

ECA Report: Still Gaps in Fight against Harmful Tax Regimes

Thomas Wahl



News

AUTHOR

Thomas Wahl

Senior Researcher
Max Planck Institute for the
Study of Crime, Security and
Law

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The EU's fight against harmful tax practices and cooperate tax avoidance has gaps. This is the result of a [special report](#) published by the European Court of Auditors (ECA) on 28 November 2024.

ECA's audit assessed the appropriateness of measures and mechanisms employed in the EU by both the Commission and five EU Member States (Ireland, Cyprus, Luxembourg, Malta, and the Netherlands). In particular, the ECA focused on the design and implementation of the following three directives that seek to curb harmful tax practices: the Anti-Tax Avoidance Directive, the 5th amendment to the Directive on administrative cooperation in the field of taxation (DAC 6) and the Directive on Tax Dispute Resolution Mechanisms. The audit covered the period from 2019 to 2023.

Overall, the ECA found that the established EU framework serves as a necessary first line of defence to support the fight against harmful tax regimes and corporate tax avoidance within the limited scope of the EU's competences in matters of direct taxation. However, there are shortcomings in the way EU measures were drawn up and implemented, and there is no appropriate monitoring system for assessing their effectiveness. Other problems identified include the following:

- Lack of guidance from the part of the Commission which would clarify the application of the EU rules in practice;
- Failure of checks whether defensive measures bear fruit;
- Since comprehensive evaluations of all three directives are overdue, it remains unclear whether they have been able to achieve their goals;
- Although Member States have tools available for exchanging information on potentially harmful cross-border tax arrangements, they carry out few quality checks on reported information and make little use of the information received, which makes the fight against revenue-escaping taxation less effective;
- In some Member States, the penalty systems for not complying with reporting obligations may not have a dissuasive effect due to the manifestly low level of the related penalties;
- There is no uniform approach among Member States to take defensive measures against non-cooperative jurisdictions outside the EU.

Although the Commission's powers in the audited field is limited, the ECA recommend that the Commission should do the following:

- Clarify the EU legislative framework;
- Improve the quality of DAC 6 reports;



- Ensure that the impact of penalties is adequate;
- Enhance its support to the Code of Conduct Group (the EU's specialised body for business taxation);
- Monitor the results and impact of the fight against harmful tax regimes and corporate tax avoidance.

In [response](#) to the ECA's special report, the Commission announced guidelines to ensure a uniform interpretation of EU legislation and to evaluate existing legislation. Important ECJ case law, such as the judgments of 29 July 2024 (Case C-623/22, →[eucrim 2/2024, 120-122](#)) and of 26 September 2024 (Case C-432/32, →[eucrim 3/2024, 186-187](#)) on reporting obligations under the DAC6 Directive, in which the Court strengthened the lawyer-client privilege, is to become part of the guidelines.

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