

The Legitimacy of the EU standard of good governance in tax matters

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Topics

Standard of good governance in tax matters

EU Standard in Agreements

Questions

Further research

Good governance in tax matters

May 2008

- Transparency and Exchange of information (on request)
- Fair tax competition means that a third country should not operate harmful tax measures in the area of business taxation

April 2018

Transparency, exchange of information (on request and automatic), fair taxation and the minimum standards against Base Erosion and Profit Shifting BEPS (harmful tax regimes, treaty abuse, transfer pricing documentation and making dispute resolution mechanisms more effective)

Good governance in tax matters

Soft law instruments

- OECD Forum on harmful tax practices
- Code of conduct on business taxation

Hard law instruments

- 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)

Legitimacy (Scharpf)

Exchange of information and BEPS: Standards developed by the OECD with the political support of the G20.

1. Exchange of information

• Input:

- Participation and representation in the agenda setting and the decision making: Lacking

• Output:

- Common goals (yes) mechanisms to achieve those goals (not – differences in resources and lack of capacity)
- Providing solutions to citizen's problems and protecting taxpayers' rights (lack of domestic safeguards and less taxpayer's rights)

Legitimacy (Scharpf)

2. BEPS

• Input:

- Participation and representation in the agenda setting and the decision making: Lacking

• Output:

- Common goals (no) and mechanisms to achieve those goals (not differences in resources and lack of capacity)
- Providing solutions to citizen's problems (difficulties to assess the link between BEPS and Domestic Resource Mobilization)

I.J. Mosquera Valderrama, Legitimacy and the Making of International Tax Law: The Challenges of Multilateralism, 7 World Tax J. 3 (2015), Journals IBFD

EU Standard in Agreements

2016 Canada - EU and EU Member States

- Comprehensive Economic and Trade Agreement (CETA)
- Strategic Partnership Agreement

*The Strategic Partnership Agreement will upgrade the current framework of cooperation between the EU and Canada and expand the basis of the relationship, in parallel with efforts to foster **trade and investment**.*

*The Agreement enshrines both sides' shared **democratic values and enhances political dialogue** on a broad range of areas, including international peace and security, economic and sustainable development, justice, freedom and security.*

<http://data.consilium.europa.eu/doc/document/ST-5368-2016-REV-2/en/pdf>

EU Standard in Agreements

➤ **EU- Canada Strategic Partnership Agreement**

- **Title II** The EU and **Canada** commit to upholding democratic principles and human rights, to advancing democracy, including free and fair elections, and the importance of the rule of law for effective democratic governance.

Other agreements

EU- Japan April 2018 Strategic partnership agreement

- A legally binding pact covering not only political dialogue and policy cooperation, but also cooperation on regional and global challenges
- Also linked to Economic Partnership agreement (trade).

EU-South Korea 2010 Framework Agreement

- Also signed trade and investment agreement and framework participation agreement

EU Standard in Agreements: South Korea

Article 12

Taxation

- 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 commit themselves to implement in the tax area the principles of **transparency, exchange of information and fair tax competition**. To that effect, 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 above mentioned principles.

EU Standard in Agreements: Canada

Article 11

Cooperation on Taxation

With a view to strengthening and developing their economic cooperation, the Parties adhere to and apply **the principles of good governance in the tax area, i.e., transparency, exchange of information and avoidance of harmful tax practices** in the frameworks of the OECD Forum on harmful tax practices and the Union Code of Conduct on business taxation, as applicable. The Parties shall endeavour to work together to promote and improve the implementation of these principles internationally.

1. EU Standard in Agreements: Japan

Article 19

Taxation

With a view to promoting good governance in tax matters, the Parties shall endeavour to enhance cooperation in line with internationally established tax standards, in particular by encouraging third countries to enhance **transparency, ensure exchange of information and eliminate harmful tax practices.**

EU Standard in Agreements

EU- China 2020 Strategic Agenda for Cooperation

- Commit to reach an agreement on the adoption of the Global Standard on **Automatic Exchange of Information** being developed by the OECD together with G20 countries in the area of taxation.

EU- Colombia and Peru. 2010 Free Trade Agreement

Art. 155(5) Effective and Transparent regulation

- The Parties also take note of the "Ten Key Principles for Information Sharing" promulgated by the Finance Ministers of the G7 Nations and the Agreement **on Exchange of Information** on Tax Matters of the Organisation on Economic Cooperation and Development's (hereinafter referred to as "OECD") and the Statement on Transparency and exchange of information for tax purposes of the G20.

As of 2018: EU Standard in Agreements

Recent developments: New text (ECOFIN 26/04/2018)

For relevant agreements to be concluded with third countries by the EU and EU Member States, without prejudice of their respective competences

*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.

EU Standard in Agreements

EU ongoing trade negotiations

- ASEAN (2007 Negotiation Directives – Singapore, Malaysia, Vietnam, Thailand, Indonesia, Philippines)
- India, Australia, New Zealand, Mexico, MERCOSUR, Chile

http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf

Questions

- ❑ What is good governance in the tax area?
- ❑ How is this standard binding for non-EU (third countries) such as Japan, China and Canada? And to ASEAN countries?
- ❑ How is this standard linked to economic partnership and trade agreements?
- ❑ How this good tax governance is linked to principles of rule of law and democratic governance ?
- ❑ What is the role of the EU Commission (and the platform for Tax Good Governance and Code of Conduct Group) in determining how this standard should be met?

Questions

- ❑ Strategic partnership agreement and trade agreements as instrument of foreign policy? And of international tax law policy making?
- ❑ Is fair tax competition only harmful tax competition?
- ❑ How the list of non-cooperative jurisdictions (May 2018 reduced to 7) contribute to effective democratic governance?
- ❑ Since April 2018, does this mean that also for countries that have not yet participated in the BEPS Inclusive Framework, but that are concluding agreements with the EU will still be required to meet BEPS standards?

Recommendations

- Further multidisciplinary research in the use of this standard should be carried out (investment, trade and taxation)
- Scholarship (legal and empirical) research GLOBTAXGOV – International tax law making by the OECD, G20 and the EU.

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