

DISCUSSION PAPER No. 227

Understanding illicit financial flows and efforts to combat them in Europe and Africa

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SUMMARY

Over the past two decades, illicit financial flows (IFFs) have emerged as a key issue for discussion in international taxation and development. The loss of trillions of resources for public use has become a matter of major concern everywhere, not least because it hinders the achievement of the Sustainable Development Goals. In this paper, we analyse policy dynamics and look into the dilemmas relating to IFFs, in particular in Africa and Europe, to understand how to step up the game in fighting IFFs and favour development.

There is no unanimous definition of what IFFs are, although they stand prominently on the international agenda. Defining them is important as it influences the way we talk about them, their legal qualification, the data available to better understand this phenomenon and, ultimately, the impact of efforts to fight them. Quantifying IFFs is problematic and so is prioritising types of flows to counter.

Different types of IFFs have a different range of impacts, some of which are far from straightforward. However, the international community agrees that IFFs have mainly extremely negative repercussions on countries.

Numerous policy factors and incentives determine their existence. As a result, all countries will need to mobilise politically and seek policy coherence arrangements to reduce IFFs (as suggested by SDG 16)

The African Union (AU) has developed in recent years a work stream on IFFs, with limited implementation so far. The European Union (EU), meanwhile, is proactive in fighting those IFFs that undermine its own tax base but does not prioritise these with its efforts towards international development. We offer a set of recommendations as well as an inventory of past European and African approaches to IFFs.

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Acronyms

ACP	Africa Caribbean Pacific States
AfDB	African Development Bank
AML	Anti-money laundering
APRM	African Peer Review Mechanism
ATAF	African Tax Administration Forum
ATAP	European Union Anti-Tax Avoidance Package
ATI	Addis Tax Initiative
AU	African Union
AU-ABC	African Union Advisor Board on Corruption
AUCPCC	African Union Convention on Preventing and Combating Corruption
BEPS	Base Erosion and Profit Shifting
CbCR	Country-by-Country report
CCCTB	Common Consolidated Corporate Tax Base
CFT	Counter-terrorist financing
CoDA	Coalition for Dialogue on Africa
CPA	Cotonou Partnership Agreement
CSO	Civil society organisation
DAC	Development Assistance Committee
DRM	Domestic resource mobilisation
DTA	Double taxation agreement
EC	European Commission
ECDPM	European Centre for Development Policy Management
ECJ	European Court of Justice
ECOFIN	Economic and Financial Affairs Council Configuration
ECOSOC	Economic and Social Council
ECOWAS	Economic Community of West African States
EITI	Extractive Industries Transparency Initiative
EP	European Parliament
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
ESRF	Economic and Social Research Foundation
EU	European Union
FATF	Financial Action Task Force
FfD	Financing for Development Forum
GABAC	Groupe d'Action contre le blanchiment d'Argent en Afrique Centrale
GDP	Gross Domestic Product
GFI	Global Financial Integrity
GIABA	Inter-Governmental Action Group against Money Laundering in West Africa
GNI	Gross national income
HLPF	High-level Political Forum on Sustainable Development
HSGIC	Heads of State and Government Implementation Committee
IATF	Inter-agency Task Force

IFF	Illicit financial flows
IfW	Institute for World Economy
IMF	International Monetary Fund
LSE	London School of Economics and Political Science
MDG	Millennium Development Goal
MENAFATF	Middle East and North Africa Region Financial Action Task Force
MNE	Multinational enterprise
MoU	Memorandum of Understanding
MS	Member state
NEPAD	New Partnership for Africa
NGO	Non-governmental organisation
OAU	Organisation of African Unity
ODA	Official development assistance
OECD	Organisation for Economic Co-operation and Development
PCD	Policy Coherence for Development
PCSD	Policy coherence for sustainable development
REC	Regional Economic Communities
SDGs	Sustainable Development Goals
StAR	Stolen Asset Recovery Assistance
TFEU	Treaty of the Functioning of the European Union
TUAC	Trade Union Advisory Committee
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDESA	United Nations Department of Economic and Social Affairs
UNDP	United Nations Development Programme
UNECA	United Nations Economic Commission for Africa
UNODC	United Nations Office on Drugs and Crime
US	United States
VAT	Value added tax
WBG	World Bank Group
WTO	World Trade Organisation

1. Introduction

“It is practically impossible to acquire complete information about illicit financial flows, precisely because of their illicit nature, which means that (...) everyone concerned should continue to carry out research on this matter, including making generally available all new relevant information.”

Former South African President Thabo Mbeki¹

The international community, which is committed to the extremely ambitious 2030 Agenda on sustainable development, is painfully aware that the amounts missing due to IFFs are in the trillions of US dollars. Indeed, this money could help fund the sustainable development goals (SDGs), and affected countries know creative solutions are required. One such priority set out in the Addis Ababa Action Agenda, the financing framework for the SDGs, is to mobilise domestic resources, for instance, by maximising the tax revenue of states. Today, many countries have committed to improving the coherence of their fiscal policies (such as banking secrecy or tax incentives) with the imperatives of development.² In this context, it might seem more straightforward to prevent capital from going offshore than to try to generate economic growth to increase the size of the tax base. This explains why recently IFFs have garnered a lot of attention. IFFs can be defined as international financial transfers, which are considered illegal or illegitimate due to the origin or destination of the funds, or the method of transfer. However, tackling IFFs is a complex task with many more implications for development than just the possibility of mobilising additional resources.³

Behaviours associated with IFFs include tax abuse, abuse of power, regulatory abuse and criminality, and they do not only impact developing countries. IFFs – whether they emanate from individuals or from companies – can undermine state resources, state effectiveness, the legitimacy of the state and specific groups, as well as the rule of law in all countries. There are many factors, which contribute to the recent prominence of IFFs on the international agenda: the urgency to fund sustainable development, concerns about terrorism financing, political funding or rising populism in a context of defiance against elites – to name but a few. In the past, policy responses to the problems of IFFs generally came from sectors such as the judiciary, fiscal administrations, customs or industrial policy, and reflected their institutional priorities. These efforts include bilateral tax treaties, policies against anti-money laundering and trade misinvoicing, beneficial ownership, automatic exchange of information, country-by-country reporting, and anti-corruption policies. The prominence that IFFs have gained offers the opportunity to place coherent sustainable development policies at the heart of IFF policymaking.

However, non-specialists may find that the complex discussion on taxation and IFFs is further complicated by the lack of clear definitions of relevant concepts, and by the often polarised nature of policy debates.⁴ In this discussion paper, we seek to clarify what IFFs are. Some of the challenges involved are that the international community still has not agreed on a common definition, that the definitions available to stakeholders all come with specific agendas attached to them, and that different types of IFFs are covered with unequal thoroughness, within currents of specialised literature, which involve lots of technical language and expertise.⁵ Hence, we will summarise the substance of international discussions on IFFs, particularly

¹ In his foreword to the Report of the High-Level Panel on Illicit Financial Flows from Africa, 2015. This report realised under the auspices of the AU/ECA Conference of Ministers of Finance, Planning and Economic Development, is sometimes referred to as ‘Mbeki report’.

² Mackie et al (2017).

³ World Bank (2017).

⁴ Hearson (2014).

⁵ Forstater (2018).

in Europe and Africa⁶. Next, we will look at the policies adopted in both continents – either as a response or before the increased focus on the topic – which we hope will provide insights for policy makers who deal with IFFs. Due to the relatively nascent stage of the field, this paper does not offer a thorough assessment of whether these initiatives have been successful.⁷ On the other hand, it draws on a diverse literature to show how states can improve their policies' coherence with development, in order to outline some recommendations.

The first section of the paper deals with definitions and conceptual issues: what are IFFs and which components do they include depending on the definition? What can be learned from the controversial issue of having different definitions? And what is the added value of the concept of IFFs in the first place? The second section covers the evolving landscape of policymaking in this area at the international and regional levels in Africa and Europe. The appendix provides an inventory of initiatives intended to stem IFFs, at the African and European level.

⁶ IFFs from Africa to Europe and secrecy jurisdictions are identified by various reports - including but not limited to the High-level Panel report on IFFs of 2015 - to be among the highest globally.

⁷ "The research on the drivers, consequences and policy aspects of IFFs has been minimal." Reuter (2017).

2. What are IFFs?

The term ‘illicit financial flows’ emerged only recently and its popularity as a policy-relevant concept is usually attributed to the book *Capitalism’s Achilles Heel: Dirty Money and How to Renew the Free-Market System*, which was published in 2005. The author, Raymond Baker, who used to be a businessman active in Africa, moved on to found the NGO Global Financial Integrity. Various related terms, such as ‘dirty money’, have been employed over time, but the international consensus is now to refer to IFFs, as exemplified by the introduction of IFFs in the 2030 Agenda’s SDGs. Yet even so, there is no consensus on what the term covers exactly, and the 2030 Agenda does not provide a definition. In 2015, the international task force on financing for development (convened by the United Nations)⁸ was mandated to research a definition but it has not yet managed to accommodate the interests of all parties involved. Currently, different definitions are used, sometimes inconsistently.

IFFs concern a broad range of stakeholders from different sectors, such as advocacy, legal enforcement, policy making, public relations or research. These stakeholders may favour one definition of IFFs over another, each legitimate in its own right. One significant example is advocates of tax justice, who usually insist formally legal tax malpractices be included. Conversely, many corporate actors would prefer to shield their legal activities from the negative connotations of the term IFFs and hence they restrict the definition of IFFs to strictly illegal flows.

This first chapter attempts to do justice to the definition controversy and demonstrate that actors are likely to favour the definition most closely aligned to their interests. The first subsection includes a comprehensive typology of IFFs as identified in the literature, which in turn will allow us to classify the implications of each definition in terms of scope and focus. In the second subsection, we will examine three possible definitions for IFFs.

2.1. Identifying potential IFFs

‘IFF’ is an umbrella term, which covers a number of different realities. This means that it is important to disaggregate them in the analysis: to establish a typology.⁹ So far, researchers have attempted to provide IFF typologies according to criteria such as whether the funds’ origin, transfer or intended use is illegal or illicit; whether the perpetrator is an individual or a company; whether the scheme involves international trade, taxes or the product of criminal activities; where the flows originate and where they go, etc. Each disaggregation method has its pros and cons. Building on the works of Cobham and Jansky (2017), and of the High-Level Panel on Illicit Financial Flows from Africa, we propose a typology consisting of four types of IFFs. Each follows a distinct rationale – although overlaps do exist. For each type of IFF, we will briefly discuss the nature and legality of the transactions involved, as well as the level of harm it can cause in relation to sustainable development as per the 2030 Agenda. Specific examples are included in the graph 2, in the next section.¹⁰

Tax abuse

Tax abuse covers a broad range of behaviours, which seek to reduce the amount of taxes paid to authorities. More specifically, tax abuse includes tax fraud or evasion (illegal schemes, which usually consist in concealing assets or profits offshore) and tax avoidance, which often refers to schemes that are

⁸ IATF (2018).

⁹ Reuter (2017).

¹⁰ Cobham and Jansky (2017). Cobham and Jansky, as well as the “Mbeki report”, rely on the four-components typology adopted here.

legal – at least until found to be illegal in court – but are commonly regarded as illegitimate, because they violate the spirit of the law or other principles.¹¹ Tax abuse thus raises questions of legality: which legal order should be considered? How should we deal with the ‘grey zone’ of secretive transactions, likely to be found fraudulent if they ever came to the attention of the relevant authorities? How should we deal with conflicting jurisprudences, while, at the same time, respecting the presumption of innocence?

Whether tax abuse involves a single individual concealing their assets in a secrecy jurisdiction or a complex scheme such as the so-called ‘double Irish with a Dutch sandwich’¹² which only multinational companies can set up, it is usually considered a major hindrance to sustainable development. Indeed, tax abuse reduces state revenues and it shifts the tax burden onto the less well-connected and less powerful stakeholders (typically placing it on small and medium enterprises, as well as the poor or middle class).¹³ At the national level, this undermines public trust and the social contract, understood here as the tacit agreement that all parts of a society both contribute and benefit from the current social organisation. It is possible to identify exceptions to this general harmfulness, provided the political economy of a country is thoroughly understood. For instance, if an abusive, predatory regime targets single entities through tax measures in order to appropriate their profits, a formally illegal shift of these profits abroad, while constituting an IFF, can reasonably be considered legitimate and/or have no negative impact on the social contract or even on development.¹⁴ The problem tax abuse causes for sustainable development hinges on the assumption that the lost tax revenue would be used to support, rather than harm, development. How states use their revenues and whether it supports development is a larger discussion this paper cannot address fully. Suffice it to say that, in some cases, there is no linear relation between development and domestic resource mobilisation.

Abuse of power

This second category includes the transfer of funds obtained through the theft of state funds and assets, and other forms of corruption. Like tax abuse, IFFs linked to the abuse of power can originate from any country and lead to any other. In many instances, destination or intermediary countries are either a secrecy jurisdiction (for long term storage or to reduce visibility, and hence the risk of a lawsuit) or a developed country (so that funds are available for consumption there). In addition to such embezzlement in developing countries and elsewhere, this category includes money transferred by a corporate or a public entity to a (often developing) country in order to fund bribes to secure a trade or an investment deal. However, much of this category falls into the grey zone of ‘legal until proven illegal’ as, in most laws, what constitutes an abuse of power is the intent, which is often hard to prove, and the link between a policy favour and a reward is also sometimes hard to determine. In addition to undermining state funds and assets, this category of IFF frequently undermines state efficiency, insofar as corruption often bends public policies away from the public interest and towards the private interest of the corruptors.

Criminality

This category – which does not prejudge the legal qualification of the three others – revolves around organised crime. An important component in this category is the laundering of proceeds of crime, which typically aims to make the funds available on legitimate markets in developed countries. Another

¹¹ While ‘tax avoidance’ is often used in this way to cover ‘legal-until-found-illegal’ activities, it also has a more specific legal signification in some jurisdictions such as the UK. This paper finds the term in its former definition useful for being more straightforward than ‘aggressive tax planning’ or ‘BEPS’, and easier to relate to clearly illegal tax evasion. See also: Oxford University Centre for Business (2012).

¹² This scheme favoured by multinational companies consists in circulating money through at least three constituencies (Ireland, the Netherlands and one more), using mailbox companies (with no employees), to avoid paying taxes. See for instance: Irish Times. (2018).

¹³ Cobham (2014).

¹⁴ Blankenburg and Khan (2012): 21-68.

component is the repatriation of proceeds of criminal activity such as the drug trade, which generally flows from developed countries towards developing countries.¹⁵ As it incentivises crime, this last category tends to undermine the rule of law and hinder development. On the other hand, the investment of dirty money in developing countries can have a significant positive impact on economic activity there.

Market/regulatory abuse

Since this last category includes flows, which infringe any regulation, it overlaps with the previous categories. In some cases, it overlaps with abuse of power, if it consists in a flow violating anti-bribery regulations; with tax abuse, if it consists in currency control evasion, which results in lowering the taxes paid; with criminality, if it breaches a restriction on financing terrorist activity, and so on. The reason for this category is that, while the motivation for IFFs can be straightforward as in the cases just mentioned, the mere fact of moving money internationally, in contravention of a regulation, constitutes an IFF. Currency regulation evasion is another case in point, along with breaches to international sanctions forbidding investment in certain locations or partnering with specific entities. Trade misinvoicing (misdeclaring the quantity, quality or price of items traded) also falls only into this category whenever it does not aim specifically to reduce one's tax base but rather, for instance, to claim subsidies.

The regulations considered as a potential basis for labelling flows as IFFs under this category are highly heterogeneous, ranging from UN sanctions to national law through international treaties and commitments. This is a source of controversy, since different stakeholders could argue at length on whether to include any single piece of legislation. The range of effects on development resulting from market and regulatory abuse is accordingly very broad.

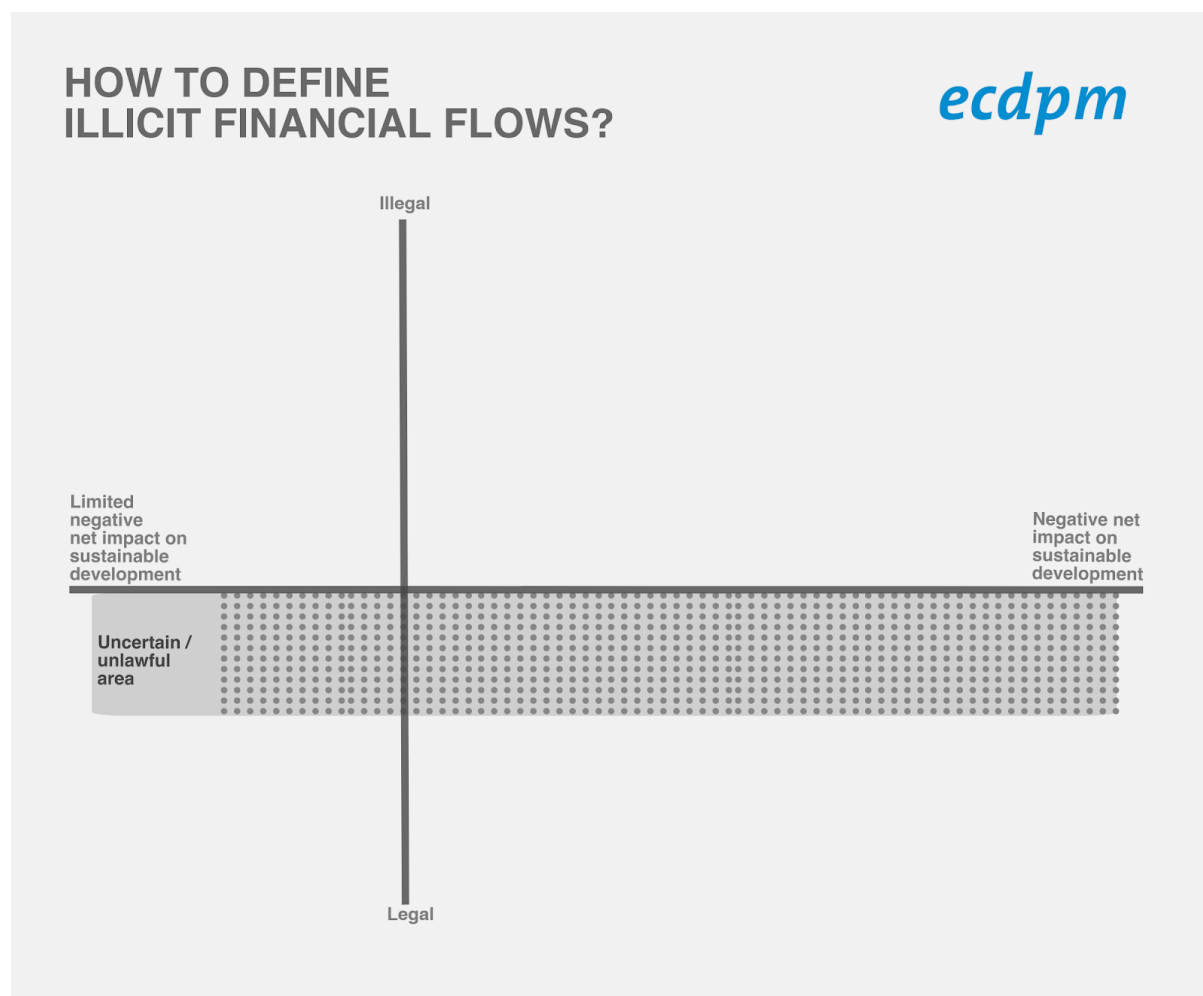
2.2. The controversy on defining IFFs

With these four types of IFFs in mind, we are now able to analyse the implications of different IFF definitions, which various stakeholders have adopted in the absence of an international consensus. The first variable we will consider is whether the flow is legal, illegal, or falls in a grey area, for instance, due to the lack of legislation, the lack of jurisprudence, controversy over the competence of the jurisdiction that considers the flow illegal, etc. The second variable we will analyse is to what extent the flow is damaging for the sustainable development of developing countries once all its direct and indirect consequences are taken into account (these range from an extremely damaging impact to the absence of any negative effects and, in few cases, positive net impacts).

Figure 1 below offers a visualisation of these variables within a graph, which will immediately afterwards be used to 'localise' different types of IFFs identified and to visualise the scope covered by competing definitional approaches to IFFs. This first, bare version is presented for the sake of clarity.

¹⁵ Reuter (2017).

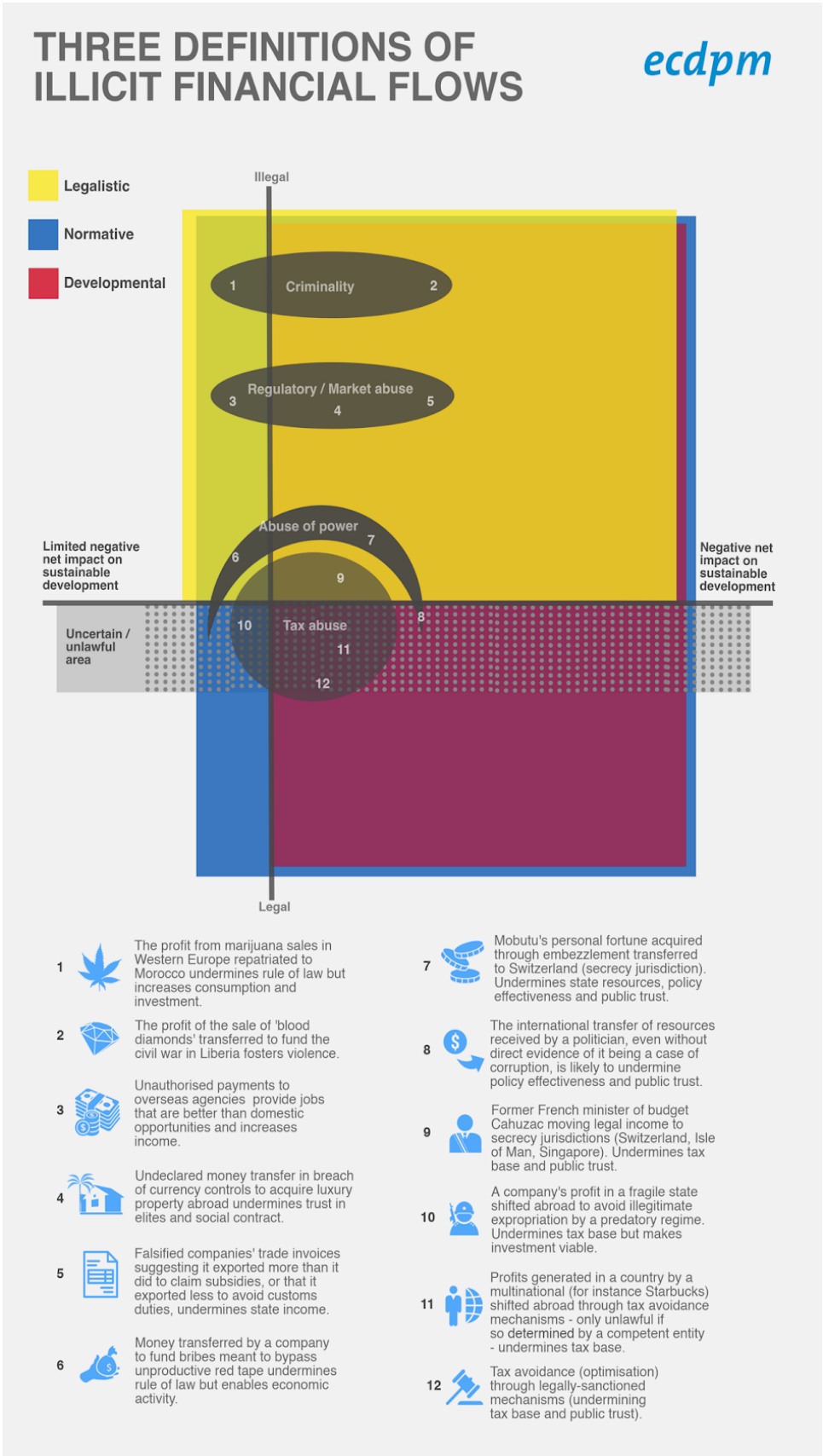
Figure 1: A graph depicting the variables used to analyse IFFs



Diverse approaches to the question of defining IFFs result in three distinct definitions, labelled here as *Legalistic*, *Normative* and *Developmental*. There is also a fourth option: the *choice not to use the term IFF*, which offers the chance to reflect on the added value and limits of this concept. The implications of these options are examined below in this section.

Figure 2 below builds on the previous graph to show to what extent these approaches include the four broad categories of IFFs previously described: *tax abuse*, *abuse of power*, *criminality* and *regulatory/market abuse*. Again, the horizontal axis allow us to distinguish IFFs' net impact on sustainable development and the vertical axis their legality (with a grey zone). The examples numbered from 1 to 12 provide further illustrations. Please note that there are overlaps between the four categories and that the respective sizes of items in the diagram do not intend to account for the respective volume or meaningfulness of each type of flow.

Figure 2: IFF categories in relation to the three definitions



Source: author's own elaboration

It is worth remembering that this semantic issue carries very real stakes.¹⁶ The energy invested in tackling IFFs worldwide – including as part of the 2030 Agenda, and the policy initiatives which will be detailed in the subsequent sections of this document – will result in different outcomes depending on the approach that is taken. For example, the focus could be strictly on illegal flows; stakeholders could take a normative approach (illicit means illegitimate and not just illegal); or they could take a resolutely developmental approach as urged by a few influential scholars. In addition, it should be noted that stakeholders do not always use these definitions consistently. The Mbeki report, for instance, adopts a legalistic definition at the beginning, but goes on to include elements not normally encompassed within this concept of IFFs (e.g. legal tax avoidance).¹⁷ Finally, some aspects of the definitional controversy were purposefully left out of the typology presented here, for simplicity's sake. For instance, some stakeholders such as the OECD use the term IFF as meaning not just money but wider financial products.¹⁸ The table below summarises the main features of all three definitions. The figure 2 above, presented a visual of all three definitions and the scope they encompass, in relation to the four types of IFFs described previously, and in terms of legality and development impact of all flows. The figure also includes concrete examples of IFFs.

The *legalistic* definition of IFFs limits them to international flows of money that have been illegally acquired, transferred and/or used. This fairly straightforward definition leaves out most tax abuse and some power abuse, which is only deemed illegal once a competent jurisdiction seizes the case and pronounces a decision. Worldwide estimates of IFFs based on this definition are particularly low and relatively robust. This is despite the fact that they aggregate the tax and power abuse found to be illegal, on a case-by-case basis, with less reliable estimates about the importance of criminal flows and flows violating regulations. Remarkably, this definition is the one most frequently used, although, in practice, stakeholders sometimes refer to a legalistic definition before moving on to using a more normative one. Some actors consistently lobby¹⁹ in favour of a strict application of this definition, as it excludes tax and trade schemes sometimes deemed illegitimate from being called IFFs. Indeed, many states agree with them, out of concern for legal certainty and clarity, and multilateral organisations such as the UN and the OECD tend to align with their member states.

The *normative* definition²⁰ of IFFs reaches further, by encompassing elements deemed illegitimate but not illegal. Estimates to quantify legal (until proven illegal) tax avoidance are often staggering - typically much more than all of the official worldwide development assistance combined. As such, they are useful for raising attention to the problems underlying IFFs and mobilising opinion for policy change.²¹ Because these estimates consist in adding creative guesswork about tax avoidance to the already fairly weak data arising from a legalistic definition, the resulting estimates, while compelling, cannot be taken at face value. Another limitation of normative definitions of IFFs is the controversial nature of the underlying norms: it is difficult to achieve universal consensus over which flows are legitimate and which are not (Tax Justice Network, 2018; European Parliament, 2015).

The *developmental* definition of IFFs, as prescribed by Blankenburg and Khan in their contribution to the 2012 World Bank report, *Draining Development*, includes all the elements of a normative definition but excludes flows, which have no negative net impact on sustainable development, in light of the country's context, including its political settlement, or the current 'rules of the game' of how politics are done and

¹⁶ Reuter (2017).

¹⁷ The various means by which IFFs take place in Africa include (...) aggressive tax avoidance" (High Level Panel on Illicit Financial Flows from Africa, 2015, p. 24). Aggressive tax avoidance is often understood as tax abuse which violates the spirit but not the letter of the law, and as such it is technically legal.

¹⁸ OECD (2014).

¹⁹ Turner (2017).

²⁰ To the extent of our knowledge, the term was first used for IFF definitions in Forstater (2018).

²¹ Mbeki report.

power is shared.²² This definition draws on the fact that using the term IFF in the first place demonstrates a concern for development, and on the finding that many types of flows do not have a negative net impact. This finding relies on methods that take into account the direct but also indirect impacts of flows, and a non-prescriptive approach to development processes, which originates in academia. Theories of development are not sufficiently consensual for this definition to be less problematic than the previous ones, but its merit is to raise the question of what the fight against specific IFFs can achieve in processes of change. For instance, some illegal flows contribute to funding what little political stability a failed state can achieve through a clientelist distribution of resources. Disrupting these flows is likely to undermine existing alliances and services, and to trigger violent competition for (other) resources.

This and other extreme examples show that the fight against IFFs can in fact trigger instability, violence and cause harm if we do not adopt the 'development first' safeguard measures, intrinsic to this definition. While this definition has been raised in international fora and certainly provides food for thought, to our knowledge, no attempts have been made to operationalise it and to estimate IFF figures on its basis. Arguably, the logic of this definition underlies the approach of many countries, which accept some forms of illicit flows (corruption-related in particular) as a fact of life or a lesser evil than the instability potentiated by repression.²³ One problem, inherent to this approach, is that if the risk of conflict deters a crackdown, this generates incentives for perpetrators to increase their ability to cause nuisance and to foster instability.

The *option not to resort to the use of the term IFF* is also open to stakeholders. Most prominently, the European Commission (EC) has chosen this path. However, this does not prevent it from individually targeting behaviours that are crucial to IFF dynamics, such as money laundering, financial crime and tax avoidance, fraud and tax evasion. Nor does it prevent the EC from seeking to play a role in coordinating a uniform, EU-wide implementation, via EU law of provisions, of the OECD's Base Erosion and Profit Shifting (BEPS) project. The EU's case will be covered in more detail in section 2.3.

This option also allows us to do away with the semantic discussion outlined above, and it solves part of the problem of estimates,²⁴ since, according to some of the definitions above, reliable data for some aspects of IFFs need not be aggregated with weaker data. On the other hand, it eliminates the possibilities of mobilisation for policy based on the commonalities of IFFs, such as their developmental impact, and the striking image of large amounts of 'dirty money'.

The focus on development inherent to IFFs discourse is important, since if stakeholders adopt other definitions of capital flows, they are likely to do so in ways which favour their own tax base, rule of law, state efficiency and/or legitimacy, and any efforts to curb these flows are likely to be more self-serving. This would reduce the global North's policy coherence as regards the development of the global South. In the 2030 Agenda, members of the UN recognise their shared responsibility to tackle IFFs. As states and actors such as the EU reflect on how best to implement the 2030 Agenda, it is worth noting and, perhaps, explaining why the EC has not adopted the Agenda's terminology.

²² Kelsall, Tim. "Thinking and working with political settlements." London: Overseas Development Institute (2016).

²³ For instance, the World Development Report 2017 discusses the role of collusion between the state and business in South Korea's development. Important corrupt and illicit flows were tolerated as long as they led to re-investment which boosted industrialisation.

²⁴ The problem with estimates is not so much the fragility of methodologies as the fact that caveats and disclaimers are systematically disregarded when the figures are taken up for purposes other than scientific, which results in 'black box' estimates with little credibility.

Table 1: Four approaches to IFFs

Approach	A. Legalistic	B. Normative	C. Developmental	No use of the term
Definition of IFFs	“An international flow of money, which is illegally acquired, transferred or used.”	“An international flow of money, which is illegally acquired, transferred or used, as well as similar legal but illegitimate (tax and trade) practices.”	“An international flow of money that has a negative impact on an economy when all direct and indirect effects in the context of the specific political economy of the society are taken into account.”	N.A
Implications for data	Low aggregate figures – weak data	High aggregate figures – very weak data	No aggregate figures	No aggregate figures (different types of IFFs are tackled individually)
Key questions that arise	Whose law? What about conflicting legal orders, grey zones and weakness of regulators vs. perpetrators?	Whose norms? What are their boundaries?	Whose theory of development impact? What if the approach generates incentives for instability?	The commonality and relevance of development impact is lost. Fails to account for SDG 16.4.
Which institutions rely on this approach	OECD,..	The Mbeki report, the European Parliament, the Tax Justice Network...	Report by the World Bank (Blankenburg & Khan, 2012)	The European Commission

3. The evolving landscape of IFF policymaking

As discussed in the previous section, the choice of definition for IFFs encompasses various issues that are linked to the perspective of different actors and institutions. Nonetheless, the question of definition is not a trivial one since it determines the coverage, availability of data, legal foundation and the impact of such flows on development. In the following section, we look at how the international community currently addresses IFFs in their policymaking and what future developments are on the horizon. We then also look at various policymaking processes relating to IFFs in Africa and Europe. We highlight these policies showing the role that chosen definitional perspectives have played.

3.1. The international agenda: IFFs as a recent priority

IFFs have an impact at the regional, international and global level. However, what happens at the international level greatly informs and influences policy making strategies on how to approach and combat them at the other two levels. In this regard, the Organisation for Economic Co-operation and Development (OECD) and the United Nations (UN) have been key players when it comes to global tax policy, norms and rules agenda setting.

The concept of IFFs emerged during the UN Financing for Development Forum (FfD²⁵) processes. It was briefly mentioned at the first UN-hosted conference to discuss key financial and development issues, under the Monterrey Consensus,²⁶ in 2002, as a means to reduce 'capital flight', which was considered to enable domestic resource mobilisation (DRM). At the time, DRM was identified as the first of six pillars in support of the FfD agenda. In 2008, during the follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus, the Doha Declaration made a more open reference to IFFs and especially money laundering.²⁷ More importantly, it was the first time that globalised financial instruments such as disclosure practices of companies and funds and transparency were proposed to help reduce IFFs. This drew the international community's attention and spurred it into action.

The Addis Ababa process and IFFs

More importantly, in July 2015, during the Third International Conference on Financing for Development, Heads of State and Government agreed to the Addis Ababa Action Agenda (Addis Agenda²⁸). The Addis Agenda focused on a comprehensive set of policy actions to redouble efforts to substantially reduce IFFs by 2030 and is linked to "a new global framework"²⁹ for financing sustainable development. It also incorporates all the SDG means of implementation (MoI) targets into a comprehensive financing framework.³⁰ Notably, paragraph 23 of the Addis Agenda states:

"We will redouble efforts to substantially reduce illicit financial flows by 2030, with a view to eventually eliminating them, including by combating tax evasion and corruption through strengthened national regulation and increased international cooperation."

²⁵ UN DESA (n.d.).

²⁶ In March 2002, after the UN International Conference on Financing for Development, more than 170 countries adopted the "Monterrey Consensus" outlining a wide range of policies to eradicate poverty by 2015, achieve sustained economic growth and promote sustainable development. Full document available at: UN (2003).

²⁷ Paragraphs 20-73 of the December 2008 outcome document (the Doha Declaration, adopted by officials from more than 160 countries through consensus) of the follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus (UN 2009).

²⁸ UN (2015b).

²⁹ UNDESA (2015).

³⁰ UNDESA (2016a).

Furthermore, paragraphs 24 and 25 acknowledge the work of the High-level Panel on Illicit Financial Flows from Africa as a best practice for other regions. The Addis Agenda also emphasises the need to support countries in combating IFFs, for transparency and accountability. This should be achieved through the publication of estimates of their volume and composition, international work on money laundering, counter-terrorism financing, as well as increased information sharing among financial institutions.

At the Addis conference, developing countries under the coalition of the G-77 and China, supported by the Civil Society FfD forum, pushed for the UN Committee of Experts on International Cooperation in Tax Matters to be upgraded to a more powerful UN intergovernmental body. This body should address, among other things, international tax policies and cooperation, especially on global concerns over the impacts of IFFs on developing countries. Ultimately, the Addis Agenda did not provide a mandate for an intergovernmental tax body at the UN level. This decision was received with mixed reactions. On the one hand, many civil society organisations (CSOs) blamed this outcome on unequal power plays by developed countries led mainly by Japan, the United States and the United Kingdom. Some developed countries, on the other hand, argued that establishing a UN tax body within the Addis outcome document would be a premature decision, as tax policy and regulatory frameworks are an issue that is largely based on national level prerogatives. Further, there was a feeling that a lot of work on international tax policy agenda setting was already being done at the OECD, thus there was no need to duplicate efforts.

During the same conference, the governments of Germany, the Netherlands, the United Kingdom, and the United States initiated the Addis Tax Initiative (ATI). ATI is meant to enhance countries' commitment to capacity building in DRM/taxation, as well as ownership of and commitment to establishing transparent, fair and efficient tax systems.³¹ Under the ATI, the EU among 50 donors committed to supporting effective domestic taxation and measures to limit tax avoidance or profit shifting by the private sector in developing countries by 2020,³² and to promote and ensure policy coherence for development. Partner countries including Ethiopia, Ghana, Indonesia, Kenya, Liberia, Malawi, and Uganda- also pledged to step up DRM.³³

The Addis Agenda mandated for various follow-up processes to occur, mainly through the intergovernmental UN Economic and Social Council's (ECOSOC) Forum on Financing for Development (FfD Forum³⁴). The G77 and China,³⁵ and various CSOs, continue to push for the establishment of a UN tax body at these fora. However, in its 2018 FfD position statement, the US took a bold step in claiming it continued to oppose the inclusion of the term "illicit financial flows" in international outcome documents, due to the lack of an internationally agreed definition.³⁶ The conclusions and recommendations agreed at the FfD Forum level feed into the discussions of the High-level Political Forum on Sustainable Development (HLPF³⁷), which is the main United Nations platform on sustainable development involved in follow-up and review on the SDGs.

³¹ Addis Tax Initiative. (n.d.).

³² EC (2017b).

³³ Center For Global Development. (2018).

³⁴ The FfD Forum is an intergovernmental process with universal participation mandated to review the Addis Ababa Action Agenda (Addis Agenda) and other financing for development outcomes and the means of implementation of the Sustainable Development Goals (SDGs).

³⁵ See 2018 FfD G77 and China statement which specifically calls for an intergovernmental UN tax body and strengthened cooperation on illicit financial flows (page 7-8). See UNDESA (2018a).

³⁶ Retrieved from: United States Mission to the United Nations (2018).

³⁷ The HLPF is the main United Nations platform on sustainable development and it has a central role in the follow-up and review of the 2030 Agenda for Sustainable Development the Sustainable Development Goals (SDGs) at the global level. More information available at: Sustainable Development Knowledge Platform (n.d.).

The quest for an international consensus

Additionally, an inter-agency task force (IATF) was set up at the institutional level to support the deliberations of the FfD Forum and the HLPF. The IATF mainly focuses on annual reporting of progress in implementing the FfD outcomes and the Mol of the 2030 Agenda for Sustainable Development.³⁸ Over 50 UN agencies are members of the IATF, while the OECD, the World Bank Group (WBG), the International Monetary Fund (IMF), and the World Trade Organisation (WTO) are seen as major institutional stakeholders of the FfD process. Under its domestic public finance action area, the IATF has 16 work clusters for various themes including one on tax related IFFs.

Still, there is a conspicuous lack of agreement on definition of IFFs, even within the IATF, which was mandated in 2015 to seek such a definition. The major reason for this has been that the task force is made up of representatives drawn from a wide cross section of people (with experts from Member States, CSOs, academia, think tanks, and the private sector) with varied priorities and interests (see section 1.2). Thus, it is difficult to agree on a definition accepted by all members. The IATF has noted that the lack of a firm agreement on the term IFFs makes the monitoring and the assessment of progress challenging.³⁹ As a result, the task force's work has relied mostly on the analysis of the components and channels of IFFs. In its 2018 progress report, the IATF describes several priorities in combating IFFs, including estimates of their volume, the improvement of policies, enforcement capacity, and the return of stolen assets.

IFFs and the 2030 Agenda

The different stages mentioned above culminated in the adoption of the 17 Sustainable Development Goals (SDGs) and their 169 associated targets, in September 2015. IFFs are implicitly mentioned in SDG 16.4, which goes: by 2030 significantly reduce illicit financial and arms flows, strengthen recovery and return of stolen assets, and combat all forms of organised crime. Furthermore, there are about 22 other SDG targets and indicators⁴⁰ related to IFFs. The OECD classifies these targets into⁴¹ those that enable or disable IFFs (SDGs 10.5, 16.3, 16.5, 16.6, 16.9, 16.10, 16.a), those that create potential trade-offs and policy conflicts (SDGs 8.3, 8.10, 10.c, 16.10) and those where target progress and efforts to curb IFFs could be mutually reinforcing (SDGs 2.3, 16.5, 17.1, 3.a, 5.2, 10.5, 10.7, 12.7, 12.14, 15). In addition, SDG 17.1 explicitly calls for the development community to strengthen DRM with a view to improving domestic capacity for tax and other revenue collection. This has been a key lesson from the ATI.

Although an official definition of IFFs has yet to be agreed upon at the international level, there appears to be consensus that IFFs are a significant disabler to both developing and developed countries in meeting their sustainable development objectives. As a result, the international community has focused on policy areas which address: organised crime, corruption, terrorism, conflicts, weak DRM, poor governance and weak institutions, uncontrolled exploitation of natural resources, inequality and exploitative elites, which are strongly linked to IFFs. The work on IFFs at the African and EU levels has, to a large extent, been aligned with these key international policy developments.

³⁸ 2018 FfD Forum. See: UNDESA (n.d.).

³⁹ UNDESA (2016b).

⁴⁰ There are 169 targets for the 17 goals. Each target has between 1 and 3 indicators used to measure progress toward reaching the targets. In total, there are currently 304 indicators that will measure compliance.

⁴¹ Pages 143-144. OECD (2016).

3.2. African perspectives: from problem identification to the 'Mbeki Report'

This section provides an overview of the African experience with IFFs, as well as the normative framework that guides the continent's responses. In addition, we will look at how these initiatives are unique to the continent and link them to the above-mentioned international processes.

Background

Africa is a continent that consists of 55 countries and has an estimated population of 1.2 billion people. The 2018 African Economic Outlook report⁴² estimates that economies on the continent have grown by 3.6% in 2017 and are expected to accelerate to 4.1% in 2018 and 2019. Paradoxically, for decades, the continent has fallen behind in terms of its development. Poverty is estimated at 41% and the region remains one of the most unequal in the world, with 10 of its countries listed among the 19 most unequal in the world. Hence, IFFs are particularly damaging for African countries, as such flows impact the continent's ability to finance their development and governance agendas. In a 2016 report on economic development in Africa,⁴³ the United Nations Conference on Trade and Development (UNCTAD) estimated that an increase of US\$ 614-638 billion per year is required for the continent to implement the ambitious SDGs by 2030. Meanwhile, the SDG funding gap in developing countries is estimated at between US\$ 1.9 trillion and US\$ 3.1 trillion each year, between 2018 and 2030⁴⁴. To fill this gap, African countries are focusing their efforts on generating increased financing from public, private, domestic, and international sources, and addressing challenges in policy and the administration of these sources of finance. Additionally, DRM is meant to contribute at least 75% to 90% on average per country, to the financing for the continental Agenda 2063, through various means, including the curbing of IFFs.⁴⁵

Continental Concerns

A 2015 report from Global Financial Integrity (GFI) notes that when IFFs are scaled to a percentage of the gross domestic product (GDP),⁴⁶ the Sub-Saharan Africa region tops the list, with illicit financial outflows averaging 6.1% of the region's GDP.⁴⁷ Many of these countries collect only between 10 to 15%⁴⁸ of their GDP through taxes. For example, in two of Africa's largest economies (Angola and Nigeria), the tax-to-GDP ratio is between 12.5% and 6% (as per 2017 data). Indeed, Nigeria has one of the lowest tax-to-GDP ratios in the world. In 2017, the second edition of the Revenue Statistics in Africa report indicated that for the 16 African countries it covered, average tax-to-GDP ratio was 19.1% in 2015. This is still a relatively low percentage compared to developed economies. Within the OECD countries, the average tax-to-GDP ratio is estimated at between 22.8% and 34.3%.⁴⁹

⁴² AfDB (2018).

⁴³ UNCTAD (2016).

⁴⁴ CAIDP-RPCDI. (2016).

⁴⁵ AUC (2015). Page 28- In the Agenda 2063 first ten-year implementation plan 2014–2023 document, the African Union states that Domestic resource mobilisation (DRM) should contribute at least 75% to 90% of the financing of Agenda 2063 on average per country, namely through: (i) enhanced fiscal resource mobilisation, (ii) maximisation of natural resource rents – OGM, agriculture, maritime, tourism, etc.; (iii) the leveraging of the increasingly important pool of African institutional savings – pension funds, central bank foreign exchange reserves, sovereign wealth funds and capital market development; (iv) enhanced retail savings mobilisation through financial inclusion namely; (v) the curbing of illicit financial flows; (vi) the reduction of inefficiency and governance/corruption-based financial leakages and wastages – government, infrastructure services, agriculture value chain, etc.

⁴⁶ Figures on IFF estimates are used here for illustrative and comparative purposes but as previously mentioned they hold little credibility in terms of accuracy, and IFF estimates should as a rule never be taken for face value.

⁴⁷ Table X1. Illicit Financial Flows from Developing Countries, by Region, 2004-2013 (in billions of U.S. dollars, nominal). Kar and Spanjers (2015).

⁴⁸ Carter and Cabreiro (2011).

⁴⁹ OECD (2017).

IFFs are also seen as exacerbating poverty and inequality in Africa. The African Tax Administration Forum estimates that up to 33% of Africa's wealth is being held abroad. A 2017 United Nations Development Programme's (UNDP) study on Income Inequality Trends in sub-Saharan Africa identified IFFs as a specific feature of resource-dependent growth, which presents obvious inequality risks that could lead to a classic case of the "resource curse"⁵⁰. Furthermore, the United Nations Economic Commission for Africa (UNECA) asserts that the estimated US\$ 60 billion lost through IFFs from Africa annually⁵¹ could reduce inequality substantially through social transfers and investments in productive and job creating initiatives.⁵²

The 2018 OECD Development Assistance Committee (DAC) figures show that an estimated US\$ 29 billion in bilateral official development assistance (ODA) was given to Africa including US\$ 25 billion to sub-Saharan Africa, which reflects an increase of about 3% compared to the previous years. This is nowhere near the estimate of US\$ 614 billion needed to finance the SDGs in Africa, and ODA flows could vary in the future. As of 2018, only five countries within the European region (the United Kingdom, Denmark, Luxembourg, Norway and Sweden) have been able to achieve or exceed the UN target of 0.7% of donor ODA as a percentage of gross national income (GNI) to developing countries. Consequently, it has become clear that, although ODA is an important source of finance, especially for fragile and low-income countries in Africa, it is no longer a stable source of development financing. Therefore, the continent needs to adjust to the changing global landscape in ODA through increased financing and ownership of its own development.

Other issues that have, over the years, contributed to Africa's focus on IFFs include: rampant corruption, the depletion of natural resources, the need to finance infrastructure, concerns around terrorists and terrorist organisations using both legitimate and illegitimate means to raise and transfer funds, and formal and informal channels to move cash around. These challenges generate specific constraints in Africa, and addressing them requires significant funds.

The Role of the African Union (AU)

The African Union (AU) plays various roles in Africa, including bringing together the African voice in the global arena and shaping a common African position during international negotiations, such as on the SDGs. Given the above context, it has taken a keen interest in curbing IFFs that leave Africa.

While the objective mentioned during the 2002 Monterrey Consensus was increasing DRM, the focus of most African countries at the time was on donor countries meeting their ODA commitments, so that the continent would be able to implement the then UN's Millennium Development Goals (MDGs). By 2008, following the Doha Declaration, the enormous amount of financing for development challenges facing African countries became a major concern for the AU. One of the challenges was the effect of cuts in ODA to African countries that took place in 2007 when the United States, France, the United Kingdom and Japan collectively slashed aid to the continent by a third.⁵³

The AU (then the Organisation of African Unity (OAU)) first started looking at the issue of IFFs by analysing the magnitude of capital flight in both monetary values and relative to the GDP of the continent in the 90s and early 2000s. In 2011, Léonce Ndikumana and James K. Boyce⁵⁴ analysed capital flight from Sub-Saharan Africa and claims that between 1970 and 2008 more than US\$ 700 billion had left the continent. This amount was almost equal to the GDP of the 33 countries covered, or four times their external debt as

⁵⁰ The resource curse refers to the failure of many resource-rich countries to benefit fully from their natural resource wealth, and for governments in these countries to respond effectively to public welfare needs. See NGRI (2015).

⁵¹ The previously raised disclaimers about the reliability of overall estimates of IFFs apply here.

⁵² UNECA (2016).

⁵³ Ndikumana and Boyce (2011).

⁵⁴ Ndikumana and Boyce (2011).

it stood in 2008. In 2010, the annual forum for African ministers of the economy, finance and planning, recommended creating national financial intelligence units, regional collaboration and carrying out country level research to start dealing with the issue of IFFs. However, this was a time when the continent was struggling to try and achieve the Millennium Development Goals (MDGs), thus overall policy discussions emphasised direct measures towards poverty alleviation and job creation, not IFFs.

The High-Level Panel Report on IFFs in Africa

The idea of forming a high-level panel of experts, both from within and outside the continent, to look into the issue of IFFs was proposed at a subsequent meeting of finance ministers in 2011, in Addis Ababa. This led to the work of the High-Level Panel on Illicit Financial Flows⁵⁵, headed by former president of South Africa, Thabo Mbeki to determine the levels and implications of IFFs from Africa. Another milestone was the 2013 Global Financial Integrity report⁵⁶, which estimated that in the span of 30 years, African economies had lost between US\$ 597 billion and US\$ 1.4 trillion in net resource transfers.

In 2015, the 10-member panel released the 122-page report of the High Level Panel on Illicit Financial Flows from Africa report, which was adopted by African heads of state that same year.⁵⁷ This report is the guiding framework that underlies Africa's approach to IFFs. It describes the overarching nature, magnitude and the development challenges of IFFs from Africa, based on disparities in national income accounts and trade data (e.g. trade mispricing).⁵⁸

As discussed in the first section of this paper, the Mbeki report defined IFFs in broad terms as “money that is illegally earned, transferred or utilised”. Based on an empirical analysis, the Mbeki report concluded that IFFs from Africa might exceed US\$ 50 billion a year. That there is a higher concentration of IFFs in certain sectors, notably the extractive and mining industries, and with a tendency to end up in OECD countries and trade partners of Africa.⁵⁹

The report presented findings relating to transparency, Africa's dependency on natural resources that make it vulnerable to IFFs, asset recovery, tax incentives, African capacities to deal with various aspects of IFFs etc. Furthermore, the findings of the report highlighted the importance of addressing secrecy as an enabler of IFFs, the political will among African countries to tackle the problem, international partnerships and the incorporation and better coordination of IFFs, across UN processes and frameworks. The Mbeki report served as a basis for the discussions on the impact of IFFs on the outcomes of both the Addis Ababa Agenda and the SDGs and to raise further questions on IFFs from Africa. For example, the UNCTAD, UNECA and the UN Office on Drugs and Crime (UNODC) have embarked on a new project to improve statistics on IFFs from Africa, as linked to SDG target 16.4 and indicator 14.6.1.⁶⁰

⁵⁵ Chaired by H.E, Thabo Mbeki, former President of the Republic of South Africa and comprised of nine other members from within and outside the continent

⁵⁶ AfDB and GFI (2018).

⁵⁷ UNECA (n.d.1).

⁵⁸ Ibid 62 on Mbeki report.

⁵⁹ UNECA (n.d.2).

⁶⁰ UN (2015) and UNDESA (2018b).

Follow-up to the Mbeki Report

After the Mbeki report's release, the panel conducted visits to several European countries, the United States and many African countries for sensitisation and follow-ups and to continue to promote the Mbeki report and urge global action on IFFs. This aims at mobilising the necessary political momentum towards implementing the transparency measures on beneficial ownership and exchange of information for tax purposes which the report recommended.

On the African continent, there has been partial progress in implementing the recommendations of the Mbeki report. Some official meetings and conferences took place, including side events during subsequent African ministerial meetings, which touched on measures to tackle IFFs. Presentations on national efforts and efforts of the Regional Economic Communities (RECs) have been held, as well as a pan-African conference on IFFs, initiated by various civil society organisations in Africa, in collaboration with UNECA and the AU. A consortium of stakeholders that serves as a coordinating mechanism to oversee the implementation of the recommendations of the High Level Panel was also created on that occasion.

A significant result of the implementation of the Mbeki report has been that the AU declared a renewed commitment to halve IFFs by 2023. This is mentioned in the first 10-year implementation plan of agenda 2063 (2014-2023).⁶¹ Furthermore, the office for the Coalition for Dialogue on Africa (CoDA)⁶² was launched in January 2018, at the AU headquarters. The CoDA is expected to continue to work towards the reduction of IFFs from Africa, specifically through policies, partnerships and research. Finally, the AU has designated the theme for 2018 to be: *"Winning the Fight Against Corruption: A Sustainable Path to Africa's Transformation,"* and African leaders have made strong statements about their commitment to further tackle corruption, as well as IFFs.

Despite the many challenges, some countries have systematically started to introduce and update a range of policy and institutional frameworks, at the regional and national levels, to try and address the dynamics of IFFs. For example, Burkina Faso, Kenya, Liberia, Mauritius, the Niger, Senegal and Sierra Leone have developed national action plans on policies to combat IFFs.⁶³ Nigeria has enacted laws on financial intelligence against money laundering and related crimes; South Africa has introduced new tax regulations, allowing for transfer pricing reporting country-by-country; and Kenya, South Africa, Uganda, Tanzania, Nigeria, Senegal, Tunisia and Angola have established separate transfer pricing units within their revenue collection agencies to enable auditing and the investigation of taxes paid by multinationals. Tanzania has also introduced three new laws related to the mining industry in an effort to double the extractives sector tax contribution to the country's GDP to 10% by 2025 and improve transparency within the sector (see the appendix for more information on these and more initiatives targeting IFFs in Africa).

Next steps for Africa

The lack of knowledge, poor data, corrupt practices, capacity constraints and limitations in enforcement capabilities represent significant challenges to stemming IFFs in Africa (AU & ECA, 2015). Most African tax administration, customs union offices and policy makers' inability to deal with IFFs effectively is due to the fact that IFFs take various forms, are marred with secrecy and building expertise takes time, requires substantial financial and human resources and institutional development. Another overarching challenge for African actors has been how to best gain from possible international collaborations in this area.

⁶¹ AUC (2018).

⁶² Founded in 2009, CoDA exists as a special initiative of its three convening organisations - AUC, UNECA and AfDB.

⁶³ UNECA (2018) Page 47. These countries have developed national action plans as part of the United States-African Partnership on Illicit Finance.

However, there are various reforms and ongoing initiatives, often with donor support. These include the work of the African Tax Administration Forum (ATAF) in building capacities of African tax administrators and producing guidelines on various topics linked to IFFs for African countries to consider adopting. Regional dialogues around IFFs being promoted under the New Partnership for Africa (NEPAD) and the Stolen Asset Recovery Assistance (StAR) initiative's work in helping to trace, freeze and repatriate stolen assets from the continent among others. Despite the existence of frameworks to facilitate repatriation, developing countries are not very proactive in claiming stolen funds eligible for repatriation. Part of the reason why African countries rarely make use of the possibilities offered to them by stolen assets recovery could be the controversial earmarking of such repatriated funds for specific developmental purposes. In any case, addressing this dysfunction should be a priority. More examples of such initiatives are examined in the appendix 5.1.

A specific avenue for international cooperation to expand the fight against IFFs is opened by the upcoming negotiations of an overarching cooperation framework between Africa and Europe to succeed the Cotonou Partnership Agreement at its expiry in 2020.⁶⁴ The parties are getting ready, by appointing negotiators and issuing their negotiating mandates. It is worth noting that the Africa Caribbean Pacific States (ACP) forum, which currently represents the African side, has issued its negotiating mandate which includes nominally the fight against IFFs among the issues that the new agreement should address.⁶⁵ At this stage of the pre-negotiation, the operational outlook of such cooperation is hard to predict, but with the ACP taking this position it is now, to some extent, up to the EU to rise to the challenge.

3.3. European perspectives: missing the developmental angle?

The need to fund development through domestic resources makes IFFs a privileged entry point for countries characterised by a low-level of development. However, the same logic applies to developed countries, which is the main focus of this section on the multiple reasons for European countries to tackle IFFs.

Domestic determinants in the fight against IFFs

The period of economic turmoil, which started a decade ago, has made it increasingly challenging for European countries to fund their advanced social systems. Ageing populations and increasing life expectancy further exacerbate this. Austerity measures, once thought to offer a panacea for state budget deficits, instead contributed to growing social unrest, the decline of many traditional political parties and the rise of populist movements. Indeed, the increased ability of the well-off to both shape the tax structure to carry less of the burden and dodge whatever remains through tax avoidance and evasion has exacerbated social inequalities and weakened the social contract in Europe.⁶⁶

⁶⁴ The Cotonou Partnership Agreement (CPA) is a legally binding treaty signed between the 28 European Union (EU) member states and 78 African, Caribbean and Pacific (ACP) countries. It was first signed on June 23, 2000, in Cotonou Benin for the period 2000 to 2020. It covers trade, development cooperation and political dialogue. See also Mackie et al (2018).

⁶⁵ ACP Group (2018).

⁶⁶ Alstadsæter et al. (2017).

The different treatment of powerful and small businesses follows a similar pattern: powerful businesses engage in a 'cat and mouse game' with legislators and regulators, through their legal experts who are paid (a lot more than regulators) to reduce their taxes and undo the work of the former. This is further accentuated by the 'revolving doors' phenomenon whereby regulators get hired for the purpose of finding ways around rules they used to enforce.⁶⁷ This reality is more prevalent and more visible due to information technologies and a number of high-profile cases of data leaks.⁶⁸ Hence, decision makers are increasingly held responsible for tackling IFFs (especially in their broader definitions covering tax avoidance) in order to stem inequalities and rebuild trust in the elites and the state's legitimacy.

The political crisis that many developed countries are experiencing also relates to increased migratory flows, which are often associated with the various challenges and lack of job prospects for youth in developing countries. These problems are attributed to the so-called 'root causes of migration', such as violent conflicts, arms trade or, specifically, IFFs.⁶⁹ Paradoxically, the public's uneasy perception of migration from developing countries offers an additional reason for the North to act against IFFs, which undermine these countries' tax base and ability to foster, among other things, investment.

Globalisation and deepened economic integration around the world mean that countries face stronger economic competition, for instance as regard their business environment. While a strong rule of law is a competitive advantage for fully licit activity, as it provides much-needed legal certainty and predictability, it is also a disincentive to business practices that prosper in grey areas. In fact, both loopholes in legislation and its weak enforcement can be a comparative advantage, as this allows operators to solve issues via paralegal deals and to extract rents. Banking and business secrecy, as opposed to transparency and whistle-blower protection, are also assets for a business environment's competitiveness and factors of IFFs. As a result, the concern to ensure that a country's business environment is competitive leads to both incentives and disincentives to tackling IFFs.⁷⁰ The implication is that efforts in ensuring policy coherence in favour of the fight against IFFs are likely to sometimes collide with core interests of other policy sectors.

Whether it is to attract business or, more generally, out of reputational concern, countries of all types usually seek to avoid being labelled a 'tax haven', as this is a pejorative way to refer to secrecy jurisdictions which, by the secrecy and taxation models they offer, attract IFFs. Similarly, being labelled a deeply corrupt state undermines a developing country's bargaining power in numerous fora (e.g. to obtain development assistance or conclude an international agreement). In other words, being branded a tax haven, or a supporter thereof, undermines a country's position. Hence, for reputational purposes, heightened levels of scrutiny – for instance, via the OECD DAC peer review, the UN High Level Political Forum's voluntary national review process, or the African Peer Review Mechanism (APRM) (See appendix 5.1 for more information) – have generated some additional incentives to address the root causes of IFFs.

In Europe, tackling IFFs is also a means of tackling the exploitation and abuse of the financial system for terrorist financing. In a context marked by a number of attacks and by the renewed political and media visibility of terrorism after a few quieter decades, this argument is likely to gain traction. Also, and less directly, by undermining development, IFFs can be understood as drivers of terrorism or of its 'root causes'. An additional factor which might play in favour of the fight against IFFs relates to historical dynamics and power play between developed and developing countries, whereby developed countries are seen to bear responsibility for the historical injustices perpetrated by many of them. When applied to environmental

⁶⁷ For a recent example of this dynamic, see Woodman (2018).

⁶⁸ Reuter (2017).

⁶⁹ ECDPM and EBA (2017).

⁷⁰ For more on the link between globalisation, financialisation and IFFs, see Moore (2012).

sustainability, this line of reasoning has produced the United Nations' principle of common but differentiated responsibilities (i.e. of proportionally higher responsibility and burden-sharing of developed countries compared to developing ones). This principle, after much controversy, is present in the 2030 Agenda and can offer a reason for the North to commit to tackling IFFs.⁷¹

Indeed, this understanding of historical injustice encourages developed countries to go the extra mile, starting, for example, by returning embezzled capital hidden in developed countries' banks and by curbing new IFFs. As an example of the possible impact of this narrative on North-South relations, the international regime on corruption has changed tremendously in the last few decades. Some countries now prosecute corruption perpetrated by their national companies abroad proactively, whereas, some of the same countries used to allow companies to deduct bribes from their tax declarations, as long as these bribes were paid abroad.⁷²

While the distinct rationales behind acting against IFFs sometimes overlap or reinforce one another, it is worth noting that they do not necessarily go hand in hand. Referring to IFFs as a whole rather than to specific flows covered by this umbrella term offers the opportunity to pool arguments among these rationales, which the 2030 Agenda facilitates by providing an overarching framework. Yet European countries addressing IFFs out of a concern for development abroad or out of a concern for domestic resource mobilisation may not yield the same results. These multiple perspectives generate additional policy coherence issues: not only may it be necessary to coordinate (and arbitrate) between levers to tackle IFFs, but also at times between communities of interest for doing so, both at the levels of states and of the supranational institutions of the European Union.

The European Union and its institutions against IFFs

The European Union (EU) with an estimated population of 508 million and a gross domestic product (GDP) of US\$ 17.1 trillion⁷³ is a key player in the global financial and economic order. So far, Member States have retained fiscal sovereignty and are free to decide on their tax systems provided they comply with a set of EU rules.⁷⁴ The Union itself does not have a direct role in raising or setting tax rates.⁷⁵ However, within the internal market, the EU strives to achieve the free movement of goods, services, persons and capital in conditions of competition, which involves reducing discrepancies between countries even in areas of taxation. For instance, Articles 110 to 113 of the Treaty on the Functioning of the European Union (TFEU) provides for harmonisation of legislation concerning turnover tax, value added tax (VAT), excise duties and other forms of indirect taxation.⁷⁶ General principles applicable on tax matters within the EU centre around: principles of subsidiarity and proportionality, non-discrimination, and legal certainty or unjust enrichment. On matters of taxation, the most significant institutions are:

⁷¹ Ye (2016).

⁷² Dimant (2013).

⁷³ Nominal GDP in 2017.

⁷⁴ EP (2017).

⁷⁵ Ibid.

⁷⁶ EP (2015a).

- The Council, and more specifically the Economic and Financial Affairs Council Configuration (ECOFIN), which brings together economic and finance ministers from Member States to discuss and adopt laws and policies on taxation. In terms of tax provision decision-making, the Council can adopt legally binding-regulations, directives or decisions, unanimously, while the European Parliament (EP) is only consulted. Non-legally binding instruments (soft law) provide a common approach via recommendations, codes of conduct (business taxation or withholding tax on passive income), action plans and guides or explanatory notes providing practical and informal guidance about EU law and specification.⁷⁷
- The European Commission (EC), the executive body, proposes, drafts and monitors the implementation of legislation (commissioners for taxation and competition).
- The Court of Justice of the European Union is the highest court in the EU, in matters of EU law. Over the past decades, the EU Court of Justice has taken a leading role in developing the internal market from a direct tax perspective based on so-called negative integration by prohibiting Member States from pursuing tax provisions which are contrary to internal market principles of the EU.

In the past, within the EU, it was typically policy and academic experts in the field of international tax law who led the debate on IFFs. However, this has changed a lot over the past decade. Now, this debate is higher up on the EU's agenda and has opened up to key stakeholders, including multinationals, developed and developing countries, international organisations, the public, donors, international financial institution (IFIs), the private sector, civil society and non-governmental organisations, among others. Concurrently, this change is driven by the UN FfD processes, the causes and consequences of the economic crisis of 2007/8, various reports on tax evasion and avoidance, Base Erosion and Profit Shifting (BEPS) and the need for action on curbing terrorist financing and money laundering, as discussed in previous sections.

Thus, due to the losses that have been highlighted within the Union itself, the EU has made further tax reforms in an effort to address IFFs. For example:

- In 2013, the then president of the European Council stated that the EU lost around EUR 1 trillion of income each year to tax dodging.⁷⁸ By means of comparison, this greatly exceeds the EUR 400 billion, which, at the time, had been committed to bailouts of eurozone members Greece, Ireland, Portugal and Cyprus. This meant that the EU needed to address tax dodging, also to justify some of its unrelated policies.
- In 2015, a paper written for the European Added Value Unit assessing the loss of tax revenue to the EU through aggressive corporate tax planning and tax avoidance, estimated the amount to be between EUR 50-70 billion per year, mostly through the shifting of profits.⁷⁹ The paper emphasised that the EU advance policies to address aggressive corporate tax planning and tax avoidance.
- The string of terrorist attacks that have struck Europe since 2015 created the need for further action to curb terrorist financing and money laundering, by, for instance, activating the use of Article 75 TFEU, which gives the EU the responsibility to define a framework of administrative measures for capital movements and payments.⁸⁰

⁷⁷ Ibid.

⁷⁸ Baker (2013).

⁷⁹ EP (2015b).

⁸⁰ EC Migration and Home Affairs (2018).

- Tax related scandals like Luxleaks, the Panama papers, banks like UBS, HSBC, and companies like Amazon and Google being exposed in the media, as well as public concern about the low effective tax rate for some multinational enterprises (MNEs)⁸¹ and their activities in developing countries, have pushed the EU to cave in to public and political pressure to act and address these causes of a major shortfall in tax revenues.

Next steps for the EU

Currently, three policy areas that touch on IFFs are being advanced within the EU. They include the automatic tax information exchange between Member States, country-by-country reporting by companies and financial institutions and a spillover analysis of EU tax legislation.

In this regard, many CSOs have advocated that the national tax authorities in African countries have access to the tax data on income and capital which MNEs in the EU report as having abroad, so that it can be taxed in the source country (i.e. where the income is earned). However, for this to be possible, various challenges would have to be overcome. Firstly, individuals may still be able to avoid having their tax information exchanged due to privacy protection laws. Secondly, it would take very long for the countries to receive the information they request. Thirdly, sometimes, African countries do not produce a complete business case with the exact taxpayer information they need. Finally, so far only a few countries such as Mauritius, Seychelles and South Africa have put in place sophisticated software and legal guarantees to ensure that the information exchanged remains secure.

Moreover, the EP and the EC have, on numerous occasions, recommended technical and financial support in the area of tax to developing countries and the application of a balanced approach to negotiating bilateral tax treaties with low-income countries.⁸² Tax treaties are considered a special tool for fighting IFFs for developing countries, as they generally shift the balance of taxing rights away from them and towards their treaty partners.⁸³ However, as evident from the fact that only two Member States have conducted a spillover analysis, this option needs to be examined further. There are policies related to double taxation agreements (DTAs) that may fall in the EU competences and that are worth considering. For example, on policy coherence for development (PCD) under Article 208 TFEU (see section 4.1),⁸⁴ Member States are required to apply coherence of all policies so that they take development objectives in the South into account. Finance is also one of the top five areas for the EU in promoting PCD.⁸⁵ Correspondingly, in Article 12 of the current Cotonou agreement, the EU has committed to advancing development priorities of ACP States by sharing information before taking a measure that might affect ACP interests and carrying out consultations in case they have concerns. Thus, there is a need to ensure consistency between tax policies applied in DTAs with developing countries and development policies.

The Netherlands and Ireland individually conducted studies to look into their treaties with developing countries, with a general aim of analysing the spillover of their tax policies.⁸⁶ As a result of the studies, some of their DTAs have been revised while others are in the process of review for revision. In this regard, the EC has recommended that Member States take steps to reconsider their tax policies, especially through

⁸¹ TUAC. (2018).

⁸² European Commission DG Taxation and Customs Union (2017a).

⁸³ Hearson (2014).

⁸⁴ Lisbon Treaty (n.d.).

⁸⁵ Ibid section 2.4-The five broad priority areas for a more pro-active engagement on PCD, are: (a) trade and finance; (b) climate change; (c) global food security; (d) migration; (e) security and development.

⁸⁶ The EC has defined 'spill-over' as the impact that one jurisdiction's tax rules or practices may have on another's. Acknowledging two main types of spillovers: 1) base spill-overs, which affect directly the tax base under which a country levies a tax and 2) tax rate spill-overs, which arise from the tax rate applied. The IMF however, identifies three types of spillovers: (1) strategic spillovers, (2) base spillovers due to real activities, and (3) base spillovers due to profit shifting.

reducing negative spillover and ensuring consistency with development needs of developing countries when looking to negotiate and/or sign DTAs. In a 2017 report on tax spillover analyses, ActionAid highlights some issues such as withholding taxes, the definition of a permanent establishment, capital gains, fees for technical services, transfer pricing and the absence of anti-abuse clauses, as warranting a more in-depth check by developing countries before signing DTAs, due to their dependence on source-based taxation.⁸⁷ Thus, these should ideally be the issues that EU Member States look into when analysing the DTAs that they have signed with developing countries. Possible revisions would be in line with their commitment to PCD and the European Consensus on Development.⁸⁸

Despite discussions now being open to more stakeholders, the EC does not use the phrase ‘illicit financial flow’, as discussed in section 1.2. Instead, it relies on notions of ‘artificial capital flows’ and ‘financial crimes’, which roughly cover the same scope as other definitions of IFFs. The first term appears to cover aggressive tax planning, whereas the latter covers money laundering and terrorist financing.⁸⁹

This approach could be interpreted as the EU choosing to focus on certain aspects of IFFs, which relate to its DRM, legal enforcement and business environment, etc., as opposed to an overarching vision of IFFs, which conveys a developmental focus. By contrast, the EP took a stand, favouring the recognition of IFFs and specifically an encompassing, normative definition of these flows.⁹⁰ This falls in line with the oft-described tendency of EU institutions to split roles, with the Parliament adopting a more normative and value-based approach⁹¹, whilst the EC’s agenda is sometimes constrained by ideological options. Perhaps even more significantly, the EC might be constrained by Member States who wish to prevent a competence creep by the EC, and nudge its agenda in the direction of their own pragmatic economic interests. This would be in line with the current College of Commissioners’ limited EU competence in fiscal matters, stronger competence on customs and judiciary cooperation, and the political priority they give to jobs creation and investment (and hence the business environment).

Nevertheless, the EU is a key player in determining the future of IFF policymaking due to the normative role that it plays in the international discussion on sustainable development and, perhaps even more, through the market power it wields. Indeed, the expression “Market power Europe” refers to the EU’s ability to export its practices, norms and regulations outside its territory thanks to the attractiveness and size of its market, which can only be accessed by sufficiently compliant economic actors.⁹² While the necessity of unanimity among Member States can be a severe hindrance (as in the case of the attempts to establish an EU blacklist of secrecy jurisdictions), whatever regulatory advances the EU does adopts are likely to snowball among the large number of countries and companies that comply with the EU’s standards because it is in their economic interest (see appendix 5.2 for more information on some EU initiatives targeting IFFs).

⁸⁷ Christensen (2017).

⁸⁸ European Commission DG Taxation and Customs Union (2017b).

⁸⁹ European Parliament DG for Internal Policies (2015).

⁹⁰ EP (2015c).

⁹¹ Stavridis and Irrera (2015).

⁹² Damro (2015).

4. Conclusions

Over the past decades, IFFs rose to prominence as a key issue for discussion in international taxation and development. The loss of trillions of US dollars for public use has become a global concern, not least because of the scale of revenue needed to further the ambitious 2030 Agenda. Furthermore, IFFs undermine state effectiveness, state and ruling elite legitimacy, as well as the rule of law.

In this paper, we have assessed policy dynamics and dilemmas underlying the formulation of what IFFs are and of how they are approached globally, in Europe and Africa – the continent generally considered to lose out the most from IFFs. This section expands the analysis in terms of policy coherence and draws a set of lessons from analysis throughout the paper. The appendix after the paper provides an inventory of initiatives to tackle IFFs pursued within the European Union and Africa.

These initiatives operate at national, regional and multilateral level, even if in some cases this is done with no explicit reference to IFFs. These initiatives also rely on policy 'levers' of very different nature, ranging from banking to diplomacy through law enforcement, etc. These entry points are, within public administrations, traditionally under the competence of different actors, whose different entry points in addressing IFFs can have a serious impact on the outcomes. For all these reasons, IFFs are frequently pointed out as a priority issue for policy coherence.

4.1. What policy coherence means for IFFs

Conflicting policy objectives and/or outcomes are fairly common when it comes to addressing complex problems. For instance, if banking secrecy or a low tax regime provide incentives for stakeholders to transfer funds illicitly to a country, this can be deemed incoherent with the development policy of the country attracting the funds.

Such examples have been raised throughout this paper, and are sufficiently documented to have contributed to the recognition of the so-called principle of policy coherence in international policymaking (see the box below).

Box 1: International principles for policy coherence – PCD and PCSD

The principle of policy coherence for development (PCD) originates from a realisation, principally among OECD countries, that policies distinct from development cooperation can have a powerful impact on developing countries and undermine the positive effects of development cooperation. PCD states that in formulating policies, donor countries should take account of their impact on developing countries. Typical domestic or international policies with big potential effects on developing countries include those on trade, agriculture, finance, security and fisheries. A specific example is the evidence that subsidised agriculture combined with free trade can cause developing countries' markets to be flooded with cheap imports of agricultural produce, undermining domestic production and food security.⁹³ The principle of PCD calls for these policies to be adjusted to eliminate or at least minimise these negative side effects.

Besides this concern with 'do no harm', a more advanced approach to PCD suggests efforts should be made to build synergies among policies to maximise their impact. For instance, granting preferential access to manufactured goods from a developing country in parallel with a private-sector development programme in the same country is a good example of synergy between development and non-development policies. Promoting PCD is thus both a corrective for perverse effects and a guide for encouraging a more efficient development effort.

In practical terms, PCD mechanisms consist mainly of structures for coordinating the actions of different ministries, agencies and administrations. Depending on the administrative culture of the country in question, these coordinating structures are either consultative or take the form of a 'watchdog' that proactively scrutinises policies that are most likely to undermine development, or even all policies. The bodies in charge of overseeing and promoting PCD in the various countries may be seen as PCD 'champions,' arguing the case of developing countries vis-à-vis a donor country government.

The 2030 Agenda introduced a new principle to the global community, that of policy coherence for sustainable development (PCSD). It features in a section on 'Systemic Issues' under Goal 17 on 'Strengthening the Means of Implementation and Revitalising the Global Partnership' (SDG 17:14).

Although PCSD is not defined in the 2030 Agenda, the OECD proposed this definition:

"An approach and policy tool to integrate the economic, social, environmental and governance dimensions of sustainable development at all stages of domestic and international policy-making. It aims to increase governments' capacities to achieve the following objectives:

- 1) foster synergies across economic, social and environmental policy areas;*
- 2) identify trade-offs and reconcile domestic policy objectives with internationally agreed objectives;*
- and*
- 3) address the spill-overs of domestic policies."*⁹⁴

Like PCD, PCSD is best characterised as an ambition, for which the reference to specific texts and acronyms is not necessary in all contexts. PCD is understood as a contribution to PCSD, since the 'unidirectional' developmental focus of PCD is a contribution to the broader, multifaceted agenda of sustainable development.

Adapted from Mackie et al (2017).

Among those countries which committed to policy coherence for development (PCD) nominally, the Netherlands and Finland made taxation one of their priorities for PCD, while Switzerland listed 'tax and international flows', which encompasses IFFs and commodities, as its first priority.⁹⁵ The European Commission (EC) adopted 'finance and trade' as one of its PCD priorities. This suggests slightly different viewpoints on the issue. Many other countries and entities engage with policy coherence in some ways, for instance because it is part of the SDGs.

⁹³ ECDPM/ESRF (2015).

⁹⁴ OECD (2016). For the latest on the OECD's work on policy coherence, see OECD (2018a).

⁹⁵ Ministry of Foreign Affairs of Finland (2018), Swiss Federal Council (2017) and EC (2018a).

Whether formulated as PCD (and thereby a contribution to broader policy coherence for sustainable development (PCSD)), as PCSD, or without any of these acronyms, countries showed a will to address IFFs by means of policy coherence. As countries rise to the challenge of implementing the 2030 Agenda, policy coherence may inspire others as a venue and means for tackling IFFs.

Applying the concept of policy coherence to IFFs yields several policy insights. Most obviously, policies that aim to attract capitals through tax breaks should be subordinated to the concern not to incentivise tax abuse, which leads to implications for fiscal regimes, as well as the need for international cooperation and transparency.

In order to turn such examples of policy coherence priorities into strategies to tackle specific types of IFFs, stakeholders need to draw on several currents of specialised literature, which cannot be covered exhaustively here. Indeed, this requires a mixture of technical expertise on the flow considered, development expertise and expertise about the politics of policy coherence in itself, to be able to consider the whole picture of causality chains from incentives (Reuter 2017) to impact on development (Blankenburg & Khan, 2012), but also the technicalities of policy instruments being considered. The aim of this paper – to provide an overview of IFF dynamics and policy responses – does not allow us to enter into the level of technical detail necessary to formulate policy recommendations to promote coherence in respect of each specific type of IFF.

On the other hand, the following four generic recommendations that build on the analysis of policy coherence systems are applicable across the spectrum of IFFs.⁹⁶ They complement the analysis of ongoing trends at African and European levels, as seen in section 3.3 and 3.3, respectively, and outline an agenda for further research. The rest of the section presents further recommendations.

4.2. Recommendations: policy coherence against IFFs

The first five recommendations concern the method to promote policy coherence in the fight against IFFs. An additional five recommendations then expand the scope.

1. Committing to the fight against IFFs

Committing to tackle IFFs (that is, recognising the concept, as opposed to ignoring it or to tackling its components separately) allows for greater emphasis on the commonality in terms of the development impact. Indeed, the commitment to tackle IFFs can incentivise policy coherence, as it offers a baseline for governments to be scrutinised by peers and civil society, to be held to account by citizens, and to publicise their track record (for instance through the African Peer Review Mechanism, the OECD DAC peer review or the HLPF voluntary national review).

2. Adopting the right approach

Adopting a developmental problem definition of IFFs, or at least embracing its implications, leads to a more refined understanding of which flows are the most damaging for development and which flows cannot be stemmed without causing more damage. The hope is that once these complex processes are better known, it will result in policies aimed at tackling IFFs that are more coherent with development. The understanding of development impacts could also promote a differentiation between IFFs in terms of the most harmful (on the right side of Figure 2 in section 1.2) and/or the easiest to tackle, hence suggesting priority areas for maximal policy efficiency in contexts of finite public resources.

⁹⁶ Mackie et al (2017).

3. Assigning responsibility

One important step is to assign responsibility for the fight against IFFs, within governments, at a level (locus of authority), which structurally favours effectiveness and has financial and symbolic resources, as well as incentives to achieve steps in the fight against IFFs. The appointed authority, or ‘champion’, should have a clear mandate, with the right dose of ambition – too much or too little could undermine its credibility. Civil society actors with a clear track record and independence from government should be recognised as legitimate to hold governments accountable for their actions. For recognised actors both within and outside government, it is essential to reflect on what empowers them, as opposed to ‘tokenism’ and ‘box-ticking exercises’. It is important to find out whether the person in charge of ensuring that governmental action is in line with the fight against IFFs has the ear of key decision-makers in other relevant administrations, and not just of the ‘liaison’ person. If this is not the case, steps should be taken to address this.

4. Setting up the right mechanisms

The fourth step towards policy coherence in favour of the agenda of tackling IFFs is ensuring coordination within and between administrations. This step involves the creation of routines and mechanisms (such as interministerial task forces and committees), which can raise awareness and allow ‘champions’ to play a convening and mobilising role. The specifics of these mechanisms depend heavily from the political and bureaucratic culture of the country in question, so there can be no ‘one-size-fits-all’ models on how to do this and political actors need to take the time to think it through.

5. Embracing the need for more coherent policies

A diverse range of policy factors and incentives determine the existence of IFFs. Reducing IFFs as per SDG 16.4 requires all countries to seek policy coherence arrangements, ensuring all available levers are mobilised for this purpose. This requires a series of steps, which include properly understanding the problem, as per the previous point, and appointing and empowering authorities within and outside of government (point 3). To ensure the measures to limit the impact of IFFs on development are integrated within public action, these steps need to be both technical (ensure the necessary coordination structures are in place, such as interministerial committees) and political (ensure access to civil society, so that political traction of the issues remains high). Acknowledging the challenge of ensuring policy coherence at large can help advance the specific fight against IFFs down the line. As a rule, focussing on (the need to solve) cases of incoherence is more mobilising than the more abstract idea of policy coherence, although they amount to the same thing.

After these few recommendations specifically geared towards policy coherence, a last section recapitulates the paper’s findings and additional recommendations.

4.3. Final recommendations

6. Navigating diverging approaches to a universal agenda

There is no single definition of what IFFs are, although they are prominent on the international agenda. The question of definition is not a trivial one, since it determines the coverage, availability of data, legal foundation and the impact of such flows on development. We retain three possible kinds of definitions for stakeholders: legalistic, normative and developmental. A fourth approach, which is not to use the term IFFs, is also viable (although not recommended). The international community should keep seeking a consensus on what IFFs are, while recognising for the time being that there are strong divergent options which shed a light on the practical political economy of IFFs. Conceptual vagueness should be avoided, not least because it allows for a political rhetoric against IFFs not followed by adapted policy responses. Estimates of specific

IFFs should be researched further, but aggregates should always be handled with care and with an attention to their caveats.

7. Generalising a politically-aware approach

The overall consensus is that the impact of IFFs on development globally (as understood within the 2030 Agenda) is extremely negative. Nevertheless, careful analysis shows there are some notable outlier cases of non-negative impact. We consider that adopting a developmental focus – whether formally adopting the developmental definition or simply addressing it – is necessary in order to ensure that the fight against IFFs does not cause further harm and to ensure that resources are well spent. But it is not enough, since preconceived ideas and simplistic models about development and about how economies and societies function can lead to wrong assessments of the net impact of specific flows. This requires in-depth analysis drawing from a range of disciplines and building on analytical models such as the political settlement.

8. Stepping up the African game on IFFs

The AU/ECA High Level Panel report on IFFs and its specific recommendations play a role in advancing calls for a broad African policy discussion and framework for addressing IFFs. However, tangible steps by countries towards implementing the report's recommendations remain scarce, which suggests that the incentives are structurally not in favour of the fight against IFFs. We highlight examples of initiatives at the continental, RECs and national levels on what is being done so far (chapter 2 and appendix). We also suggest that African countries could make better use of the possibilities offered to them by the international legal regime on IFFs, for instance through a more proactive use of repatriation mechanisms and of the Cotonou Agreement's article 12.

9. Putting Europe back on the developmental track

Despite a strong legal and political commitment to policy coherence for development, the EU is essentially targeting IFFs as part of a domestic agenda, which centres on the need to ensure that all actors pay national taxes and that competition between economic actors is respected. This misses the developmental potential of the fight against IFFs, and undermines the EU's potential role as a norm setter and progressive force as regards IFFs. Since initiatives on taxation and mechanisms for policy coherence are in place already, putting the fight against IFFs higher on the EU's agenda could yield significant results. Impetus for this could come from the EU's community institutions themselves or from a coalition of member states.

10. Building on a juncture point in Europe-Africa relations

The ongoing redefinition of relations between Europe and Africa, triggered by the expiry of the Cotonou Partnership Agreement in 2020, offers a window of opportunity to step up intercontinental cooperation regarding IFFs. Policy makers should keep in mind the various different incentives for addressing IFFs, and recognise that regulation in this domain is a major global public good, so that the upcoming negotiations give the issue the place it deserves as a decisive aspect of Africa-Europe relations.

5. Appendix: a selection of initiatives targeting IFFs

5.1. Selected African initiatives tackling IFFs

Continental Initiatives

AU Convention on Preventing and Combating Corruption (AUCPCC)

This convention was adopted in 2003⁹⁷ by African heads of state and government and is considered a landmark Africa-wide instrument when it comes to fighting rampant political corruption, which most countries have ratified. On the other hand, the AU organs and institutions have also taken specific steps to fight corruption on the continent⁹⁸. The African Union Advisory Board on Corruption (AU-ABC), established under the AUCPCC, in their regional anti-corruption programme for Africa 2011-2016⁹⁹, provided technical policy research and knowledge production in support of the work that the HLP on IFFs was doing around Africa. Furthermore, the programme has commissioned a technical background paper on IFFs, organised expert meetings and multi-stakeholder consultations and built networks at the country and intergovernmental African levels. These meetings and consultations have focused on the specificities, institutional and policy gaps and the nature of the policy response to IFFs, from an African perspective. One of the recommendations made in the Mbeki report was to expand the functions of the board under article 22, paragraph 5 of the AUCPCC, to include the development of methodologies for analysing the nature and extent of IFFs from Africa and disseminate information and sensitise the public on their negative effects.

The New Partnership for Africa (NEPAD)

Established in 2001, the NEPAD works on continental governance and integration matters. Regarding IFFs, NEPAD has been instrumental in designing a pilot project to combat IFFs by advancing regional dialogues on capacity building for tax and mining administration officers. In collaboration with other partners, the NEPAD Agency has also started to design implementation tools and guidelines to foster coherence and the alignment of SDGs and Agenda 2063.¹⁰⁰ In 2018, NEPAD collaborated with the OECD on a report, which focused on IFFs in West Africa and covered five in-depth case studies, which include: human smuggling from West Africa to Europe, drug trafficking in and through West Africa, counterfeit goods in Ghana, artisanal small-scale gold mining in Liberia and Ghana, and financing of terrorism in the Sahel.¹⁰¹

African Peer Review Mechanism (APRM)

The APRM, established by the NEPAD Heads of State and Government Implementation Committee (HSGIC) in 2003, is a self-assessment and voluntary instrument for monitoring performance and progress among Member States in four thematic areas: democracy and political governance; economic governance and management; corporate governance; and socio-economic development. The President of Kenya is the current chair of the APRM, which 35 African states have joined. Of these, 17 have been through their first complete review cycle and five have gone through a second round in January 2017.

⁹⁷ AU (2017).

⁹⁸ Lawyers of Africa website (n.d.).

⁹⁹ African Union Advisory Board on Corruption (2013).

¹⁰⁰ NEPAD (2018).

¹⁰¹ OECD (2018).

One of the recommendations of the Mbeki report was that questions on a country's progress in tackling IFFs could be included in the APRM country assessments. If IFFs are included, African Member States will be agreeing to engage in a joint review process in identifying the main weaknesses, and the needs for reform, with regular expert-level cooperation to combat IFFs. In 2017, UNECA and the APRM signed a Memorandum of Understanding (MoU¹⁰²) that focused on ECA's support in the implementation of the APRM mandate, including the enhanced role of the APRM in efforts to tackle IFFs out of Africa.

African Development Bank (AfDB)

The Agreement that established the AfDB was adopted and opened for signature on 4 August 1963. Its major role is to contribute to the economic and social progress of its regional member countries – individually and collectively. As of 31 December 2011, 53 independent African countries are regional members. In 2007, AfDB developed a strategy on anti-money laundering and combating financial terrorism. Later, in August 2016, it developed an updated strategic framework (2016-2020) and action plan for preventing IFFs in Africa. This framework includes more coverage of forms of IFFs, an action plan for its implementation and a results measurement framework.¹⁰³ The bank works to tackle IFFs from a governance perspective with a focus on transparency and accountability, as both are necessary for social, economic and political progress, on many levels. In February 2018, in collaboration with the OECD, the World Bank, NEPAD and the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA), the AfDB published a report entitled: *“Illicit Financial Flows: The Economy of Illicit Trade in West Africa”*.¹⁰⁴ The report highlighted that West Africa alone loses US\$ 50 billion per year in IFFs and looked at the illicit or criminal activities, economic, security and developmental costs of IFFs in West Africa.

African Tax Administration Forum (ATAF)

Established in 2008,¹⁰⁵ ATAF has remained a leader on tax policy and tax administration matters. It promotes economic development by building capacity of African Tax Administrations and other relevant and interested stakeholders on tax matters through trainings. Furthermore, it represents an African viewpoint on tax matters at the UN Committee of Experts on International Cooperation in Tax Matters and at the OECD. Thus, representing an African voice in global tax standards setting foras. ATAF has also produced various guidelines for African countries on: treaties, transfer pricing, interest rules, and permanent establishment, among others, to ensure that African countries can build on this work to find solutions to various aspects of IFFs.

Stolen Asset Recovery Assistance (StAR)

StAR is an initiative that was launched in 2007 by the World Bank and the United Nations Office on Drugs and Crime (UNODC), during the United Nations Convention against Corruption. Both the Mbeki report and the Addis Agenda supported this initiative in tracing, freezing and repatriating stolen assets. StAR has gathered corruption case data in 11 African jurisdictions¹⁰⁶ including: Nigeria, Egypt, Kenya, Tunisia, Chad, Equatorial Guinea, Liberia, Gabon, Lesotho, Zambia, Burkina Faso. StAR is particularly important for Africa, as the enormous amount of resources that are illicitly taken out can be recovered and brought back to the continent to finance sustainable development.

¹⁰² UNECA (2017).

¹⁰³ AfDB (2016).

¹⁰⁴ OECD (2018b).

¹⁰⁵ ATAF (2018).

¹⁰⁶ StAR (2018).

For example, StAR helped to facilitate the recovery of US\$ 505.5 million,¹⁰⁷ through investigations carried out after the death of Nigeria's former president General Sani Abacha (1993-1998). These funds were hidden in Swiss banks and were successfully repatriated by Switzerland to Nigeria in September and November 2005 and early 2006. The funds were later invested in pro-poor projects in the country.¹⁰⁸

Sub-regional efforts

The Inter-Governmental Action Group against Money Laundering in West Africa (GIABA¹⁰⁹) is a specialised institution of the Economic Community of West African States (ECOWAS). Since its establishment in 1999, it focuses specifically on money laundering and financing of terrorism. GIABA encourages countries within ECOWAS to take collective responsibility when it comes to adherence of anti-money laundering (AML) and counter-terrorist financing (CFT) standards.

At the regional economic community (REC) level, various other membership-based initiatives have been launched to encourage cooperation between member countries. This will allow them to develop effective systems necessary to consolidate and sustain their combined efforts in combating money laundering and terrorism financing. They include: the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG); the Middle East and North Africa Region Financial Action Task Force (MENAFATF) and the task force on money laundering in Central Africa (Groupe d'Action contre le blanchiment d'Argent en Afrique Centrale (GABAC). The implementation of the Financial Action Task Force (on money laundering) (FATF) recommendations, on cooperation and coordination, money laundering, terrorism financing, transparency and beneficial ownership, international cooperation among others,¹¹⁰ would especially support these goals.

At the national level, African countries have joined various international groups and networks targeting IFFs from different angles, including membership in the Inter-Governmental Action Group against money laundering in the sub-regions, the Financial Action Task Force, the Financial Crimes Enforcement Network, Egmont Group of Financial Intelligence Units, the Extractive Industries Transparency Initiative (EITI).

National level initiatives

Nigeria has enacted a law granting independence to the National Financial Intelligence Unit against money laundering and related crimes. The country has also signed the multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting (BEPS) as well as the common reporting standard multilateral competent authority agreement to continue the convention on mutual assistance in tax matters.¹¹¹

South Africa introduced new tax regulations, allowing for transfer pricing reporting country-by-country to help the government understand how large multinational companies shift profits between their subsidiaries to avoid taxes. The requirement for Country-by-Country reporting (CbCr), which applies for financial years commencing on or after 1 January 2016, is a consolidated Multi-National Enterprise (MNE) group turnover of at least R10 billion in the fiscal year prior to the year in which the CbC report must be submitted.¹¹²

Among other countries, Kenya, South Africa and Uganda, Tanzania, Nigeria, Senegal, Tunisia and Angola, have established separate transfer pricing units within their revenue collection agencies, with Guinea and

¹⁰⁷ An earlier USD 800 million in cash and assets was recovered from members of the Abacha family and his associates through a decree in 1999. This money was eventually utilised by the government for housing projects and education in all the states of the Federal Republic of Nigeria. See Jimu (2009).

¹⁰⁸ Jimu (2009).

¹⁰⁹ Established on 10 December 1999 by a decision of the Authority of Heads of State and government of the ECOWAS.

¹¹⁰ FATF (2012-2018).

¹¹¹ Udo (2018).

¹¹² PKF (2018).

Sierra Leone said to be in the process of setting them up. The establishment of such units has helped African countries increase capacity-building initiatives to enable auditing, investigating and successfully collecting taxes from multinational companies. For instance, the African Tax Administration Forum (ATAF) asserts that its technical assistance programme has helped African countries recoup about US\$ 160 million in tax revenues, over the past three years, which they would not have received without the changes in their transfer pricing legislation.¹¹³

In July 2017, Tanzania's president gave his assent to three new laws related to the mining industry. These laws are expected to bring significant changes to the sector. The Tanzanian government says the laws aim curb tax avoidance and evasion by companies operating within the sector, to double the extractives sector's tax contribution to the country's GDP to 10% by 2025 and improve transparency within the sector. The new legislations touch on re-negotiation of agreements with mining companies, the need for parliamentary approval for future agreements and calls for the establishment of a Mining Commission to regulate the industry.¹¹⁴

In addition to this, some African countries are taking specific measures related to protecting their tax bases including, for example, analysing their tax treaties with developed countries. Some countries have cancelled or renegotiated their tax treaties in recent years, while others are undertaking reviews (Hearson 2014). Rwanda, Malawi, Zambia, Nigeria and South Africa are among those countries that have recently made efforts to gain more taxation rights through tax treaty cancellation and renegotiation. Malawi renegotiated a tax treaty with the Netherlands in 2015.¹¹⁵ This included having stronger anti-abuse provisions related to taxes on dividends, interest and royalties and exchange of information.

5.2. Selected EU initiatives tackling IFFs

The EU's work on tackling tax avoidance and evasion has generally focused on the EU VAT Action Plan, the EU Anti-Tax Avoidance Package, the EU Code of Conduct, EU State Aid, and the common consolidated corporate tax base (CCCTB) among others. Below we look at some examples. The focus on these areas is closely linked to 15 action points¹¹⁶ on coherence, substance, transparency, digital economy and the multilateral instrument. These action points are based on the base erosion and profit shifting project (BEPS117), initiated in 2013 and completed in 2015, which was led by the Organisation for Economic Co-operation and Development (OECD).

EU Anti-Tax Avoidance Package (ATAP)

The package is part of a June 2015 Action Plan¹¹⁸ on fair, efficient and effective corporate taxation by the European Commission (EC), developed to run from 2015 to 2017 and beyond. The package concentrates on increasing tax transparency, coordination of tax rules and addressing competitive distortions for businesses operating within the EU to ensure a level playing field. The main contents of the package centre on ensuring that tax authorities have access to vital information to check that companies are taxed where they make their profits. The directive sets out six key anti-avoidance measures, which include the deterrence of profit shifting, the prevention of double non-taxation, prevention of companies from re-locating

¹¹³ Tax Analysts (2018).

¹¹⁴ LRCT (2018).

¹¹⁵ Government of the Netherlands (2015).

¹¹⁶ OECD (2015).

¹¹⁷ To tackle unfairness and fraudulence of the existing international tax system, the G8 and G20 mandated the OECD to lead on the 'base erosion and profit shifting' (BEPS) process which aims to update the international tax system.

¹¹⁸ EC (2018b).

assets purely to avoid taxation, the creation of artificial debt arrangements to minimise taxes, preventing exploitation of differences in tax treatment of same income or entities between member states (hybrid mismatch arrangements), and the General Anti-Abuse Rule. All Member States are now expected to implement these provisions before 1 January 2019¹¹⁹.

Furthermore, as part of the ATAP, the EU has adopted two anti-tax avoidance directives. The first was adopted in July 2016¹²⁰ and includes rules to tackle intra-EU hybrid mismatch arrangements¹²¹. The second directive, adopted in February 2017¹²², includes all situations of hybrid mismatches between EU Member States and third countries, with the aim of closing the aggressive tax planning tools available to non-EU Member States in the international tax system.

Automatic Exchange of Information on Tax Rulings

The Automatic Exchange of Information on Tax Rulings emerged as a response to revelations concerning the extensive abuse of tax rulings – particularly through the LuxLeaks scandal of 2014¹²³ – by multinationals in aggressive tax planning. The Automatic Exchange of Information on Tax Rulings focuses on creating transparency and compliance between EU and national Member State laws, when it comes to the issuance of tax rulings relating to multinational corporations' tax arrangements. As of 1 January 2017, Member States are obliged to automatically exchange information on all new cross-border tax rulings that they issue. This will be done through a central depository, accessible to all EU countries.¹²⁴

State aid investigations

State aid is defined as an advantage, in any form whatsoever, conferred, on a selective basis, to undertakings by national public authorities¹²⁵. The EC is in charge of ensuring that state aid complies with EU rules so that companies, which receive government support, do not gain selective outcomes that give them unfair advantages over their competitors.

Some of the cases that have already been decided on involve¹²⁶ Luxembourg granting state aid to Fiat, the Netherlands granting aid to Starbucks, the Excess Profit exemption in Belgium and Ireland giving aid to Apple. These decisions have been widely publicised and debated in these countries. The companies involved have appealed against the decisions before the European Court of Justice (ECJ). The appeals claim that the EU went too far in its assessment of the application, method of implementation and use of the state aid tool. As of 2017, there are four formally opened investigations on state aid including: Luxembourg for alleged aid to McDonald's and possible state aid in favour of GDF Suez (ENGIE); the Netherlands for possible state aid in favour of Inter IKEA and the United Kingdom on tax schemes for multinationals (Controlled Foreign Company rules-CfC).

¹¹⁹ EC (2016).

¹²⁰ EU (2016).

¹²¹ Hybrid mismatch arrangements are arrangements exploiting differences in the tax treatment of instruments, entities or transfers between two or more countries (OECD publication 05/03/2012). They are the consequence of differences in the legal characterisation of payments (financial instruments) or entities and those differences surface in the interaction between the legal systems of two jurisdictions (official journal of the EU, 19/07/2016).

¹²² European Commission DG Taxation and Customs Union (2016).

¹²³ The LuxLeaks showed that multinational companies obtained at least 548 favourable tax rulings in Luxembourg from 2002 to 2010. See ICIJ (2014).

¹²⁴ EC (2017a).

¹²⁵ EC (2018c).

¹²⁶ More information on the Final decisions and open formal investigations on EU state Aid cases is available at: EC (2018d).

Automatic exchange of information on country-by-country reports (CbCR)

In 2016, in response to pressures by the European Parliament (EP) and intense public and international scrutiny, the EC came up with a new accounting proposal allowing for CbCR. As of 2017, multinational enterprise (MNE) groups located in the EU or with operations in the EU, with total turnover equal or in excess of EUR 750 million,¹²⁷ are obliged to file their annual accounts CbCR in the Member State (MS) in which they are a resident for tax purposes. In 2017, the EP suggested expanding this threshold.

The automatic exchange of information on country-by-country reports is not public but between tax authorities and is based on tax accountability, coordination, convergence and transparency. Furthermore, it looks at revenue, the profit before income tax, the income tax paid and accrued, the number of employees, stated capital, retained earnings and the tangible assets¹²⁸ that MNEs are reporting in other EU MS jurisdictions. The negotiations on public CbCR continues to be an uphill struggle for the EU, as several MSs are not in full agreement with the legal basis¹²⁹ of its voting proposal and implementation. Currently, a final text of the public CbCR proposal is under consideration.

Agreements signed on the exchange of financial information of EU residents with Switzerland, Liechtenstein, Andorra, San Marino and Monaco

These tax transparency agreements were signed between 2015 and 2016, in some cases, amending previous agreements dealing with taxation of savings. They allow for the automatic exchange of financial accounts information by tax administrations by applying measures equivalent to those within the EU.

The Common Consolidated Corporate Tax Base (CCCTB) proposal

The EC first presented the CCCTB in 2009 (initially, it did not get the necessary unanimity at the Council, as countries like the UK rejected it). In 2016, it was re-launched with the idea that major companies should adhere to it, through a two-step process: first, a common corporate tax base (CCTB), second, a common consolidated corporate tax base (CCCTB). The proposal includes a single set of rules to calculate companies' taxable profits in the EU. In this way, cross-border companies will only have to comply with one single EU system to compute their taxable income, rather than 28 different national tax rulebooks.

The CCCTB has undergone extensive discussions at the Council. Some countries, including Denmark, Ireland, Luxembourg, Malta, Sweden and the Netherlands, have sent in their opinions citing, among other issues, the lack of a proper impact assessment to ensure that the CCCTB does not end up harming revenue collection and employment at the national country level of EU MSs. In May 2017, the EC decided to re-launch the CCCTB project, which, in its view, should become applicable as of 1 January 2021 and would not cover corporate taxes, as these are considered a national prerogative¹³⁰. The main reason for these delays and diminished ambitions is that CCCTB is viewed as being overly ambitious, since it encroaches on areas of national sovereignty and suggests changing national tax laws.

¹²⁷ European Commission DG Taxation and Customs Union (2018).

¹²⁸ Ibid.

¹²⁹ On January 17, 2017, the European Parliament's Committee on Legal Affairs (the "Committee") published its opinion on the appropriate legal basis for the disclosure of income tax information (i.e., public country-by-country (CbC) reporting). On January 12, 2017, the Committee decided that Article 50(1) of the Treaty on the Functioning of the European Union (TFEU), not Article 115, constitutes the appropriate legal basis for the proposal to amend EU Directive 2013/34 (the "Accounting Directive"); therefore, a unanimous vote will not be required to amend the Accounting Directive. More available at: Silbering-Meyer (2017).

¹³⁰ Loyens & loeff (2018).

EU blacklist of tax havens

In November 2016, EU finance ministers agreed on a criterion to single out non-EU tax havens and publish a blacklist. The criteria and process for a non-EU country to be included in or removed from the blacklist were based on standards of transparency, effective exchange of information, fair tax competition principle and BEPS implementation. The European Council, at its meeting on 5 December 2017, adopted and published conclusions on the EU list of non-cooperative jurisdictions for tax purposes¹³¹. Negotiations and discussions over the content of the list took over a year, with smaller, low-tax EU nations such as Ireland, Malta and Luxembourg, worried about scaring off multinationals and the UK opposing the list due to the probable inclusion of its crown dependencies, including Jersey and the Virgin Islands.¹³² Furthermore, the EU started negotiations with 92 jurisdictions around the world (including the United States, Switzerland and Canada), to develop a new international blacklist for countries that fail to meet international transparency standards.

In December 2017, the European Council listed 17 countries¹³³ (including two African countries: Namibia and Tunisia) for failing to meet agreed tax good governance standards. In January 2018, eight countries were removed from the list and moved to a separate category of jurisdictions subject to close monitoring. In May 2018, Bahamas and Saint Kitts and Nevis were also removed from the list. In addition, following consultations with the EU, 47 countries committed to addressing deficiencies in their tax systems and meeting the required criteria.¹³⁴ The blacklist has potential defensive measures attached to it, for example, termination of or holding off tax treaties, withholding additional taxes to the tax haven or deduction to payments to a tax haven could be denied. A complementary grey list allows for a gradation of offending countries.

The credibility of this list has been questioned on the grounds of the very limited (and shrinking) number of countries featuring on it and because no single EU Member state (MS) was listed or even screened, triggering accusations of double standards when MSs such as Malta and Luxembourg have a reputation of being secrecy jurisdictions.¹³⁵ The impossibility for the EU to target its own MSs and the fact that this list can be used as leverage against third countries raises the question whether the EU is in a position to distribute good points.

EU Anti-Money Laundering Directives

To date, the EU has introduced five directives on anti-money laundering as part of its regulatory framework to combat financial crime, especially terrorist financing. The EP and the European Council have provided modifications on the EC's proposals on this matter. In April 2018, the EP adopted its fifth directive on anti-money laundering,¹³⁶ reinforcing a fourth, already existing directive and implementation strategy.

¹³¹ Council of the European Union (2017).

¹³² Euractiv (2017).

¹³³ American Samoa, Bahrain, Guam, Marshall Islands, Namibia, Palau, Saint Lucia, Samoa and Trinidad and Tobago, Barbados, Grenada, the Republic of Korea, Macao SAR, Mongolia, Panama, Tunisia and the United Arab Emirates.

¹³⁴ Head (2018).

¹³⁵ Guarascio (2018).

¹³⁶ EC (2018e).

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