

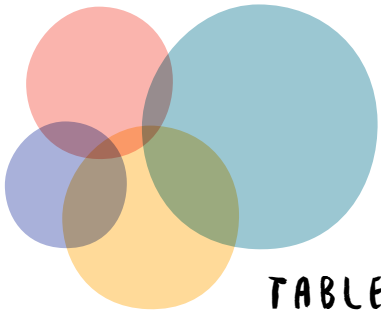
**Counter**

**Balance** Challenging  
Public  
Investment  
Banks



LEADING BY  
EXAMPLE ON  
RESPONSIBLE  
TAXATION

CAN THE “EU BANK”  
SHOW THE WAY IN  
THE FIGHT AGAINST  
TAX EVASION AND  
TAX AVOIDANCE?



## TABLE OF CONTENTS

---

### •••• INTRODUCTION

Why the EIB needs to lead by example on tax justice

---

### •••• CHAPTER #01

An urgent need to clean up EIB's act on tax: investments via tax havens

---

### •••• CHAPTER #02

Key recommendations for the EIB to lead on responsible taxation

---

### •••• ANNEX #01

EIB's response

---

### •••• ANNEX #02

Resources & further readings

# INTRODUCTION

---

## WHY THE EIB NEEDS TO LEAD BY EXAMPLE ON TAX JUSTICE

---



Photo by [Marco Verch](#) (CC BY 2.0)

In recent years, numerous scandals have largely exposed the magnitude of tax evasion and tax avoidance taking place at international level. In Europe, Lux Leaks, Swiss Leaks or the Paradise Papers have made many citizens, journalists and decision-makers more aware of the massive injustices underpinning tax evasion and tax avoidance schemes. These scandals also underlined the harmful impact of such practices on the resources at the disposal of national governments to guarantee essential public services and an efficient functioning of our economies.

As a consequence, a real political momentum for tax justice has built up: **fighting aggressive tax planning is high on the international and European political agenda**. At European level, this has translated in a strong push from the European Commission to investigate tax agreements between national governments (in Ireland or Luxembourg for instance) and multinational companies to assess their compliance with European state aid rules. A set of initiatives has been undertaken in order to ensure fairer competition between European member states and avoid a race to the bottom on taxation. In this regard, **the European Union is playing a leading role**.

**BUT IT IS NOW HIGH TIME THAT THE EUROPEAN UNION TRANSLATES THESE POLITICAL PRIORITIES IN ALL ITS FIELDS OF OPERATIONS. FOR CONSISTENCY'S SAKE, IT SHOULD THEREFORE ENSURE THAT ITS OWN FINANCIAL ARM – THE EUROPEAN INVESTMENT BANK (EIB) – ALSO PLAYS A LEADING ROLE IN THE FIELD OF FAIR TAXATION.**

The EIB is the “EU Bank”, fully public and controlled by the European Union’s 28 member states and the European Commission. It is the largest multilateral lender globally, with more than EUR 80 billion invested in 2016. Since the financial crisis, it has been at the heart of economic recovery efforts at European level, via two successive capital increases and its pivotal role in implementing the Investment Plan for Europe via the management of the European Fund for Strategic Investments (EFSI). Given its central macroeconomic role and its nature of “EU body” and public institution, it is all the more important that its publicly-backed investments and business do not feed the cycle of aggressive tax planning by multinationals but rather grasp the opportunity to push for a new standard of improved transparency and tax-responsible practices.

A responsible taxation policy at the EIB could create a leverage effect on other International Financial Institutions (IFIs) and inspire them to move in that direction. In 2009, the EIB was already the first IFI to adopt a public tax havens policy. But since then, the EIB’s role as a model in the field has progressively vanished.

In the 2015 report “[Towards a responsible taxation policy of the EIB](#)”, Counter Balance highlighted that despite its tax haven policy, the EIB money was still running via tax havens. The report documented several cases of EIB funds granted to beneficiaries that allegedly used tax havens to increase their profits or to embezzle proceeds from corruption. Hence, we formulated a set of recommendations to improve the EIB standards and practices under a „Responsible Taxation Policy“.

A year later, in September 2016, Counter Balance published „[The Dark Side of EIB Funds](#)“ report concluding that between 2011 and 2015 the EIB supported private equity funds incorporated in tax havens and problematic jurisdictions. In addition, this report stressed the systematic lack of transparency of these types of operations, both from the EIB and the investment fund’s side.



## SINCE THEN, A NUMBER OF POSITIVE DEVELOPMENTS TOOK PLACE:



### THE EUROPEAN COMMISSION SIGNIFICANTLY RAISED THE PRESSURE ON THE EIB:

A first stone in the EIB's garden was thrown by the Commission in its "**External Strategy for Effective Taxation communication**" published on 28 January 2016. The Commission underlined that European legislation prohibits EU funds from being invested in entities in third countries which do not comply with international tax transparency standards. Therefore, it called on the EIB *"to transpose good governance requirements in their contracts with all selected financial intermediaries"*. It continued, regretting that *"in the past [it] has had to block certain projects submitted by the [financial institutions – meaning the EIB] because they involved unjustifiably complex tax arrangements through harmful or no tax regimes in third countries"*.

Later, an exchange of letters between the Commissioner Pierre Moscovici and the EIB President Werner Hoyer testified for the pressure exerted by Commission's top officials on the EIB. Especially, Moscovici stated that the Commission identified problematic operations led by the EIB involving *"issue of structures that make use of aggressive tax planning or other practices not complying with tax good governance criteria"*. He further referred to investments via equity funds based in the Channel Islands, and explicitly mentioned that the upcoming "EU Black List" of tax havens would apply to the EIB.

This pro-active stance from the European Commission was further confirmed by an article in the Belgian newspapers Le Soir indicating that the European Commission blocked projects worth EUR 1 billion for fiscal reasons in 2016 and the first half of 2017 only<sup>1</sup>. This gave a more precise idea of the magnitude of the issue at stake.

Finally, on 21 March 2018, the Commission published the "New requirements against tax avoidance in EU legislation governing in particular financing and investment operations"<sup>2</sup> where the EIB's role was singled out. The paper details sanctions linked to the EU "black" and "grey" lists of tax havens and calls on the bank to review its taxation policy in order to guarantee that EU external development and investment funds cannot be channelled or transited through entities in countries on the EU blacklist.



### A CLEAR SIGNAL SENT BY THE EUROPEAN PARLIAMENT:

In recent years, the European Parliament has intensified its calls on the EIB to clean up its act on fiscal matters. In 2017, it adopted a resolution<sup>3</sup> which *"underlines that combating all forms of harmful tax practices should remain an important priority of the EIB"* and calls on the EIB to *"review and enhance its non-transparent and uncooperative jurisdictions policy (NCJ Policy) as soon as possible once the EU list of non-cooperative tax jurisdictions is drawn up"*.

On 6 February 2017, the Development Committee organized an exchange of views with the EIB on *"the EIB's tax due diligence in its external lending"* during which strong criticisms stemming from the Commission and MEPs from various political groups were voiced. On this occasion, the EIB announced that it approved an „Interim Approach“ to its tax havens policy.



**THE NEW RESOLUTION OF THE  
EUROPEAN PARLIAMENT ADOPTED  
ON 8 FEBRUARY 2018**

**Paragraph 26.**

Recalls that the EIB's non-compliant jurisdiction (NCJ) policy needs to be ambitious; notes that relying on the common EU list of third country jurisdictions that fail to comply with tax good governance standards, which was endorsed by the Council of the EU on 5 December 2017 and which will prevail over other lead organisations' lists in the case of conflict, is a positive but insufficient step, and calls for country-by-country reporting without exemptions to be made a key part of the EIB's corporate social responsibility strategy; calls on the EIB to: comply with the relevant standards and applicable legislation on the prevention of money laundering and on the fight against terrorism, tax fraud and tax evasion; not make use of or engage in tax avoidance structures, in particular aggressive tax planning schemes or practices which do not comply with tax good governance criteria, as set out in the legal acts of the Union, Council conclusions, Commission communications or any formal notice by the Commission; and not maintain business relations with entities incorporated or established in jurisdictions that do not cooperate with the Union in relation to the application of the internationally agreed tax standards on transparency and exchange of information; calls on the EIB, following a consultation with the Commission and stakeholders, to revise and update its NCJ policy in the light of the adoption of the aforementioned Union list of non-cooperative jurisdictions; calls on the Commission, for its part, to submit a report to Parliament and the Council every year on the implementation of that policy;

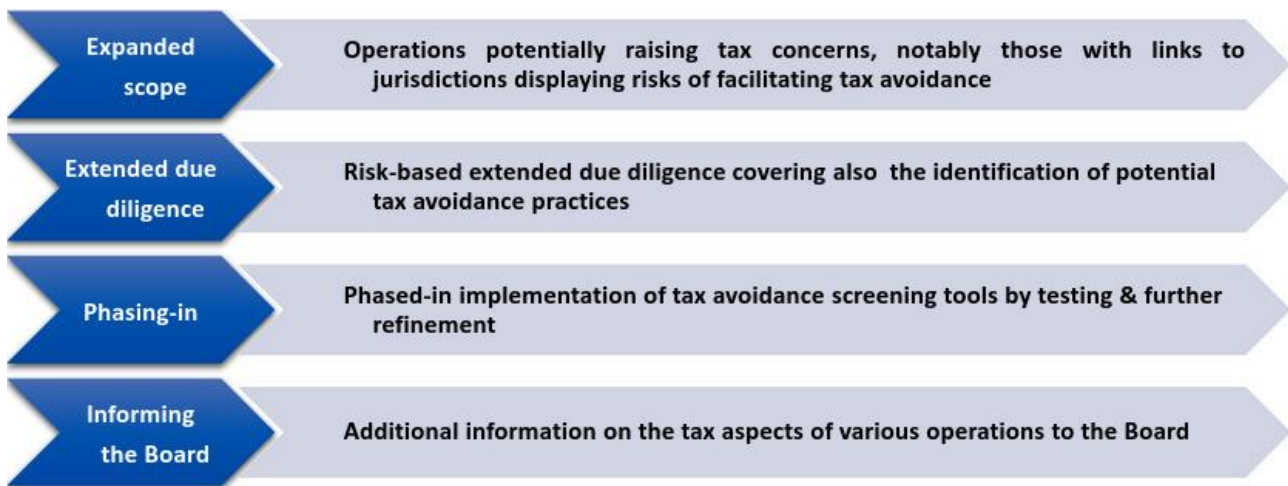


## THE NEW EIB'S INTERIM APPROACH AND UPCOMING CHALLENGES IN 2018:

In January 2017, the Board of Directors of the EIB adopted the “**Interim approach** to the EIB Policy towards weakly regulated, non-transparent and uncooperative jurisdictions” and jurisdictions displaying risks of facilitating tax avoidance.

To date, the EIB has refused to disclose the content of this document, arguing that it is still work in progress and therefore cannot be made public<sup>4</sup>. Nonetheless the bank has provided information about the key components of this Interim Approach, claiming that it aims at better integrating tax avoidance and tax good governance into its due diligence and project-selection process.

Below are summarized the main features of this Interim approach that were presented by the bank:



In addition, the bank adopted a **statement on tax fraud, tax evasion, tax avoidance, aggressive tax planning, money laundering and financing of terrorism**<sup>5</sup> in which it claims to have “*reviewed and further enhanced its due diligence processes with the aim that the risk-based tax assessment identifies potential tax avoidance concerns*”, therefore addressing “*considerations raised by EIB stakeholders, including the EIB Board of Directors, European Commission, European Parliament and Civil Society Organisations*”.

The approval of these new guiding documents certainly appears as a positive, but even more importantly it seems that the bank’s Compliance Office (OCCO) in charge of tax due diligence has adopted a more stringent approach towards tax evasion and tax avoidance. For example, more thorough information on tax aspects of projects is now passed on to the EIB Directors before they proceed to the vote on projects.

Nevertheless, as this report aims to show, **there is still a long way to go for the EIB to become a leader in the responsible taxation field.**

The bank needs to take a more active role in ensuring that it does not support companies that take advantage of the weaknesses of the current system to reduce their tax bill to the minimum especially through the artificial shift of profits to tax havens.

The allegedly more progressive stance taken by the EIB since two years now needs to be set in stone via the review of its tax havens (NCJ) Policy. Indeed, **the revision of the EIB NCJ Policy will take place in 2018, following the adoption of the EU list of non-cooperative jurisdictions by European member states.**

In this context, the purpose of this report is twofold: on the one hand provide a brief analysis of the reasons why the EIB urgently needs to clean up its act on tax, and on the other hand formulate key recommendations for the revision of the EIB’s tax havens policy in 2018.



# CHAPTER #01

## AN URGENT NEED FOR THE EU'S BANK: STOP INVESTMENTS VIA TAX HAVENS

A fundamental reason why the EIB should take action on tax is that it has – and still does – financed projects via tax havens.

In the afore-mentioned report “**The Dark Side of EIB Funds**”, Counter Balance analysed a little-known part of the EIB’s operations:

its use of private equity funds.

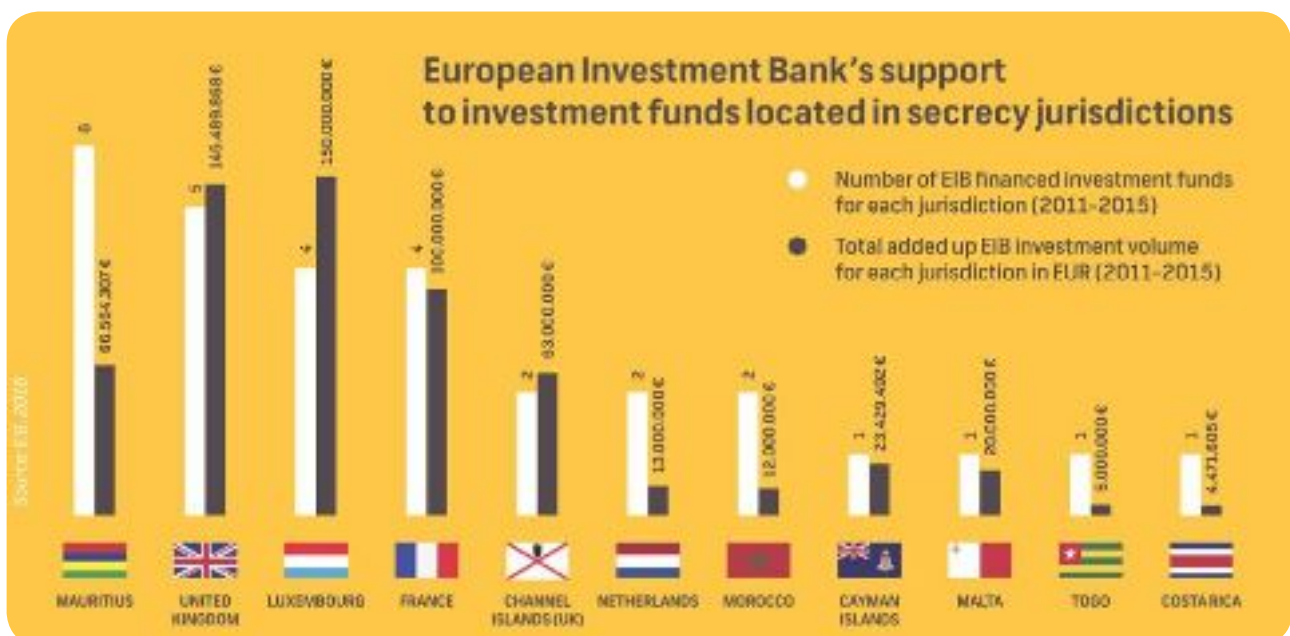
The study concluded that,

**between 2011-2015 the EIB supported private equity funds incorporated in tax havens and problematic jurisdictions:**

→ FROM 2011 TO 2015, THE EIB INVESTED EUR 470 MILLION IN INVESTMENT FUNDS LOCATED IN SECRECY JURISDICTIONS, AS DEFINED BY THE FINANCIAL SECRECY INDEX;

→ 67% OF THE VOLUME OF EIB OPERATIONS WENT TO CLIENTS LOCATED IN THE TOP 30 SECRECY JURISDICTIONS;

→ THE COUNTRY WHERE MOST OF THESE INVESTMENT FUNDS ARE DOMICILED IS MAURITIUS.



These findings were all the more concerning considered that our study only covered a limited portfolio of EIB's operations: its support to private equity funds. Neither did it include other types of financial intermediaries backed by the EIB or other investment funds supported by the specialised arm of the EIB Group (the European Investment Fund), nor the more traditional direct loans to projects, which remain the core of EIB's lending portfolio.

Hence, the article "How Europe invested in tax havens" of the Belgian media Le Soir published in May 2017<sup>6</sup> and demonstrating the magnitude of EIB operations flowing via tax havens came as no surprise. There were two main findings highlighted by Le Soir:



**IN 2016 ONLY, THE EUROPEAN COMMISSION BLOCKED EIB PROJECTS WORTH AROUND EUR 1 BILLION BECAUSE OF THEIR LINKS TO TAX HAVENS.**

This figure is indeed much higher than what our above-mentioned report showed. The article reports that between the end of the 2015 and the end of 2016, the Commission intervened 18 times against projects structured via tax havens. The location of these problematic projects was mainly Jersey and Guernsey, but some were also connected to the Cayman Islands, the Bermuda, the Bahamas and Lebanon. 9 of these projects were fully blocked by the Commission, and 9 of them were restructured out of tax havens and then approved by the Directors of the EIB. In his letter to the EIB President, Commissioner Moscovici recommended "to avoid jurisdictions whose tax rate is weak or 0% [...]. Despite significant progress in the international efforts to fight tax evasion and money laundering, there is still a high risk – which cannot be mitigated – that these jurisdictions are used to serve tax dodging practices".



**AN EIB PROJECT WAS LINKED TO THE INFAMOUS LAW FIRM MOSSACK FONSECA WHICH STOOD AT THE HEART OF THE PANAMA PAPERS SCANDAL.**

Surprisingly enough, Le Soir indicates that few months after the Panama Papers scandal burst, the Board of Directors received a quite original project to approve: an operation in which a client was registered in Panama via the services of Mossack Fonseca. The Commission reacted and immediately blocked the project, which was ultimately approved by the EIB Directors after being cleaned from any links to the controversial law firm.

It is important to remark that the EIB denied these elements via a statement sent to the European Parliament<sup>7</sup>. The bank argued that, in the end, all projects submitted were approved by the EIB directors, despite delays for some of them. But it failed to show evidence that these projects were not approved after being re-routed out of tax havens.



## THE EIB AND THE FIGHT AGAINST TAX EVASION AND AGGRESSIVE TAX PLANNING

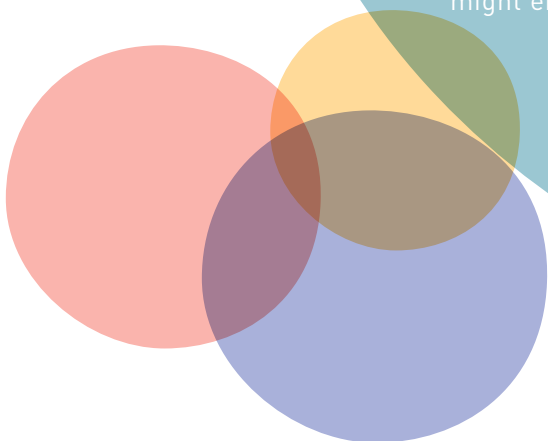
In 2009, the EIB became the first international financial institution to adopt a public policy explicitly addressing the issue of offshore financial centres, then referred to as non-cooperative jurisdictions (NCJs). The EIB policy includes a general prohibition on investments linked to NCJs, except in limited circumstances. However, the policy lost most of its power not long after its adaptation. The bank had based its due diligence and compliance on the 'OECD black and grey list' as reviewed under the G20 mandate in 2009. Soon thereafter these lists became empty again as a result of tax havens ironically signing information exchange agreements just among themselves to comply with the G20 commitment.

As a result of pressure by civil society organisations and the European Parliament, in March 2014 the EIB updated its NCJ policy, but only with an addendum that harmonises the EIB's approach with that of the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereafter the Global Forum). CSOs have repeatedly argued that the Global Forum uses unambitious criteria, as it predominantly focuses on banking secrecy instead of corporate tax dodging. In addition, the Global Forum does not include many developing countries therefore it cannot claim to be truly global. Since the inception of the Global Forum process, the EIB has thus retreated from its leading position in tackling tax avoidance to a less pro-active role shared by other financial institutions.



GUE/NGL Action in Plenary chamber of European Parliament. Photo by GUE/NGL (CC BY-NC-ND 2.0)

While the EIB's **NCJ policy** was ambitious at the time, it nonetheless included a number of loopholes. A major problem is that the EIB's policy does not prohibit counter-parties from registering in a country other than those where they are economically active – and produce economic value – because of “other tax burdens that make the structure uneconomic”. This implies that counter-parties are still permitted to move to offshore financial centres to benefit from lower taxation and/or higher secrecy. In addition, counter-parties can still operate in a prohibited jurisdiction if this jurisdiction offers a level of “corporate security”. The policy remains unclear about what this can and might entail.





Mauritius flag. Photo by [Sunny Report](#), [CC BY-SA 2.0]

As a follow-up to our *The Dark Side of EIB Funds* report, we analysed recent investment funds supported by the EIB during the 21 months' period running from January 2016 to end of October 2017. Our source of information on the EIB projects was the publicly available data disclosed on the EIB website, and our benchmark the Financial Secrecy Index (FSI) 2015 of Tax Justice Network<sup>8</sup>.

To our regret, our research found that the EIB is still investing in private equity funds structured via secrecy jurisdictions. **In 2016 and 2017, the Bank supported 5 investment funds located in secrecy jurisdictions:** 1 in Luxembourg (6th in the FSI Index), 1 in the United Kingdom (15th in the FSI Index) and 3 in Mauritius (23rd in the FSI Index).

For example, the *Ginkgo Fund II*, incorporated in Luxembourg, is an investment vehicle dedicated to the depollution and transformation of contaminated industrial sites in urban areas in Europe with the aim of treating environmental liabilities, positioning the cleaner property for residential and/or commercial real estate

developments thus slowing urban sprawl. It received a EUR 30 million support by the EIB under the flagship Investment Plan for Europe – also known as the Juncker Plan<sup>9</sup>.

The other equity funds backed by the EIB mostly target investments in the private sector, especially Small and Medium Enterprises and midcaps, in Africa and Asia.

This is the case of the *APIS Growth Fund I*, incorporated in the United Kingdom, which focuses on mid-market companies active in the creation and development of technology-enabled financial sector infrastructure, such as payment gateways, switches, payment platforms, as well as software for automated processing of transaction data. The EIB provided USD 21.8 million to this fund<sup>10</sup>.

Then comes a set of funds incorporated in Mauritius. It is important to flag that the recent Paradise Papers highlighted the pivotal role of Mauritius in attracting companies willing to benefit from secrecy and tax benefits.



The International Consortium of Investigative Journalists (ICIJ) revealed in its article *„Tax Haven Mauritius’ Rise Comes At The Rest of Africa’s Expense“*<sup>11</sup> that files from Appleby’s Mauritius office reveal complex schemes and shell companies, as well as controversial tax agreements signed between Mauritius and countries in Africa aimed at helping companies slash tax rates. The article also exposed the case of some managers of the Angola sovereign wealth fund who used Mauritius to move millions of dollars in fees and dividends.

Furthermore, in 2016, the EIB signed a EUR 18 million operation with **AFIG Fund II**, a private equity fund incorporated in Mauritius and focusing on SMEs in Sub Saharan Africa, in particular in the sectors of agribusiness, manufacturing, energy, food and beverages, healthcare as well as financial and industry services<sup>12</sup>.

The bank also invested USD 16.6 million in the Africa Renewable Energy Fund (**AREF**) which in turn invests into small hydro, wind, geothermal, solar, stranded gas and biomass projects across Sub-Saharan Africa<sup>13</sup>.

Last, in September 2017, the EIB Directors approved a EUR 9 million financing for the Cepheus Ethiopia SME Fund. Cepheus is portrayed as a *“local Ethiopian fund manager launching its first fund focused on Ethiopia where the private equity industry is nascent”*, even if it is incorporated in Mauritius<sup>14</sup>. It is interesting to note that the EIB describes this operation as *“EIB’s first fund investment in Ethiopia, supporting a first-time manager with a focus on generating superior developmental returns.”*

Unfortunately, trying to access more information regarding Cepheus Growth Capital than what is stated in EIB’s **press release** is very complicated. The website of the fund provides next to zero information on who manages the fund and its governance structure<sup>15</sup>. But via web-search we identified the two managers of the fund<sup>16</sup>, one of

which seems to have already a track record of managing an offshore-based fund. Indeed, before creating Cepheus in 2016, he founded and managed from 2004 until 2015 Panton Capital Group, a credit hedge fund that focused on capital structure arbitrage and relative value credit trading strategies, according to the Centre for Global Development<sup>17</sup>. Panton Capital Group is registered in Delaware while based in New York, according to online registers<sup>18</sup>. In addition, according to a US Securities and Exchange Commission (SEC) document dated back to 2009<sup>19</sup>, he was also director of an other offshore entity called Panton Alternative Fund, based in the Cayman Islands. Such findings raise questions about the due diligence led by the EIB about this new Ethiopian fund and the track record of its managers.

But the list does not end here: it is worth noting that further operations currently in the EIB’s pipeline of projects under appraisal are linked to secrecy jurisdictions. This is the case of an emblematic gas pipeline – the Trans-Adriatic Pipeline (TAP) – which has been under appraisal at the EIB since August 2015<sup>20</sup> and finally approved by the EIB Board of Directors in early February 2018. The consortium of companies promoting the project – TAP AG – is based in Baar, in the canton of Zug, a region of Switzerland well-known for its corporate secrecy<sup>21</sup> and has to date showed little transparency about its financial results<sup>22</sup>. The fact that the EIB has decided to grant a startling EUR 1.5 bn loan for this project – its largest loan to a fossil fuel project – despite the foggy fiscal accountability of the TAP AG company, casts into doubt the actual engagement of the EU Bank in the fight against tax havens, just as the EU has made it a firm priority. Such decision runs counter to the spirit of the NCJ policy of the EIB as well as the bank’s commitment to *“maintaining a stringent policy against tax fraud, tax evasion and harmful tax practices”*.



Therefore, although some EIB projects have recently been blocked for fiscal reasons and despite a more stringent approach apparently applied by the Bank, the problem of EIB operations funding tax-havens-based clients has only been partially addressed to date. The final section of this report will provide key recommendations in this regard.

## CHAPTER #02

---

# KEY RECOMMENDATIONS FOR THE EIB TO LEAD ON RESPONSIBLE TAXATION

---

#01

**IN 2018,  
THE EIB SHOULD USE THE REVIEW  
OF ITS TAX HAVENS (NCJ) POLICY TO CLOSE  
EXISTING LOOPHOLES AND DEVELOP A  
BROADER RESPONSIBLE TAXATION POLICY**



The EIB should adopt a fully-fledged Responsible Taxation Policy by the end of 2018. A first step in this regard should be the revision of its Non Cooperative Jurisdictions policy, as a key component of a broader taxation policy. An open and inclusive public consultation with all stakeholders should take place for both processes. The EIB often claims that for what concerns tax, it has the best standards in place among international financial institutions<sup>23</sup> but, should this be even true, the bank needs to acknowledge it is not enough. There is no valid excuse: the EIB needs to clean up its act on tax havens.

What is more, as numerous tax issues remain hard to tackle by purely legal means, public institutions such as the EIB need to go beyond what it is strictly legally required and look into all options they have available to avoid their funding supports companies with harmful tax practices. This requires a policy framework that allows the bank to take a proactive and responsible approach to tackle abuses wherever they may appear.





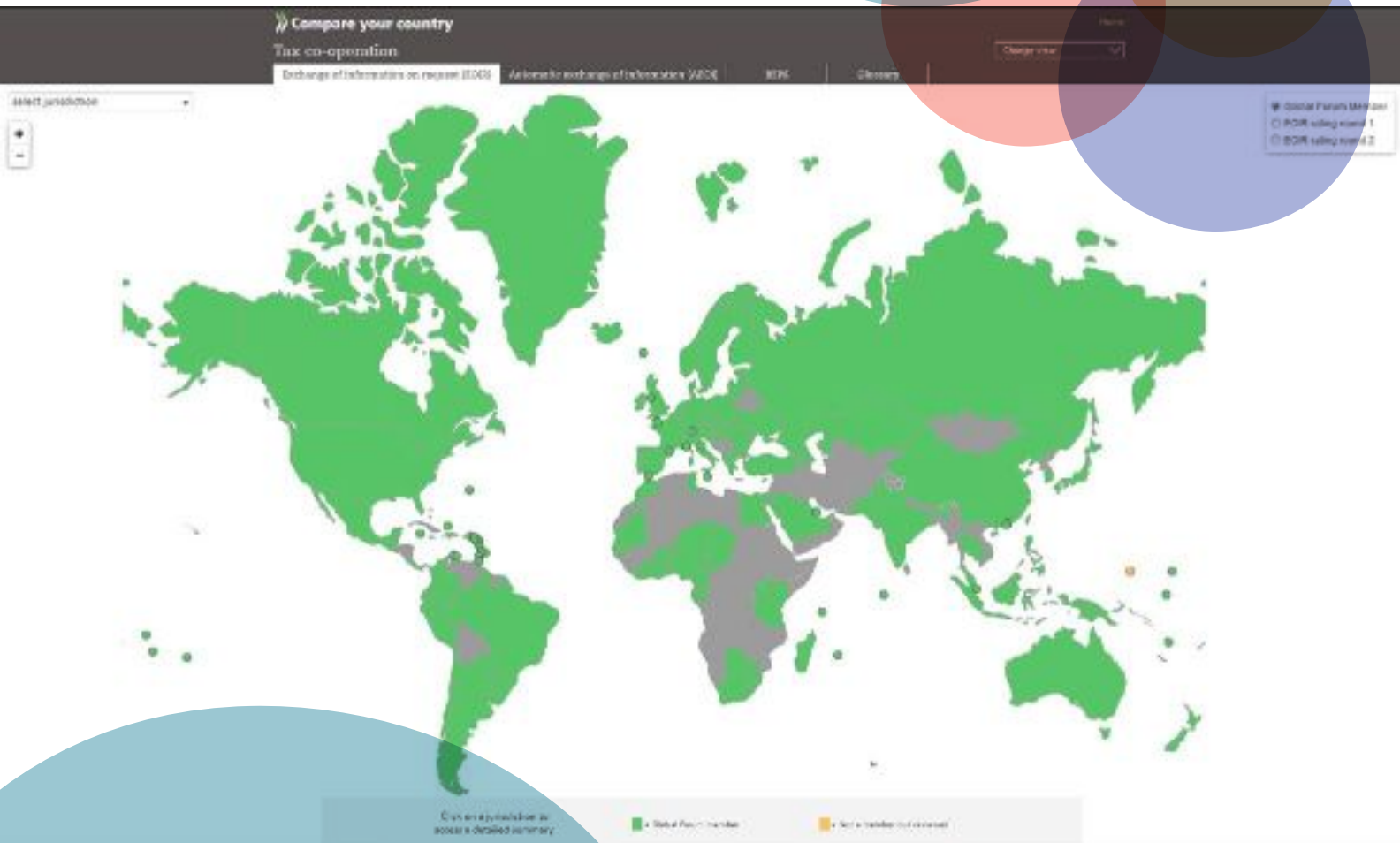
## EXAMPLES OF LOOPHOLES IN THE CURRENT NCJ POLICY

The EIB policy<sup>24</sup> includes a general prohibition on investments linked to non-compliant jurisdictions (NCJs) except in limited circumstances. The EIB has acknowledged that “linked to” means not only companies located in a non-compliant jurisdiction but also companies controlled by NCJ-located companies. The policy also allows the EIB to impose additional tax disclosure obligations for cross-border operations even if none of the jurisdictions involved qualifies as an NCJ.

Notably, the EIB policy also includes a relocation clause within a few months, prescribing – according to the policy – a mandatory relocation for an EIB beneficiary if operating in an NCJ. It should be pointed out that when the policy was first adopted in 2010 the introduction of this relocation clause was a significant step forward: it assigned a precise role to IFIs to proactively promote responsible taxation by the private sector and to prevent the abuse of tax havens.

However, the policy lost most of its power not long after its adaptation. The bank had based its due diligence and compliance on the ‘OECD black and grey list’ of tax havens, as reviewed under the G20 mandate in 2009. But, as mentioned above, soon thereafter tax havens found a way around the blacklisting process by signing a sufficient number of information exchange agreements among themselves to comply with the G20 commitment. This meant that the OECD lists were soon emptied, and thus the EIB policy not applicable to those jurisdictions anymore.

In March 2014 the EIB updated its NCJ policy with an addendum<sup>25</sup> that harmonises the EIB’s approach with those of the EBRD and the IFC, based on the Global Forum on Transparency and Exchange of Information for Tax Purposes<sup>26</sup> (hereafter the Global Forum). CSOs have repeatedly argued that the Global Forum uses unambitious criteria, as they predominantly focus on banking secrecy instead of corporate tax dodging. In addition, the Global Forum has 148 members so far and many developing countries are still missing before it can claim to be truly global. This is a paradox, given that those excluded are often the same countries that the IFIs are trying to target with investments, and also the ones that experience more difficulties in collecting their fair share of tax than others. In contrast, several of the most notorious tax havens that appear in the top 20 of the Financial Secrecy Index (FSI)<sup>27</sup>, including Switzerland and Luxembourg, are full members of the OECD as well as the Global Forum, and have mostly passed the Global Forum peer review ranking system.



Global Forum members as of February 2018,  
<https://compareyourcountry.org/tax-cooperation>

Although the EIB NCJ policy was ambitious when adopted in 2009, it includes a number of loopholes which would need to be fixed in a Responsible Tax Policy, such as:



The EIB's policy does not prohibit counter-parties from registering in a country other than those in which they are economically active – and produce economic value – because of “other tax burdens that make the structure uneconomic”. This implies that counter-parties are still permitted to move to offshore financial centres to benefit from lower taxation and/or higher secrecy<sup>28</sup>.



Counter-parties can still operate in a prohibited jurisdiction if this jurisdiction offers a level of “corporate security”. The policy remains unclear about what this can and might entail, even though it hints at the need to have certainty for investors, including guarantees that taxation will be kept relatively low. Such unclear - and possibly discretionary in its interpretation - provision needs to be taken out of the revised NCJ policy.

## RELYING ON THE EU BLACK LIST OF NON-COOPERATIVE JURISDICTIONS IS A NEEDED STEP, BUT WILL NOT BE SUFFICIENT



The EU “black” and “grey” lists of non-cooperative jurisdictions, published in December 2017, contain a set of jurisdictions which are not yet compliant with EU tax good governance criteria and/or have made commitments to implement tax good governance principles.

The European Commission has made it clear in its recent paper on “EU anti-tax avoidance requirements on financing and investment operations”<sup>29</sup> that countries part of the “Black List” should not receive EIB funding anymore. In addition, the revised External Lending Mandate of the EIB makes it clear that the EU Black List is binding to the bank, and that EIB operations shall not support projects that contribute to money laundering, terrorism financing, tax avoidance, tax fraud and tax evasion. The Article 22 of the regulation setting up the European Fund for Sustainable Development reiterated this requirement<sup>30</sup>.

The status of the „Grey List“ (or Annex II Jurisdictions) of countries that have taken political commitments to implement tax good governance principles within a given timeline (end of 2018, or end 2019) is a bit more delicate. The Commission asks the EIB to pay specific attention to these jurisdictions to ensure that „the concerns which these jurisdictions have committed to address in order to comply with tax good governance criteria, are not exploited in projects financed by EU funds.“ Therefore, the presence of an Annex II Jurisdiction in the structure of an operation should trigger a case-by-case examination, in order to demonstrate that the use of such jurisdiction is not motivated by tax reasons that have raised EU concerns.

Using the EU Black List, as well as and even more the Grey list, would be a step forward for the EIB compared to the currently empty OECD lists that the EIB is using. However, **the use of the EU lists cannot be considered as a silver bullet for the bank.** Indeed, these lists do not include several jurisdictions that can be considered as tax havens. Recent reports by **Oxfam International** and **Tax Justice Network** - using the same criteria as the European Union does - recently showed that a more comprehensive list should feature key jurisdictions like Mauritius, as well as 4 EU Member States (Ireland, Luxembourg, Malta and the Netherlands). The example of Mauritius is quite telling, as it is absent of from the Black list to only feature on the Grey one, despite its problematic track record, as demonstrated by the Paradise Papers (see previous chapter) as well as an analysis of the new agreements signed by Mauritius carried out by Tax Justice Network<sup>31</sup>. In addition, EU member states already took several jurisdictions off the lists in January 2018, despite not disclosing the following commitments taken by these jurisdictions, which arguably led to the withdrawal from the EU lists<sup>32</sup>. Hence, extra measures need to be put in place to address these limits.

It is important to highlight that the Black List would not apply, for grounded reasons, to development projects supported by the EIB physically taking place in these jurisdictions themselves. Very concretely, this would for instance not rule out an investment into a wind farm in Tunisia carried out by a company incorporated in the same country, which could have positive development impacts for this given country. The idea of this „physical implementation clause“ is not to harm the local population of a country but rather avoid companies and consortiums to exploit such jurisdictions - mostly for tax purposes.

## THE EIB NEEDS TO BETTER TACKLE RISKS OF TAX AVOIDANCE



With its new “Interim Approach”, the EIB entered into a new field of evaluation and assessment: due diligence on risks of tax avoidance.

This is certainly a valuable direction for the bank to create a pre-emptive filter at the EIB level and not to rely only on the European Commission to block projects when consulted under the so-called Article 19 procedure. The revised NCJ policy needs to fully integrate thorough tax due diligence checks, taking into account elements that should represent red flags for the EIB.

As pointed out in a recent joint civil society letter to the EIB<sup>33</sup>, the EIB should not finance - or in alternative should use its mandatory relocation clause for a project to be re-structured - in the following situations:

→ The operation uses entities either subject to zero taxation or less than 50% taxation rate compared to the country of implementation of the project, including hybrid entities (i.e. entities that are treated as transparent by one country but as non-transparent by another country).

→ EIB operations shall not make any use of entities for which a hybrid mismatch is possible especially if it can benefit from preferential tax regimes, including intellectual property transfers or license agreements in low-tax jurisdictions or if the entities are not covered by Controlled foreign corporation rules and/or withholding taxes.

→ Enhanced tax-related due diligence should identify all above-mentioned elements, including links to NCJs, use of preferential tax regimes, tax treatment of cashflows, indicators leading to tax avoidance concerns (such as high leverage ratio), etc.

## REQUIRING PUBLIC COUNTRY BY COUNTRY REPORTING TO EIB CLIENTS SHOULD BE A MINIMUM STANDARD



The EIB should require public Country by Country Reporting (CBCR) from its clients, without exemptions. In order to be eligible for EIB financing and investment, all beneficiaries, whether corporations or financial intermediaries, which are incorporated in different jurisdictions should disclose externally audited country-level information about their sales, assets, employees, profits and tax payments in each country in which they operate in their audited annual reports. Such a measure would be coherent with the most recent efforts at EU level to introduce country-by-country reporting requirements for private banks and multinationals.

It is thus crucial that the EIB, as an EU policy-driven bank, reviews its policy to align it to these important changes in EU law and goes even beyond these positive developments by setting important concrete precedents on how to implement these across the board as concerns IFI corporate due diligence. Public CBCR requirements should be made an essential part of the Corporate and Social Responsibility (CSR) strategy of the bank, as well as of the EIB project-selection under its 3 Pillar Assessment (3PA) and Result Measurement Framework (REM).

CBCR is especially essential in cases where the EIB engages with multinational corporations, as NGO studies have proven that there is often a complete disconnection between where multinational corporations are economically active and create value and the stories they tell in their financial accounts<sup>34</sup>. Therefore, for EIB lending to multinational companies, the EIB should make public CBCR a mandatory eligibility criteria for any company approaching the bank to benefit from its direct financing, in any economic

sector. For EIB lending through financial intermediaries, public CBCR requirements should apply to both the intermediary and the ultimate beneficiaries of EIB funds (if operating in several countries).

This measure would help bring to the public domain how much income and profits are produced in each country by multinational companies, as well as uncover the often modest taxes they pay in each country. Exposing how little tax major corporations pay is one of the best ways to move tax authorities and governments to crack down on tax avoidance by multinational companies within the EU and in developing countries.

In this regard, the EIB should not wait for the outcome of current discussions at EU level on public CBCR. Indeed, it should not be forgotten that the EIB is a public institution and supports projects in the name of EU policies - such as cohesion or development, thus it is now time for the bank to exert a leading role and ask for more than what commercial banks do for the sake of broader public interest goals. EIB shareholders (EU member states) are in a position to decide to impose CBCR as an eligibility criteria to benefit from EIB funding regardless of whether they agree to apply CBCR across the board to any company. In practice, this would mean that CBCR would apply to any company benefiting from publicly-guaranteed European funds. Given that public money is limited, such demand would be a tool to ensure an efficient allocation of resources against these goals - as enshrined in the EU Treaties. This would not mean substituting national tax authorities in their prerogatives, but rather asking national authorities for access to such information. Information exchange agreements with national tax authorities could be formalised via Memoranda of Understanding, which would then become a condition for Member States to see their national companies receive European public funds.

## IMPROVING DUE DILIGENCE ON BENEFICIAL OWNERSHIP



A beneficial owner is the real person who ultimately owns, controls or benefits from a company or trust fund and the income it generates. Very often the use of a controversial tax regime or money-laundering activities and other misconduct take place through complex corporate structures linking different companies and investment vehicles incorporated in a large number of jurisdictions, including those that are non-compliant. For a public institution, such as the EIB, lending at international level to multinational companies or financial institutions, or for cross-border investment operations, there is a high risk that the ultimate beneficiary of lending and investment is associated with tax avoidance and illegal activities.

The EIB claims, as part of its corporate due diligence, to request beneficial ownership information from its clients (the so-called “Know Your Customer” procedure)<sup>35</sup>. However, simply relying on information provided by the client cannot be sufficient to determine who is the ultimate beneficial owner of the supported entity in reality. For what concerns tax matters, it should be noted that a beneficial owner might be anyone who benefits from income streams associated with the company operations, and not just those directly involved in the company ownership or management.

Therefore, the EIB has to perform adequate corporate due diligence and aim first of all at identifying the true beneficial owners of all of its clients. But when it comes to identifying company beneficial owners most problems emerge with intermediated lending. This is when EIB lends large funds to other financial institutions which then on-lend it in smaller tranches to several ultimate beneficiaries. The same goes for EIB investments into equity funds which then support ultimate investee companies. In these cases,

the EIB due diligence is limited to the financial intermediaries themselves and it is unclear how much the bank screens the beneficial owners of the ultimate beneficiaries of its financing, rather than simply relying on the due diligence performed by the financial intermediary. It should be stressed that in its lending through financial intermediaries, the EIB does not even make public the names of the ultimate beneficiaries of its intermediated lending. In this regard, the EIB is lagging behind other multilateral institutions, such as the EBRD.

Thus, the identification of beneficial owners, together with integrity assessments to identify any sanctioned individuals or entities, as well as the screening for adverse media, presence of Politically Exposed Persons (PEPs) and potential conflict of interests should all be part of the EIB’s standard due diligence procedure and Anti-Fraud Policy. Reputational checks, including verifying if future clients are linked to previous tax scandals, should be conducted via press reviews and the exploration of the database of the International Consortium of International Journalists (ICIJ) for instance. **No financing should be granted when legal arrangements and entities such as trusts are routed or located in jurisdictions that pose difficulties to identify the Beneficial Ownership (BO) of such structures.**

Following the review of the EU Anti-Money Laundering Directive, the EIB should claim access to all public registries of beneficial owners of companies that should be established in all EU Member States. As a public institution, the bank definitely has a „legitimate interest“ in accessing such information.

Then, the EIB itself needs to step up the transparency of its operations by disclosing the beneficial ownership of its clients on the EIB website as part of the information available during the project’s appraisal phase.



Lux Leaks demonstration against the condemnation of Antoine Deltour and Raphaël Halet.  
Photo by [Mélanie Poulain](#) [CC BY 2.0]

As a result, by making more information public before project approval, the EIB would trigger more interest and cooperation from whistleblowers and external informants. Information provided by third parties should be strongly considered within the due diligence process and project monitoring after approval. **The EIB should review its current whistle blowing policy, which does not cover external informants<sup>36</sup>, but is just limited to the EIB staff.** In any case the EIB should uphold the right to review its client due diligence during the project implementation, even though this could lead to the eventual halting and slowing down of the project financing and generate financial losses for the client.



#06

## TOWARDS A STRONGER FOCUS ON DOMESTIC RESOURCE MOBILIZATION



Tax revenues form the basis of a sustainable economy and are crucial for developing countries that seek to invest in poverty reducing services while also becoming less dependent on foreign aid. Yet, the reality is still far from such principles. The United Nations trade body, the UN Conference on Trade and Development (UNCTAD), estimates that developing countries lose at least \$100bn a year due to one type of corporate tax avoidance alone<sup>37</sup>.

Therefore, as a public bank tasked with a development mandate for its operations outside Europe, with the primary goal of poverty eradication, it is key to inquire: will EIB projects have a neutral or even positive impact on tax collection in the country of operation? Any project having a negative impact should be rejected.

As pointed out by the civil society's input to the revision of the EIB's NCJ policy, the bank should assess the impact of its supported projects on **domestic resources mobilisation** in the country of operation. When evaluating projects ex-ante, periodically and ex-post, it is crucial for the bank to include corporate tax payments as a separate indicator in addition to total payments to governments.

The EIB should **include and mainstream tax indicators** in its projects indicators, especially under its operations outside of Europe, as well as its 3PA and REM evaluation systems. Such indicators need to include minimum effective tax rate for projects as a priority indicator. The EIB needs to explain how these tax indicators are measured and what importance is attached to them in comparison to other development indicators.

#07

## USING CONTRACT CLAUSES TO TRANSPOSE TAXATION AND GOOD GOVERNANCE REQUIREMENTS



Transparency requirements need to be set in stone as part of the clauses of contracts with EIB clients. In order to demonstrate that, as requested by the European Commission, the EIB is effectively "*transposing good governance requirements in contracts*", the bank should publish the integrity covenant of its contracts when signing an operation. The publication of such covenant would be a further deterrent for EIB beneficiaries intending to abuse tax havens.

However, more can be achieved also after the project approval if the right tax conditions are inserted in project financial agreements. In particular, financial covenants should include specific clauses concerning tax evasion and avoidance and related fraud, corruption and money laundering. Given the confidentiality of these agreements, it is not possible to know what is already covenanted on this matter as standard practice by the EIB management.

For instance, is the integrity statement covenanted as an integral part of the entire project financial agreement? In which specific form? And which power has the EIB to activate clauses and interrupt the financing based on allegations of tax evasion and avoidance without incurring any sanction? More generally, concerning lending through financial intermediaries, which legal obligations are imposed on the latter for what concerns the need to covenant specific tax clauses with beneficiary companies to which they onlend EIB financing?



#08

## INTEGRATING TAX EVASION AND TAX AVOIDANCE IN THE EIB EXCLUSION SYSTEM



A new EIB exclusion system has been published on 19 February 2018<sup>38</sup>. In this context, it is crucial that a system of sanctions for clients violating the EIB tax-related requirements is effectively part of this exclusion policy, including potential suspension or cancellation of the financing, as well as exclusion from future EIB financing. A related measure could be to temporarily blacklist companies who also settled with national tax authorities on tax avoidance or tax evasion grounds – which is an increasingly spread practice around Europe.

For the time being, it remains unclear how the possible suspension or cancellation of the financing would be applied, as well as the exclusion from future EIB financing, in case of violation of the relocation requirement for instance.

#09

## MORE TRANSPARENCY AND REPORTING



There is currently a lack of transparency from the EIB about how it implements its tax havens policy. The public is neither aware of the number of applications turned down by the EIB due to non-compliance with the NCJ Policy nor of the number of relocations requested and implemented as per the policy's stipulations. For the time being there is no detailed reporting made by the EIB to external stakeholders, including the European Parliament, about the implementation of its NCJ policy and the above-mentioned elements.

Hence, **the EIB should publish on a yearly basis a “Tax report” on the implementation of the NCJ Policy.** To be meaningful, this report needs to include disaggregated data on the tax impact of its investments, and information about how the relocation clause is used. If necessary, the EIB should publicly demonstrate that the use of a third jurisdiction was superior in advancing its development mandate compared to a direct domiciliation in the targeted developing country.

## GOVERNANCE



The EIB's efforts to curb the abuse of tax havens should not stop just at the ex-ante due diligence to be performed on each of its clients and operations. It is essential that the bank's Board of Directors be adequately informed and pro-actively monitor tax due diligence by the bank's services. In this context, it is positive that the Interim Approach foresees more information on tax and corporate transparency due diligence to be circulated to the Board of Directors. In this context, the revised NCJ Policy should set in stone such approach.

The EIB shall **develop and strengthen in-house capacity** to oversee due diligence and project monitoring activities to ensure there is no dependency on external advisers who might have a conflict of interest. This could include hiring new staff to focus on tax matters beyond legal compliance, and raising awareness in the Projects and Operations Directorates on the need for fair taxation in order for the bank to contribute to sustainable development and human rights. The EIB should consider the creation of a Working Group on tax to take stock of the most recent developments at EU level and supervise the creation of an EIB Responsible Taxation policy. In parallel, the EIB should create a separate internal "Tax Unit", possibly as part of its compliance office, with sufficient capacity to implement thorough due diligence on tax issues.

# EiB'S RESPONSE

---



WE HAVE GIVEN  
THE EUROPEAN  
INVESTMENT BANK  
THE OPPORTUNITY  
TO SHARE THEIR VIEWS  
ON THIS REPORT PRIOR  
TO PUBLICATION AND  
WE THANK THEM FOR  
THEIR INPUT WHICH IS  
AVAILABLE BELOW.





Ευρωπαϊκή Επενδυτική Τράπεζα  
Evropská investiční banka  
Den Europæiske Investeringsbank  
Europäische Investitionsbank  
Euroopa Investeermispank  
Ευρωπαϊκή Τράπεζα Επενδύσεων  
European Investment Bank  
Banco Europeo de Inversiones  
Banque européenne d'investissement  
An Banc Eorpach Infheistíochta  
Evropska investicijska banka  
Banca europea per gli investimenti  
Eiropas investīciju banka  
Europos investicijų bankas  
Európai Beruházási Bank  
Bank Europeu tal-Investment  
Europejski Bank Inwestycyjny  
Banca Europeea de Investiții  
Banca Europeana de Investiții  
Európska investičná banka  
Evropska investicijska banka  
Euroopan investointipankki  
Europeiska investeringsbanken

Mr Xavier Sol  
Director  
Counter Balance

Via e-mail: [Xavier.sol@counter-balance.org](mailto:Xavier.sol@counter-balance.org)

Luxembourg, 2 March 2018

SG/CR/CS/2018-317/JSMB/HL/hd

EIB – Corporate Use

Dear Mr Sol,

Thank you for providing the European Investment Bank ("EIB" or the "Bank") with the opportunity to comment on the Counter Balance draft paper titled *"Leading by example on responsible taxation – can the "EU Bank" show the way in the fight against tax evasion and tax avoidance?"* ("CB Paper").

The EIB recalls its concerns raised at the time of some of your earlier publications quoted in the CB Paper. We understand that for reasons of transparency and objectivity, Counter Balance will present the Bank's comments provided herein at the time of (together with) the release of the CB Paper.

As already indicated in past interactions with Civil Society Organisations ("CSOs"), the EIB appreciates and takes account of the comments received from CSOs regarding its activities. In this vein, we recall the most recent Joint Paper of 12 January 2018 prepared by thirteen CSOs, including Counter Balance, which contributes to the review of the EIB's Policy towards weakly regulated, non-transparent and uncooperative jurisdictions (the "NCJ Policy").

As indicated in the EIB's reply to the Joint Paper of 30 January 2018, CSOs' proposals will be reviewed as part of the EIB NCJ Policy revision process in 2018, together with the recommendations presented in the CB Paper.

The EIB would like to bring to your attention some points raised in the CB Paper.

#### General Comments on EIB ownership, governance, and remit

The shareholders of the EIB are the 28 Member States of the European Union and governance over the EIB is exercised according to the EIB Statute and EIB Rules of Procedure, which provide the specific legal framework for the Bank.<sup>1</sup> Besides the Bank's paid-in capital by the shareholders, EIB finances itself on the market. The money it lends does not come from public budgets but mainly from borrowing on the global capital markets.

As the Bank of the EU, the EIB provides finance and expertise for sustainable investment projects that contribute to EU policy objectives. Thus, the EIB differs considerably from commercial banks in that its activity is driven by public policy objectives and it operates on a non-profit making basis.

<sup>1</sup> On the Board of Directors, the 28 Directors nominated by the Member States and the Director nominated by the Commission each have one vote. A favourable vote requires both: (i) a majority consisting of at least one third of the members entitled to vote, including the Director nominated by the Commission, and (ii) a majority of at least 50% of the subscribed capital, the Commission's Director has a weighting of 0% of the capital. For further reference on the corporate governance of the EIB, we refer you to the publication: "The Governance of the EIB", available here: [http://www.eib.org/attachments/general/governance\\_of\\_the\\_eib\\_en.pdf](http://www.eib.org/attachments/general/governance_of_the_eib_en.pdf).





The EIB promotes sound eligible projects on the basis of its public policy missions, not financial intermediaries or project companies. It is therefore crucial to distinguish between tax regimes directly applicable to projects financed by the EIB, on the one hand, and tax regimes applicable to more remote entities upstream the ownership structure, detached from the projects financed by the Bank and with separate governance systems, on the other hand.

The approach on tax good governance at the EIB should therefore be commensurate. An overly cautious approach to tax optimisation schemes (tax avoidance) can have the unintended consequences of excluding eligible and sound projects from EIB's financing and precluding needed investments. Therefore, following the approach of the Anti-Money Laundering Directive<sup>2</sup> and Financial Action Task Force recommendations<sup>3</sup> (both address serious crimes, including tax crimes), it is important to recognise the risk-sensitive approach as a central element to implement tax good governance measures, including tax avoidance checks by the Bank.

#### Terms and definitions

The terms "tax avoidance", "tax justice", "fair taxation" and "aggressive tax planning" used in the CB Paper merit further review. In order to make these terms a useful reference, it is crucial to define what is meant by each of them and their interchangeable usage with the term "tax evasion" should be avoided. We recall that neither the Anti Tax Avoidance Directive nor Base Erosion and Profit Shifting Final Reports define "tax avoidance". In absence of a uniform definition of "tax avoidance" at EU (or international) level, it is the prerogative of national courts and, when in doubt, the Court of Justice of the EU to interpret EU law and provide clarifications.

The terms "tax haven", "secrecy jurisdictions", "problematic jurisdictions", "EU Black List", "EU Grey List" used in the CB Paper merit further review and clarity. EIB recalls that:

- i. There is no commonly accepted definition of "tax havens";
- ii. The EIB's NCJ Policy follows the reference lists issued by the Lead Organisations.<sup>4</sup> The reference lists of the Lead Organisations are published after detailed scrutiny of jurisdictions' legal and/or institutional frameworks;
- iii. The Tax Justice Network's Financial Secrecy Index, often used by Counter Balance to define "secrecy jurisdictions", is not considered a reference list by the EU or any other Lead Organisations;
- iv. It is not sufficient that a jurisdiction is coined in the public domain as a "tax haven" to appear on such lists, a jurisdiction is listed only if it does not comply with the EU and/or internationally agreed standards; and
- v. Annex I of the 'Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes' of 05/12/2017 (amended on 23/01/2018) (the "Council Conclusions") lists 9 non-cooperative jurisdictions. Jurisdictions mentioned in Annex II of the Council conclusions "should not, at this stage, be placed on the list of non-cooperative jurisdictions" (Recital 11). As you will know, the Bank's NCJ Policy already takes account of the EU list of non-cooperative jurisdictions laid down in Annex I of the Council Conclusions and EIB closely monitors the progress of the jurisdictions mentioned in Annex II of the Council Conclusions in addressing remaining tax deficiencies, as well as the future status of those jurisdictions for which the screening process has been temporarily put on hold.

<sup>2</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ.JOL\\_2015\\_141\\_R\\_0003&from=ES](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ.JOL_2015_141_R_0003&from=ES).

<sup>3</sup> <http://www.fatf-cafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.

<sup>4</sup> Please refer to EIB's NCJ Policy: <http://www.eib.org/infocentre/events/ai/ncj-policy-and-procedures-workshop.htm>.



### Incorrect or misleading statements

The EIB points out that in a number of places, the CB Paper makes incorrect or misleading statements, or references to other sources, which are incorrect. Some examples are:

- i. *"The EIB has refused to disclose the content of the Interim Approach"*. EIB recalls that the third engagement event with stakeholders, which was publicly announced and open to all interested stakeholders, took place on 29 November 2017 in the EIB Brussels Office.<sup>5</sup> In this event EIB provided a detailed overview of its NCJ Policy and the Interim Approach to the NCJ Policy adopted by the Board in January 2017 (the "Interim Approach") and engaged in an exhaustive discussion/Q&A session with stakeholders. We were pleased to count yourself among the participants of the event. Furthermore, and as indicated to Counter Balance in February 2017, the information provided to Counter Balance, together with the Statement published on the EIB website, constitutes a meaningful summary of the Bank's interim approach to the EIB NCJ Policy adopted on 31st January 2017
- ii. *"Belgian newspaper Le Soir indicating that the European Commission blocked projects worth EUR 1 billion for fiscal reasons in 2016 and the first half of 2017 only" and "projects linked to the infamous law firm Mossack Fonseca"*. The information concerning blocked projects and links to Mossack Fonseca is incorrect. To this end, the EIB has issued a statement to the European Parliament / The Committee of Inquiry into Money laundering, tax avoidance and tax evasion (PANA) which is publicly available.<sup>6</sup> All operations have been assessed in line with the Interim Approach and eventually approved by the EIB Board of Directors;
- iv. *"Text box: The EIB and the fight against tax evasion and aggressive tax planning" and "Text box: Examples of loopholes in the current NCJ Policy"*. The interpretation of the EIB's NCJ Policy provided in the mentioned text boxes is wrong and does not reflect the EIB's approach;
- v. References to *"Cepheus Growth Capital"*, two individual managers<sup>7</sup> and *"Panton Capital Group hedge fund"*. As regards Panton Capital Group, the Bank notes, based on information received, that the fund was closed in 2015 and is since that date no longer in existence. Consequently, the fund is not related to Cepheus Growth Capital Fund in which the EIB has decided to invest in 2017; and
- vi. *"EIB operations funding tax-havens-based clients"*. As already indicated above, the EIB promotes eligible projects, not financial intermediaries or project companies.
- vii. As Counter Balance knows, the EIB Anti- Fraud policy<sup>8</sup> applies to external informants reporting allegations of Prohibited Conduct.
- viii. The EIB Exclusion Policy is published on the EIB website<sup>9</sup>. The Exclusion Policy can apply to EIB counterparts and other relevant parties if they are found to have engaged in Prohibited Conduct connected to an EIB-financed operation. Tax fraud is included in the definition of fraud, which is one of the constituent parts of Prohibited Conduct.

<sup>5</sup> <http://www.eib.org/infocentre/events/all/eib-2017-stakeholder-engagement-workshop.htm>

<sup>6</sup> <http://www.europarl.europa.eu/cmsdata/138120/EIB%20Statement%20on%20PANA%20report%20FINAL.pdf>

<sup>7</sup> The EIB understands that you have observed applicable personal data protection legislation and rules when invoking personal information regarding the individuals mentioned in the CB Paper.

<sup>8</sup> <http://www.eib.org/infocentre/publications/all/anti-fraud-policy.htm>

<sup>9</sup> <http://www.eib.org/infocentre/publications/all/exclusion-policy.htm>





#### Other General remarks and considerations

Please consider that in the last two years the EIB Group has been clearly playing a leading role among IFIs and leading by example on tax good governance, with the development of the Interim Approach on the NCJ Policy, introducing extended tax due diligence, insourcing tax expertise, publishing on the EIB Group web 'Statement on tax fraud, tax evasion, tax avoidance, aggressive tax planning, money laundering and financing of terrorism', organising the international conference "Tax - Compliance – Ethics: International Taxation – Role for International Financial Institutions?"<sup>10</sup> and the above mentioned engagement event with stakeholders.

Any conclusive tax integrity assessment covering potential tax avoidance practices is based on facts and evidence, and such conclusion is the prerogative of national tax authorities and is subject to judicial review. The EIB cannot substitute national tax authorities or provide confirmation on tax good standing, nor can it assume legal risks (liability) for doing so. This would be beyond its mission and outside its legal remit. Likewise, the EIB should not be in a position to determine what constitutes a "minimum effective tax rate for projects", as this falls under the responsibility of the relevant tax authorities and could not be monitored by the Bank. However, the EIB has adopted and continues to further develop the proactive approach of applying sound and robust due diligence, including tax good governance scrutiny, before embarking on new or renewed operations.

Many aspects of the EIB's due diligence go beyond the minimum requirements or thresholds outlined in the CB Paper. As you will appreciate, the EIB's due diligence approach has been extended under the Interim Approach to include tax good governance checks designed to identify the presence of a number of possible tax risk indicators (preferential tax regimes being one of them), in addition to the existing AML-CFT checks, which are aligned to the 4<sup>th</sup> AML Directive and FATF Recommendations.<sup>11</sup>

Transparency and accountability are key principles defining how the EIB Group manages its operations. The EIB Group Transparency Policy commits the EIB to a high level of dissemination of information, with well-defined exceptions based on applicable EU legislation. Naturally, this Policy also applies to the tax-related information held by the EIB and clarifies the Bank's legitimate constraints when requested to put some of this information into the public domain.

The EIB also invites Counter Balance to take into consideration the positive developments in the implementation of tax good governance standards undertaken by jurisdictions mentioned in the paper, as well as, of the fact that membership in the Inclusive Framework on BEPS and the Global Forum on Transparency and Exchange of Information for Tax Purposes is open to all jurisdictions and countries and has been constantly growing.

As regards the public Country by Country Reporting ("CBCR") and disclosure of the beneficial owners of the EIB clients, the EIB cannot unilaterally go beyond the existing legal framework, nor replace EU and national institutions in charge of the legislation process and encroach upon their respective roles and prerogatives.

<sup>10</sup> <http://www.eib.org/infocentre/events/all/international-tax-conference-2017.htm?f=search&media=search>

<sup>11</sup> Please refer to EIB's AML-CFT Framework available here: <http://www.eib.org/infocentre/publications/all/eib-group-and-money-laundering-policy-and-combating-finance-of-terrorism-framework.htm>.



The EIB contributes to promoting globally the tax transparency standards and implementation of anti-BEPS standards and welcomes further discussions aimed at establishing a level playing field, which would lend itself to the successful implementation of a robust tax good governance framework across the board.

Yours sincerely,

EUROPEAN INVESTMENT BANK

Handwritten signature of Gerhard Hütz in blue ink.

**Gerhard Hütz**  
Group Chief Compliance Officer

Handwritten signature of Hakan Lucius in blue ink.

**Hakan Lucius**  
Head of Division  
Corporate Responsibility and Civil Society



## ANNEX #02

# RESOURCES & FURTHER READINGS

1 <http://plus.lesoir.be/92485/article/2017-05-04/quand-leurope-investissait-dans-les-paradis-fiscaux> 2 [https://ec.europa.eu/info/sites/info/files/economy-finance/c\\_2018\\_1756.pdf](https://ec.europa.eu/info/sites/info/files/economy-finance/c_2018_1756.pdf) 3 European Parliament resolution of 27 April 2017 on the Annual Report on the Financial Activities of the European Investment Bank (2016/2099(INI)) 4 The EIB, in his reply published in an Annex to this report, considers that the information it has disclosed about its Interim Approach constitutes a „meaningful summary”. 5 <http://www.eib.org/about/compliance/tax-good-governance/index.htm> 6 <http://plus.lesoir.be/92485/article/2017-05-04/quand-leurope-investissait-dans-les-paradis-fiscaux> 7 <http://www.europarl.europa.eu/cmsdata/138120/EIB%20Statement%20on%20PANA%20report%20FINAL.pdf> 8 <https://www.financialsecrecyindex.com/Archive2015/index.php?id=3> 9 See the press release on EIB website: <http://www.eib.org/infocentre/press/releases/all/2016/2016-112-nouveau-financement-dans-le-cadre-du-plan-dinvestissement-pour-leurope-ginkgo-2> 10 See the funds' description on EIB website: [http://www.eib.org/products/lending/equity\\_funds/acp\\_equity\\_funds/apis-growth-fund-i.htm](http://www.eib.org/products/lending/equity_funds/acp_equity_funds/apis-growth-fund-i.htm) 11 <https://www.icij.org/investigations/paradise-papers/tax-haven-mauritius-africa/> 12 See the fund's description on EIB's website: [http://www.eib.org/products/lending/equity\\_funds/acp\\_equity\\_funds/afig-fund-ii.htm](http://www.eib.org/products/lending/equity_funds/acp_equity_funds/afig-fund-ii.htm) 13 See the EIB's press release related to projects <http://www.eib.org/infocentre/press/releases/all/2015/2015-200-development-banks-confirm-multi-million-dollar-backing-for-african-renewable-energy-fund.htm> 14 See the fund's description on EIB's website: <http://www.eib.org/projects/pipelines/pipeline/20170078?f=search&media=search> 15 <http://www.cephuscapital.com/>, visited on 23 November 2017 16 <https://www.avca-africa.org/media/1436/avca-member-interview-cepheus-growth-capital-partners.pdf> 17 <https://www.cgdev.org/page/kassahun-kebede-0> 18 <https://www.corporationwiki.com/p/2ppw5m/panton-capital-group-llc> 19 [https://www.sec.gov/Archives/edgar/data/1353728/000091957409005840/xslFormDX01/primary\\_doc.xml](https://www.sec.gov/Archives/edgar/data/1353728/000091957409005840/xslFormDX01/primary_doc.xml) 20 See the project's description on EIB's website <http://www.eib.org/projects/pipelines/pipeline/20140596?f=search&media=search> 21 See the website of TAP AG <https://www.tap-ag.com/about-us> 22 <https://www.lacite.info/economietxt/2015/12/09/les-nuages-sassombrissent-sur-le-tap-gazoduc-phare-de-la-suisse> 23 According to the EIB's website, the bank is “committed to maintaining a leading role amongst IFIs against tax fraud, tax evasion and harmful tax practices as well as money laundering and terrorism financing”. <http://www.eib.org/infocentre/events/all/eib-stakeholder-engagement-workshop.htm> 24 <http://www.eib.org/infocentre/publications/all/eib-policy-towards-weakly-regulated-non-transparent-and-uncooperative-jurisdictions.htm> 25 <http://www.eib.org/about/documents/ncj-policy-addendum.htm> 26 <http://www.oecd.org/tax/transparency/> 27 <http://www.financialsecrecyindex.com/> is an index produced by the Tax Justice Network that “ranks jurisdictions according to their secrecy and the scale of their activities”. 28 <http://eurodad.org/4380/> 29 [https://ec.europa.eu/info/publications/eu-anti-tax-avoidance-requirements-financing-and-investment-operations\\_en](https://ec.europa.eu/info/publications/eu-anti-tax-avoidance-requirements-financing-and-investment-operations_en) 30 5 December 2017, ECOFIN conclusions: <http://www.consilium.europa.eu/media/31945/st15429en17.pdf> 31 Article showing that despite its compliance with new OECD rules, Mauritius is likely to remain a tax haven for the developing world: <https://www.taxjustice.net/2017/07/12/half-measures-mean-mauritius-will-continue-to-be-a-tax-haven-for-the-developing-world/> 32 <https://www.euractiv.com/section/economy-jobs/news/uproar-over-removal-of-panama-and-seven-others-from-eu-tax-haven-blacklist/> 33 12 January 2018: <http://www.counter-balance.org/civil-society-urges-the-eu-bank-to-lead-on-responsible-taxation/> 34 Christian Aid. “FTSEcrecy: the culture of concealment throughout the FTSE”; May 2014. Available at: <http://www.l4bb.org/reports/FTSEcrecy-report.pdf> 35 Article 15 of the Policy on preventing and deterring prohibited conduct in European Investment Bank activities [www.eib.org/attachments/strategies/anti\\_fraud\\_policy\\_20130917\\_en.pdf](http://www.eib.org/attachments/strategies/anti_fraud_policy_20130917_en.pdf) 36 The EIB Anti-Fraud policy covers external informants. We consider that these provisions should be clearly spelled out under a broader whistleblowing policy covering both internal and external informants. 37 Joint NGO report, 10 November 2016, <http://www.eurodad.org/Entries/view/1546662/2016/11/10/Development-Finance-Institutions-and-Responsible-Corporate-Tax-Behaviour-Where-we-are-and-the-road-ahead> 38 <http://www.eib.org/infocentre/publications/all/exclusion-policy.htm>

# CREDITS

---



This publication has been produced with the financial assistance of the Open Society Initiative for Europe and the European Union. The contents of this publication are the sole responsibility of Counter Balance and can under no circumstances be regarded as reflecting the position of the Open Society Initiative for Europe and the European Union.

---

## COUNTER BALANCE

### – Challenging public investment banks

is a European coalition of development and environmental non-governmental organisations with extensive experience working on development finance and the international financial institutions as well as campaigning to prevent negative impacts resulting from major infrastructure projects.



*Counter Balance's mission is to make European public finance a key driver of the transition towards socially and environmentally sustainable and equitable societies.*



#### CONTACT INFORMATION:

Counter Balance secretariat

---

EMAIL: [info@counter-balance.org](mailto:info@counter-balance.org)

---

[www.counter-balance.org](http://www.counter-balance.org)

---

**WRITTEN BY:** Xavier Sol (Counter Balance)

**EDITED BY:** Adriana Paradiso

**GRAPHICS AND LAY-OUT:** Liesbeth Boucher

**TEXT CLOSED ON 22 MARCH 2018**