues of unrelieved double taxation.

Beyond the specific design issues of each ATAD rule, their fragmented implementation and application across the EU Member States appears to be a major source of compliance burdens for businesses operating within the Single Market. This issue arises partly from the various options accorded by the Directive, such as the choice to adopt a group ratio rule under the interest deductibility limitations, or to select between two different CFC models. Additionally, the lack of shared practical guidance leads national tax authorities to interpret key terms of the ATAD differently, resulting in inconsistencies in application. Such a fragmentation not only exacerbates the complexity of the EU tax environment but also compromises the level playing field within the Single Market.

DAC6

The same problems also affect another piece of anti-tax avoidance legislation, namely the [Amending Directive to the 2011 Directive on Administrative Cooperation \[on reportable cross-border arrangements\] \(2018/822\) \(DAC6\)](#). DAC6 provides for mandatory disclosure rules on cross-border arrangements meeting certain hallmarks, thereby flagging them as potentially abusive. The broad formulation of the DAC6 hallmarks, although intended, leaves ample room for divergent interpretative practices. As a result, the same arrangement may be reportable in one Member State but exempt from disclosure in another.

Additionally, the hallmarks' overly comprehensive scope may burden tax authorities with information on arrangements that either pose no risk of abuse or are already known to them. In this respect, an overall assessment of the usefulness and effectiveness of the disclosure rules should also take into account the [findings of the European Court of Auditors](#), which signaled a limited use and poor quality of the information received under DAC6.

Therefore, a review of DAC6 should ensure that the rules are clear, easy to understand and interpreted consistently across the Member States, and that the information collected is effectively used. Streamlining procedures and harmonizing penalties would also contribute to reducing compliance costs and increasing legal certainty.

3. Key Priorities for Future Reform

These considerations point to a set of priorities that should guide an evaluation of the current EU anti-tax avoidance rules and future initiatives aimed at reducing disproportionate burdens for both taxpayers and tax authorities, while enhancing competitiveness.

- **Promoting consistent application and interpretation:** Consistent application of rules across Member States should be pursued to create a level playing field, within the limits of the subsidiarity and proportionality principles. This includes aligning definitions and interpretations of key concepts, which may be achieved by issuing non-binding practical guidance developed in cooperation with the relevant stakeholders. Furthermore, this effort could also investigate the harmonization of other uncoordinated anti-avoidance rules adopted by Member States, such as limitations on the deductibility of intra-group royalty payments or service fees.
- **Ensuring coherence and efficiency of the system:** The assessment of each individual measure should consider the overall set of EU anti-avoidance rules, particularly regarding reporting and disclosure obligations. The aim should be to avoid overlapping obligations and ensure a streamlined and efficient reporting framework.
- **Monitoring the effectiveness of the anti-avoidance measures:** Developing a common performance monitoring framework would provide a tool to measure the success of the current rules in achieving their underlying policy objectives. Taxpayers would also benefit from greater transparency regarding the use of data collected by the tax authorities.
- **Enhancing cooperation:** Establishing platforms for Member States to discuss and resolve interpretative issues may contribute to greater certainty and harmonization. Furthermore, the enhanced use of cooperative compliance mechanisms could effectively reduce administrative burdens.

4. Conclusion

In conclusion, pursuing greater harmonization and cooperation can help create a more efficient and equitable tax environment for businesses across the European Union. However, it seems imperative to strike a balance that preserves the progress made so far in combating tax avoidance. Clear, consistently applied and well-monitored anti-avoidance measures are key to maintaining the integrity of the tax system while supporting a competitive business landscape.

IBFD references:

- EU tax law developments are reported on the daily IBFD [Tax News Service](#) page.
- For an overview of the implementation status of the ATAD across EU Member States, see [ATAD Implementation Tables](#), Tables IBFD.
- For an overview of the implementation status of DAC6 & DAC7 across EU Member States, see [DAC6/DAC7 Compliance Table](#), Tables IBFD.
- E. Casi-Eberhard et al., [One Directive, Several Transpositions: A Cross-Country Evaluation of the National Implementation of DAC6](#), 13 World Tax J. 1 (2021), Journal Articles & Opinion Pieces IBFD.
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- R.H.M.J. Offermanns & R. Botelho Moniz, [DAC6 in a Selection of EU Member States: The Practical Application of the Main Benefit Test and Its Hallmarks](#), 61 Eur. Taxn. 6 (2021), Journal Articles & Opinion Pieces IBFD.
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- > P. Pistone et al., [*Abuse, Shell Entities and Right of Establishment: A Plea for Refocusing Current Proposals and Achieving Deeper Coordination within the Internal Market*](#), 14 World Tax J. 2 (2022), Journal Articles & Opinion Pieces IBFD.
- > P. Pistone et al., [*The Implementation of Anti-BEPS Rules in the EU: A Comprehensive Study*](#) (P. Pistone & D. (Dennis) Weber eds., IBFD 2018), Books IBFD.