Chapter 26

Slovakia: Taxation Policy in the Light of EU Tax Policy

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Abstract

This chapter presents a broad overview of the dynamics of the coexistence of a Member State – the Slovak Republic – and the European Union (EU), which share competencies in the area of taxation. From the perspective of the Slovak Republic, this chapter examines the general concept of state sovereignty; further, it explores how the Slovak Republic's sovereignty is affected by its membership in the EU, especially in light of new tax legislation. Conferring part of its sovereignty to the EU, the Slovak Republic applies the monistic principle of regulating the relationship between EU law and national law and prioritizes EU law over its own. Notably, this chapter also explores the EU's direct legislative competences in tax matters and its visions and efforts in the sphere of direct taxation, where its legislative position differs from that for indirect taxes. In this regard, Slovakia can be seen as a supporter of EU legislative actions that lead to a more cooperative approach towards common European problems; however, not all initiatives were perceived as beneficial for the Slovak Republic – some may hold risks for the state's economy. Given that a Member State's sovereignty and tax competence are closely connected to tax competition, this chapter also considers this topic; in particular, this chapter explores why Slovakia did not positively receive some of the EU's proposals, particularly the Common Consolidated Corporate Tax Base (CCCTB). Subsequently, this chapter turns to the Slovak Republic's overall policy and particular measures in the fight against tax evasion in light of its attitude towards EU. This area is of special importance for the Slovak Republic. In the last decade, the Slovak Republic has introduced action plans for fighting tax evasion and tax fraud and many related individual measures.

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Further, Slovakia generally affirms the EU's related measures as helpful in solving tax evasion. The data show that these activities are yielding positive outcomes in Slovakia, with the amount of taxes evaded generally declining.

Keywords: *Slovakia, tax law, tax sovereignty, tax harmonisation, implementation of EU measures, tax competition, fighting tax avoidance*

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1. The elements of tax sovereignty

1.1. The concepts of state and tax sovereignty and the conferral of relevant competences in the field of tax law

State power is a legally regulated social force capable of determining the actions of the inhabitants of the state's territory through legal and non-legal methods.[1] As a specific sign of state power[2], its sovereignty is defined as independence of state power unanswerable to any other power inside or outside the borders of the given state[3] – put differently, there is no higher political power than the political unit itself when the state is sovereign.[4]

Tax sovereignty is one of the attributes of statehood.[5] Historically, the existence of a state has been associated with the right to impose taxes on a territory: 'When Thucydides mentions a nation that was recognized as independent, he writes in the sense that it is subject to its own laws, courts and taxes',[6] which are used and redistributed by the state at its discretion.[7] Tax is defined as 'a public monetary obligation of natural and legal persons to the state and its organic elements, strictly established by law, which is collected from them in a special process based on the coercive disposition of the state by the authorities designated by the state in the form of mandatory non-returnable and non-purposed payment'.[8] Tax policy and tax sovereignty are symbols of a state's national sovereignty.[9] According to the Constitution of the Slovak Republic ('Constitution'), taxes can be collected at the state and local levels and imposed only by law or on the basis of the law (Art. 59), that is, by a national act

1 Krošlák, Balog and Surmajová, 2020, p. 42.
2 Procházka and Káčer, 2013, p. 39.
3 Bröstl, 2023, p. 58; see also: Procházka and Káčer, 2013, p. 39.
4 Bröstl, 2023, p. 59.
5 Babčák, 2019a, p. 798.
6 Bröstl, 2023, p. 58.
7 Mrkývka, 2015, p. 111.
8 Stieranka, Sabayová and Šimonová, 2016, p. 19.
9 Široký, 2018, p. 21.

of prescribed force; this reflects the so-called 'principle of legality of the imposition and collection of taxes'.[10] 'Taxes from a legal point of view are a powerful instrument of the state explicitly stated in Article 59 of the Constitution'.[11] Therefore, the only legislative body with the competence to approve the imposition and regulation of tax obligations is the National Council of the Slovak Republic ('National Council'); however, in the context of local taxes, the municipal council also serves as a legislative body with powers) – thus, neither the Government of the Slovak Republic ('Government') nor any other authority can determine tax obligations in the territory of the Slovak Republic ('SR'). As articulated in II. US 362/2019:

> The provision of Art. 59(2) of the Constitution is essentially a constitutional safeguard, the purpose of which is to make it impossible for the executive power (the Government and public administration bodies) to impose tax or fee obligations on individuals and legal entities on the basis of their own discretion, with the fact that the imposition of such obligations is the prerogative of the legislative power and it can therefore only be realised by law or on the basis of the law.

However, this statement can be applied both internally and externally.

Externally, the sovereignty of a state manifests in the arrangement of mutual relations between individual states within the framework of international law and is reflected in the principle of sovereign equality, according to which no state can be forced to accept an international legal obligation without giving consent.[12] This follows general international law and is connected to state equality, one of the basic principles expressed in the UN Charter.[13] However, the external sovereignty of a state is relativised by international law, which obliges states to act in particular ways, and by their membership in international organisations and other supranational associations, such as the EU.[14] In this context, Krunková and Skalická[15] state that, today, few recognize sovereignty as absolute sovereignty; instead, sovereignty is popularly limited to so-called 'relative sovereignty'; that is, freedom in the context of a relationship of submission to the will of another state.

In this context, the basic law of the state, the Constitution, declares in Art. 1 that 'the Slovak Republic is a sovereign, democratic and legal state', but also states that it 'recognises and observes the general rules of international law, the international treaties by which it is bound, and its other international obligations'. Pursuant to Art. 7 para. (2) of the Constitution, the Slovak Republic can transfer the exercise of part of its rights to the European Community and the EU by an international treaty that has been ratified and declared in the manner established by law or on the

10 Babčák, 2019a, p. 448.
11 PL. ÚS 5/2012.
12 Procházka and Káčer, 2013, p. 39.
13 Vršanský and Valuch, 2016, p. 44.
14 Krošlák, Balog and Surmajová, 2020, p. 44.
15 Krunková and Skalická, 2011, p. 39.

basis of such a treaty. This was brought about by the Treaty on the Accession of the Slovak Republic to the EU, to which the National Council consented on 1 July 2003 by resolution no. 365 and at the same time situated as a contract according to Art. 7 para. (5) of the Constitution, which takes precedence over the laws of the SR. The president ratified the treaty on 26 August 2003 and the treaty entered into force on 1 May 2004.

Art. 7 para. (2) of the Constitution continues that 'legally binding acts of the European Communities and the European Union have priority over the laws of the Slovak Republic' and further states that 'the adoption of legally binding acts that require implementation shall be carried out by law or Government regulation pursuant to Art. 120(2)';[16] this refers mainly to directives, as sources of EU law without general validity (binding only for Member States and only with regard to the result) – notably, these directives must be implemented into the national order, which is realised in the SR by issuing new or changing existing legal regulations.[17] In the decision PL ÚS 2/09, the Constitutional Court confirmed the application of the primacy of EU law, according to which all authorities, not only general courts, are obliged ex officio not to apply national law that, in their opinion, contradicts EU law (with the possibility of verifying such an interpretation by asking a preliminary question to the Court of Justice of the EU [CJEU]). Therefore, a monistic principle regulates the relationship between EU and national laws,[18] while the sources of EU law have priority over SR laws. In the case of the state's membership in the EU, part of the state's sovereignty is transferred to this entity, and the constitutional law of individual Member States must respond to such situations.[19] Although, according to Orosz, Svák, and Balog,[20] the EU has a common systemic basis of generally recognised constitutional values, the adaptation of the constitutions of the Member States – the so-called 'Europeanisation' of national institutes and the incorporation of the so-called 'integration clauses' – casts the protection of Member States' constitutional identities in a new light.[21] The transfer of powers to the EU means that the Member States retain these powers, but do not always exercise them to the agreed extent because they are exercised by the EU; notably, the SR has transferred only the exercise of part of its powers[22]. Krunková and Skalická[23] emphasise that in the framework of any integration, only the exercise of part of sovereignty is transferred to joint bodies. The state does not relinquish its sovereignty, since that would de facto cause it to cease to exist.

In the tax sphere, primary EU law establishes the EU's legislative limitations regarding the Member States and thus the scope of competencies. Specific guardrails

16 These are referred to as 'approximation regulations'.
17 Klučka and Mazák, 2004, p. 135.
18 Orosz, Svák and Balog, 2012, p. 268.
19 Drgonec, 2001, p. 28.
20 Orosz, Svák and Balog, 2012, p. 260.
21 Orosz, Svák, and Balog, 2012, p. 260.
22 Orosz, Svák and Balog, 2012, p. 262.
23 Krunková and Skalická, 2011, p. 41.

are set in the Treaty on Functioning of the EU (TFEU), which prohibits protective and discriminatory taxes; emphasizes competence in the harmonisation of indirect taxation to ensure the establishment and functioning of the internal market and avoid distortion of competition (Arts. 110–113); and prohibits infringement of fundamental rights and freedoms, discrimination based on nationality (Arts. 63–65), and the approximation of other laws of the Member States that directly affect the establishment or functioning of the internal market (Art. 115), with the latter being mostly used for the partial approximation of direct taxation issues (where the competence of the EU is not determined as explicitly as in the case of indirect taxation issues). Nevertheless, it is not only the primary law, and subsequently the secondary law issued on its basis, but also general legal principles and CJEU's case law that need to be considered. Especially the case law is the means of control of the CJEU over the member States' compliance with the above-mentioned regulation, for which reason the CJEU is often being labelled as a negative legislator.[24]

1.2. Standpoints regarding tax competition

To some extent, tax sovereignty is related to tax competition, as both include the right of the state to define the elements of its own tax system according to its needs and ideas. Similar to other countries that joined the EU after 2004, the SR can be classified as one of the states that supported tax competition rather than tax harmonisation (especially in the area of income taxation). These Member States are often referred to as 'new Member States', characterised by a transformation from a centrally managed economy to a market economy and a lagging GDP per capita compared to the original Member States or EU average. Therefore, it is logical to expect their efforts to catch up (e.g. through tax competition with a lower tax burden). Usually, affirmations of competition are based on arguments that it preserves fiscal autonomy (since taxes are a natural stabiliser for regulating fluctuations in the economic cycle), increases competitive advantage by attracting investors through reducing corporate income tax (which usually leads to higher economic growth, especially in smaller countries), and contributes to the overall reduction of the tax burden in the EU.[25] Such a description corresponds to the SR's situation when it joined the EU, since, in 2004, a large-scale tax reform was adopted (including the introduction of a flat income tax of 19% with a very complex and broad tax base without a larger spectrum of various exceptions or special regimes).

Meanwhile, the main argument against tax competition is the inefficient allocation of resources (in the case of taxes, the market cannot ensure the efficient allocation of resources between Member States and the subsequent allocation of

24 Bujňáková et al., 2015, pp. 101–102.
25 Teplická and Daubner, 2013, p. 173.

public expenditures).[26] For example, Babčák[27] states that in EU documents, the term 'tax competition' is much more often used in a negative context (e.g. 'harmful tax competition') than in a positive one. He further notes that the very fact that certain unilateral measures in the field of taxation are considered by the Commission to be manifestations of harmful tax competition may discourage states from giving up part of their tax sovereignty to the EU. Further, research by Teplická and Daubner[28] on a sample of 27 EU states for the period between 1998 and 2008 confirmed that tax competition leads to higher economic growth; however, this research also observed that reducing the tax burden on capital, corporate income, labour, or consumption deepens the budget deficit. Therefore, tax competition cannot continue over the long-term and cannot lead to the so-called 'race to the bottom' without increasing the deficit. It is necessary to determine the right balance.

In step with the above, the SR's position on the issue of tax competition was particularly visible during negotiations on the CCCTB concept (see the next subsection). The rejection of the harmonisation of direct or corporate taxes, in addition to other stated political reasons (including the loss of sovereignty), was significantly economically conditioned. The Minister of Finance at the time, Ivan Mikloš, stated, 'if the proposal of the European Parliament were to be put into practice, the efficiency, neutrality and stability of our tax system would deteriorate'; meanwhile, the executive director of the Business Alliance of Slovakia, Róbert Kičina, also negatively evaluated the proposal of the CCCTB, according to which 'the enforcement of a tax base other than the Slovak one would once again bring a number of different exceptions, from which only certain groups of people would benefit, who are basically not entitled to such benefits'.[29] Malová, Láštic, and Rybár[30] considered this position logical in view of the economic policy of the government, which, in 2004, introduced a large-scale reform of the tax system with lower direct taxes and a simpler method of calculation (and therefore, also control) than those used in the vast majority of Member States. According to Mikloš, at that time, Slovakia had 'one of the broadest tax bases in the EU, which means that it had few exemptions in taxation'; additionally, he advised that while 'harmonization would force various exceptions, as is the case in other EU countries – the tax reform was the most significant reform of the previous Government and is also the biggest competitive advantage of Slovakia'.[31] Harmonisation was, therefore, seen by Vladimír Palko as a 'limitation of the competitive advantage of the new EU Member States'.[32] In 2006 and 2007, a group of members of the National Council repeatedly submitted proposals to adopt the Declaration on Tax

26 Teplická and Daubner, 2013, p. 173.
27 Babčák, 2020, pp. 85–86.
28 Teplická and Daubner, 2013, pp. 185–186.
29 Jančík and Odkladal, 2005.
30 Malová, Láštic and Rybár, 2015.
31 *Palko: Slovensko má slabnúci postoj k daňovej harmonizácii v EÚ*, 2007.
32 Ibid. Similarly, Peter Chrenko from Ernst & Young: Jančík and Odkladal, 2005.

Sovereignty in Direct Taxes[33] as the official position of the SR; however, this proposal was not approved.

Currently, the SR strives to maintain a certain degree of freedom in its potential application of elements of tax competition. From the SR's reactions to many EU and OECD initiatives, especially in the fields of combating the erosion of the tax base, fighting tax evasion, and let's call it a desire for increase of justice in the allocation of tax revenues between the EU Member States, it is noticeable that SR also strives for solidarity and contribution to the construction of a community of states with harmonised tax regimes to an extent when better results are achieved in the stated objectives of the common EU tax policy, but also in a wider context international community.

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2. Tax harmonization and the sovereignty of Member States

2.1. View of direct tax harmonization in the EU

In accordance with the above-described process, Slovakia, as an EU Member State, transferred part of its competence to determine some elements of its tax system to the EU (or to accept its formation at the transnational level) with the subsequent (mandatory) acceptance of the result (in the creation of which, however, it directly participated). Nevertheless, it cannot be said that the Slovak supreme legislative body thus a priori waived the right to exercise legislative authority in tax matters in which legislative acts were also adopted by the EU. Despite the above-mentioned principle of the primacy of EU law over the laws of the SR, these acts are implemented in the national legal order by the legal regulations of the SR in a modified manner (according to the principle of legality, by adopting new or changing existing tax laws), thus the will of the national legislative body is also reflected in the process of adopting EU legislative acts in the tax field.

That is, on the formal side, members of the government represent the SR in EU bodies, and formally (and legally), their representation of the SR is regulated by national legislation. This legislation is designed to ensure the presentation of the positions held by the Slovak legislature, primarily the Constitutional Act No. 397/2004 Coll. on the cooperation of the National Council and the Government of the Slovak Republic in matters of the European Union, the Rules of Procedure of the National Council of the Slovak Republic, and in detail the System of Forming Opinions on Draft EU Legal Acts and the State of Coordination of the Implementation of EU Policies approved by the resolution of Government no. 627 of October 27, 2013. The purpose of the regulation was to maintain the position of the National Council in

33 See: INESS, 2007.

line with a strong model of its control over the government. The regulation outlines the government's obligation to submit designated materials to the National Council. Additionally, it grants the National Council the authority to approve the SR's position on draft legally binding acts and other EU acts (which are decided by representatives of the governments of the EU Member States) as well as on other EU matters if requested by the government or at least one-fifth of the Members of the Parliament. Subsequently, a member of the government is bound by the approved position when presenting the positions of the SR to EU bodies. The National Council entrusted the Committee of the National Council for European Affairs with this work; further, in addition to approving binding mandates for members of the government, this committee has also been entrusted with other powers of the national parliament, such as assessing the compliance of draft EU legislative acts with the principle of subsidiarity, including approving reasoned opinions[34]. Therefore, the SR applies the so-called 'mixed' system of monitoring EU affairs in the national parliament. Through this committee, the National Council can correct the way in which members of the government who hold official positions on the SR express themselves regarding proposals for EU legislation or other matters.

The SR places a high importance on the possibility to express its position on proposed legislative acts. Notably, it does not support the Commission's long-time call for changing the unanimous voting system to a majority voting system.[35] For example, the Report on the membership of the SR in the European Union for 2011 (p. 3) states that one of the Slovak priorities was successfully implemented in the agreement on the Euro Plus Pact; namely, the explicit mention that direct taxes remain within national competence. In 2019, when the initiative 'More effective creation of legislation in the field of taxes: determination of areas in which voting by qualified majority (QMV) would be adopted' was presented, the official position of the SR was that

> the idea of changing the current voting procedure in tax matters to QMV and the procedure proposed by EC has no support of the SR. The phasing of the procedure and the EC's arguments are not justified. Even now, in the case of initiatives where they see the need for joint action, Member States can reach a unanimous agreement. This is also evidenced by a series of approved legislative acts during the last three years (e.g. ATAD, DAC). On the other hand, the EC also needs to enforce the QMV for its initiatives that are currently criticized by Member States and are conflicting the need to maintain sovereignty in the given issues.[36]

34 In the context of the early warning system on compliance with the principle of subsidiarity in draft EU legislative acts.

35 See, for example: Communication from the Commission: A Constitution for the Union COM(2003) 548 final, p. 24.

36 Ministry of Foreign and European Affairs of the Slovak Republic, Annual report on the membership of the Slovak Republic in the European Union of 2018, Annex I, p. 5.

For the same reason, the SR expressed a restrained attitude towards the work of the Committee for Administrative Cooperation in the Tax Area (in view of a possible deviation from unanimous decision-making in tax matters, as the Committee makes decisions on the basis of a qualified majority). Member States are clearly aware of the reason for changing the system (i.e. the effort to enforce certain proposals at the expense of individual members). Considering that the effort to change the voting system has not been generally accepted for a long time, one may ask to what extent negative harmonisation in the field of direct taxes by means of the CJEU's case law can be considered a quasi-way to circumvent the impossibility of the harmonisation of direct taxes.

Procházka and Káčer[37] state that the traditional process of making collective decisions in international organisations (through unanimity) is based on the principle of sovereignty, and the deviation to majority voting occurs only where states limit their sovereignty in favour of integration into higher units; that is, to create communities (which allows them to feel like part of a whole). However, we do not see such a state (unity) in the current EU, which is characterized by different opinions and attitudes.[38] Kruková and Skalická[39] advise that states voluntarily take on limitations to their sovereignty. Member States evaluate decision-making by a qualified majority and the associated loss of the right of veto as a partial loss of their sovereignty, given that they can be overruled by other Member States – an element almost absent in traditional international relations.[40] Member States also guard their sovereignty. Furthermore, Kruková and Skalická draw attention to the issue of the legitimation of autonomous political power in transnational political systems. Non-unanimous voting would be a fundamental blow to questioning the exclusive legitimization of the decision-making processes at the EU level; specifically, this would enable the overriding and thus the negation of national wills. Additionally, there is also the problem of the implementation of indirectly valid secondary EU acts, which must be transposed into national law but with which the given state did not agree – in such cases, the national parliament would actually be forced by an international obligation to accept a certain vote; however, this goes against the principle of prohibition of the imperative mandate. According to Babčák,[41] Member States defend the necessity of unanimity with the possibility of exercising the right of veto; notably, the EU does not have a mandate to harmonise direct taxation, which would be enshrined in the founding treaties – that is, the EU's tax powers are limited directly through the founding treaties. There is no interest in changing anything in this regard – Member States are not interested

37 Procházka and Káčer, 2013, p. 39.

38 There are directly opposing views on the future direction of tax legislation in the EU, one pole of which begins with an image of the complete unification of tax systems, and the other pole ends with a clear rejection of common tax policy and legislation. Babčák, 2015.

39 Kruková and Skalická, 2011, p. 41.

40 Novotný, 2006, p. 10.

41 Babčák, 2020, pp. 31–33.

in transferring part of their remaining tax sovereignty to the EU for the sake of harmonising direct taxes.

Nevertheless, since the beginning of its membership in the EU, the SR has maintained a positive attitude towards most solutions to tax issues at the EU level. This includes those issues related to indirect taxes and – above all – the fight against tax fraud. The SR supports international assistance, administrative cooperation, and the exchange of information for tax purposes, which significantly contribute to reducing the tax gap, and other measures that in principle also related to partial adjustments (initial coordination of tax systems) in direct taxes to eliminate double taxation, tax evasion, profit shifting and aggressive tax planning. Notably, exceptionally negative attitudes have been expressed to individual initiatives. For example, negative attitudes were expressed towards the CCCTB concept of 2006,[42] where the SR

> on the basis of the progress of work and partial outputs [...] has not yet acquired the conviction of the usefulness of the project, which should lead to the simplification of the situation of multinational companies doing business within the internal the EU market. The SR continues to hold the opinion that work on the CCCTB proposal should not receive political support [...] until the final proposal presented by the European Commission, in terms of its technical side and detailed evaluation of the impacts, convinces the Member States of the advisability of its consensual adoption.[43]

Among other things, the SR criticised the proposed redistribution mechanism.[44] It more or less maintained this position even after the re-submission of the CCCTB proposal in 2016,[45] at which time

> the SR announced at the working meetings a reservation of the review of the submitted draft C(C)CTB directives [...] From the Slovak perspective, an essential feature of a competitive EU corporate income tax system in relation to the rest of the world should be mainly an aspect of the uniformity of the rules in the territory of the Member States Another important element is stability, predictability and certainty in the application of common rules and the achievement of a common standard, which

42 Communication from the European Commission to the Council, the European Parliament and the European Economic and Social Committee – on the implementation of the Community's Lisbon Program – Progress to date and further progress in the area of the Common Consolidated Corporate Tax Base (CCCTB) – COM(2006) 157 final, p. 17.

43 Ministry of Foreign and European Affairs of the Slovak Republic, Annual report on the membership of the Slovak Republic in the European Union of 2007, p. 44.

44 The SR, as a smaller Member State, can rightfully feel concerned about not meeting its budget expectations and the total amount of the redistributed part of the tax base. Ministry of Foreign and European Affairs of the Slovak Republic, Annual report on the membership of the Slovak Republic in the European Union of 2018, p. 50.

45 European Commission, Proposal for a Council Directive on the Common Corporate Tax Base COM(2011) 121 final; European Commission, Proposal for a Council Directive on the Common Consolidated Corporate Tax Base (CCCTB) COM(2016) 683 final, p. 45.

> would simplify the system from the point of view of the legislative solution, as well as the application by tax subjects. SR is open to further negotiations on the drafts of the mentioned directives.[46]

In the following period, however, the statements were not so categorical (in the sense that the SR 'supports the study of the draft directive').[47] However, according to Babčák,[48] the adoption of this concept would not contribute to the elimination of national sovereignty; on the contrary, it would facilitate cross-border trade and support trade and investment more broadly.

Additionally, the SR also demonstrated a negative attitude towards negotiations on the proposal for a Council Directive amending Directive 2006/112/EC as regards the introduction of the detailed technical measures for the operation of the definitive VAT system for the taxation of trade between Member States – COM(2018) 329 final,[49] the Proposal for a Council Directive amending Directive 2006/112/EC as regards rates of value added tax COM(2018) 20 final,[50] and the Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax with as regards the special scheme for small enterprises COM/2018/021 final.[51] The SR presented several reservations and questions regarding the new EU resources system. The SR also had a somewhat restrained attitude towards some elements of the proposal for a Council directive amending Directive 2006/112/EC on the common system of VAT, as regards the treatment

46 Ministry of Foreign and European Affairs of the Slovak Republic, Annual report on the membership of the Slovak Republic in the European Union of 2017, Appendix, p. 35.

47 Ministry of Foreign and European Affairs of the Slovak Republic, Annual report on the membership of the Slovak Republic in the European Union of 2018, Appendix, p. 42.

48 Babčák, 2019b, pp. 21, 831–832.

49 Where, in the opinion of the SR, 'the definitive regime should be such that it does not weaken the existing system with new types of fraud, does not increase the administrative burden on businesses and tax administrations, which the proposal in question does not meet, and thus the SR does not support a definitive regime based on the fact that VAT collection will be dependent from other Member States. It is necessary to focus the discussion on the definitive regime on a system that would mainly eliminate tax fraud.' Ministry of Foreign and European Affairs of the Slovak Republic, Annual report on the membership of the Slovak Republic in the European Union of 2019, Appendix, p. 54.

50 This contains a proposal to remove restrictions in the area of reduced rates and proposes the mandatory application of the base rate through the so-called 'negative list of goods and services subject to the basic VAT rate: 'Given the fact that the said proposal deviates from a certain degree of harmonization that currently exists in the area of reduced rates, the SR does not support the path of the so-called 'negative list'. The SR prefers to maintain the current status with the possibility of using existing exceptions that are applied by other MSs'. Ministry of Foreign and European Affairs of the Slovak Republic, Annual report on the membership of the Slovak Republic in the European Union of 2019, Appendix, p. 55.

51 The SR supports this initiative, but has reservations about certain aspects of the proposal, where it sees the potential for an increased risk of tax fraud. Ministry of Foreign and European Affairs of the Slovak Republic, Annual report on the membership of the Slovak Republic in the European Union of 2018, p. 23.

of insurance and financial services COM(2007) 0747; specifically, the SR preferred conventional measures to combat tax fraud and thus called for amending the existing legislation rather than completely changing the VAT system as such.[52] The SR demonstrated a similar attitude toward the part of the Proposal for a Council Directive on administrative cooperation in the field of taxes COM(2009) 29 final (which was to replace Council Directive 77/799/EEC of 19 December 1977), namely to the proposed extension of the directive's scope of action to all types of taxes and mandatory social security contributions due to the practical aspect that in the SR levies are not part of taxes.[53]

By contrast, the SR welcomed the vast majority of initiatives in the tax field, such as efforts to address the taxation of the digitised economy or aggressive tax planning with a greater scope of information exchange. The SR also supported some projects even more enthusiastically than other Member States; for example, while a financial transactions tax failed at the EU level, the SR worked to solve the issue within the framework of enhanced cooperation. The SR currently supports the Proposal for a Council directive implementing enhanced cooperation in the area of financial transactions tax COM(2013)71 (as of 2019), but only the original objectives of the directive and with reservations. The SR presented these attitudes through its fundamental national positions on certain elements of the proposal, the taxation of which would lead to distortion and negative consequences for the Slovak financial market.[54] However, this tax was highly criticised in the media and by some political entities.[55]

In essence, the SR demonstrates a consistent attitude towards harmonisation in the area of taxes. Notably, it does so despite the considerable fragmentation of the opinions of individual political parties, which can be attributed mainly to the fact that more radical opinions appear more often among minority parties that are not part of the government or parliament,[56] even if some parties are exceptions.[57] This statement can also be applied to situations and topics of extraordinary consensus across the political spectrum, such as the rejection of tax harmonisation before the 2014 elections.[58]

52 Ministry of Foreign and European Affairs of the Slovak Republic, Annual report on the membership of the Slovak Republic in the European Union of 2008, pp. 53–54.

53 Ministry of Foreign and European Affairs of the Slovak Republic, Annual report on the membership of the Slovak Republic in the European Union of 2009, p. 43.

54 Ministry of Foreign and European Affairs of the Slovak Republic, Annual report on the membership of the Slovak Republic in the European Union of 2019, Appendix, p. 54.

55 See, for example: Karlík, 2016.

56 Štrkolec, Vartašová, and Sábo, 2022.

57 See, for example, the 'Sloboda a Solidarita' party, which has long been a parliamentary party that was against the increase of the European Financial Stabilization Mechanism, the introduction of the European Stability Mechanism (EMS), and deeper integration that could threaten the sovereignty of Member States. Mesežnikov, 2014, p. 149.

58 Mesežnikov, 2014, p. 150.

2.2. Current initiatives

Regarding the Communication of the European Commission to the European Parliament and the Council 'Taxation of enterprises in the 21st century (BEFIT)', the SR has so far presented its preliminary position[59] in a very diplomatic tone. In general, the SR supports the goals and vision of the framework presented by the Commission, welcomes the stated measures, and is ready to discuss these measures. However, at the same time, the SR is aware that only the presentation of the relevant outputs from the proposed measures will be the subject of investigations and in-depth evaluations of the potential effects of the proposed output of the Commission for the SR. Regarding the proposed measures, the SR approaches all of them with an open mind and is ready to examine them from the viewpoint of their impact on the system of corporate taxation at the national level and on financial administration, as well as on their feasibility and justification from its own perspective.

Another very recent piece of regulation is the Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union, which was implemented in the Slovak legal order with effect from 31 December 2023 in step with the expected deadline for the directive's implementation. Since previous Slovak legislation has not covered the rules for the minimum taxation of taxpayers' income, this regulation required the SR to create a new legal regime. The 500 Club and the Slovak Employers' Union were involved in consultations on the preparation of the draft law, given that it would mainly affect entities from the business environment.[60] Even before its adoption, in March 2022, the Institute of Economic and Social Studies (INESS)[61] expressed a negative opinion on the draft of the directive itself, stating that it 'may weaken the competitiveness of smaller countries (which have fewer opportunities to attract investors) and increase the bureaucratic burden (for both states and companies) and legal uncertainty (endangering contracts concluded under current conditions). These consequences would be felt most by smaller Member States, which have less means to cope with additional costs. Notably, the directive overrides states' sovereign power to determine tax rates. INESS underlined that no assessment of the impact of the directive from the perspective of EU competitiveness was carried out because the proposal was based on the OECD's assessment, which was based on different conditions.'

The SR's position was presented in the draft directive in 2022, and the interdepartmental comment procedure was completed on 11 May 2022. It contained a list of identified irregularities in the text of the directive and clarifications that must be accordingly made to ensure that the directive can be effectively applied and to reduce

59 LPEU/2021/271: Record of position on the draft EU act.

60 Preliminary Information on the Draft Law on Ensuring the Global Minimum Level of Taxation of Multinational Enterprise Groups and Large National Groups (PI/2023/23).

61 INESS, 2022.

the administrative burden on all affected entities while maintaining the same goals. In terms of the effects of the directive, both positive and negative effects on the public administration budget and the business environment were identified. According to the Ministry of Finance of the SR ('Ministry'), the SR had a stable tax system that did not contain the harmful preferential tax regimes used by some states. At the same time, the SR was not perceived as a tax haven. The SR has introduced some preferential regimes or adjustments, such as the patent box mode or the so-called 'superdeduction' for science and research; however, these were not harmful adjustments in the context of the Code of Conduct for Business Taxation within the EU Council or regimes evaluated within the Forum on Harmful Tax Practices. Based on preliminary estimates of the Ministry processed from the available data, additional taxation of Slovak companies in the SR belonging to groups with a consolidated revenue of more than EUR 750 million was not expected, as these companies were not anticipated to have effective tax rates below 15%. Additionally, there was no domestic group operating in the SR at that time with a consolidated group revenue of more than EUR 750 million and core entities within the scope of the directive. A significant positive impact on the budget of the public administration was also not expected considering that there were only potentially two main parent entities of a multinational group in the SR with a consolidated income above EUR 750 million; however, theoretically, it could be brought about by the application of the secondary rule Undertaxed Profit Rule (UTPR) to the basic entities of the group located abroad, mainly in third countries. The expected negative impact on the budget of the public administration was connected with the need to modify the information system of the financial administration of the SR. The impact on the business environment was presented briefly and primarily included (as a negative impact) an increase in the administrative burden and potential additional taxation in the case of an effective level of income taxation below the minimum tax rate of 15%. However, this excessive brevity was criticised by the commission, which recommended the development of a more detailed opinion on the potential impacts on the business environment.

The draft implementation regulation itself – in the form of a special act on compensatory tax to ensure the minimum level of taxation of multinational business groups and large national groups (LP/2023/477) – was submitted by the Ministry to the interdepartmental comment procedure on 3 August 2023. The Act (No. 507/2023 Coll.) was adopted on 8 December 2023 and came into effect on 31 December 2023.

Due to the position of the so-called 'source state/importer of capital' (with relatively few parent entities and many subsidiary entities) and to avoid taxation of the income of the affected entities abroad, the SR decided to ensure minimum taxation in the form of a national compensatory tax. From the viewpoint of the extent of adoption of the directive's text, the SR used the exception according to Art. 50 para. (1), based on which it decided not to apply the income inclusion rule and the undertaxed profit rule for six consecutive accounting periods beginning 31 December 2023 (because it fulfilled the condition according to the cited article of the directive, as there were no more than 12 main parent entities within the scope of the directive).

Several provisions specific to the national tax systems of other EU Member States that are irrelevant from an implementation point of view (when taking over the national compensatory tax) for the SR (e.g. non-qualified refundable imputation tax, the regime of deductible dividends, and recognised distribution tax systems) were not included in the draft of the new law. The SR chose to implement a qualified national tax to ensure that in situations where the main parent entity of a multinational group is located abroad and only subsidiaries with an effective taxation rate below 15% operate in the SR, the subsidiaries are not subject to additional taxes abroad, with their tax revenues logically remaining in the SR.[62]

While the state anticipated reduced competitiveness, the draft law's reasoning suggests that it may have a positive effect on competitiveness. Specifically, the regulation should limit corporate tax competition in EU Member States by introducing a minimum level of taxation. Additionally, the new taxation rules should ensure that multinational corporations pay their fair share of tax regardless of where they operate. By abolishing a substantial portion of the benefits associated with the transfer of profits to states with zero or very low taxation, the reform was expected to globally create fairer business conditions for business entities.

It was assumed that the new regulation would negatively affect entrepreneurs by increasing their administrative burden. In particular, this was because the regulation was set to introduce new obligations for entities within the scope of the law (specifically, the Ministry estimates that approximately 5,000 entities will be subject to this law) with expected costs of approximately EUR 300,000. The negative impact on the state budget in 2024 related to the adjustment of financial administration information systems in amounts less than EUR 0.5 million was also quantified. However, it was expected that the positive impact on state budget revenues after 2024 would exceed the budgeted costs.

Another proposal currently being developed is the Proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU – COM(2021) 565 final (ATAD III), to which the SR has so far held a slightly restrained position in the sense of agreeing with the idea of the proposal. However, it did so with reservations especially regarding the vagueness and ambiguity of the proposed text of the directive, the insufficient time for its implementation, and the administrative complexity of the proposed measures for all affected entities (LPEU/2021/847). Reservations regarding the proposal have also been voiced by academics in the context of the continuous expansion of EU intervention in the sphere of direct taxes (if only because this proposal has not yet been approved and its extension to non-EU countries is already being prepared),[63] which may give the impression that these steps only obscure the EU's real intention and long-term goal of harmonising corporate taxes across EU countries.[64]

62 Baláži, 2023, p. 53.
63 Hrabčák, 2022, pp. 61–62.
64 Bonk, 2017, p. 868.

3. The tools of the fight against tax avoidance (as an element of tax sovereignty) in Member States

3.1. National tax policy in the area of tackling tax avoidance and fraud

Efforts to reduce tax evasion have been part of the agenda of the SR for a long time. Indeed, the government has declared this intention its program statements, highlighting the importance of this issue. Over the past ten years, legislative activities aimed at addressing tax evasion have intensified significantly. In particular, 2012 was a landmark year when activities in this direction increased in terms of both quantity and quality.

The Action Plan for Combating Tax Fraud,[65] adopted in 2012, became a fundamental program document of the Government. This plan contained 50 measures gradually implemented between 2012 and 2014; specifically, these measures were not only of a tax nature but also concerned commercial and criminal law.[66] According to Štrkolec,[67] the following measures were the most significant: the introduction of the obligation to submit a financial guarantee by risk persons during VAT registration; the cancellation of the VAT registration of persons who do not communicate with the tax administrator or fulfil legal obligations; a mandatory monthly taxation period for new VAT payers (for a period of 12 months); joint and several liability for tax; provision of tax when importing goods from third countries; introduction of the obligation of non-cash payment in business transactions above a certain limit; and introduction of the obligation to submit data on domestic supplies of goods and services to the tax administrator in electronic form (summary report). In 2012, Act No. 394/2012 Coll. on the limitation of cash payments was adopted, which, in addition to preventing tax fraud and tax evasion, was also intended to contribute to fighting money laundering, corruption, and criminal activity. With this Act, a new body was created, the Criminal Financial Administration Office, which specifically focuses on the detection and investigation of economic criminal activity in the field of taxes and customs.[68] In 2012, 'Tax Cobra', a project for coordinating tax inspections in suspected cases of tax fraud and associated large-scale tax evasion, was established. Some of the most significant measures in the second stage of implementing the action plan include the introduction of an obligation for business entities to submit control statements and the subsequent introduction of a new information system to process these statements. In the third stage, a new module for automatic communication with bank systems was launched and the

65 Resolution of the Government no. 235 of 31 May 2012, Action plan to combat tax fraud for the years 2012 to 2016.

66 For more details, see: Huba, Sábo, and Štrkolec, 2016, pp. 123–124.

67 Štrkolec, 2017, p. 220.

68 Straka and Šimonová, 2014.

information systems were integrated.[69] Thus, the action plan prioritised indirect taxation.

In 2013, the state attempted to contribute to the improvement of discipline in the issuance of cash receipts, thus limiting undeclared payments, by amending Act No. 171/2005 Coll. on gambling by Act No. 135/2013 Coll., which came into effect on 1 September 2013 and enabled the implementation of the receipt lottery (the so-called 'National Receipt Lottery'); however, the effect of these changes was ultimately assessed as questionable,[70] and the whole idea was abandoned in 2021. In general, this aspect of tax evasion and fraud was dealt with by legislation first regulating the introduction of electronic cash registers,[71] which over time changed to online cash registers, the possibility of using a virtual cash register, and, from 2019, online connections between cash registers and the central financial administration database. Nevertheless, these changes were accompanied by several technical problems due to insufficient initial preparation for the full launch of this new regime.[72] Another unsuccessful measure that may be pointed out was the above-mentioned obligation for risk persons to submit a financial guarantee during the VAT registration process. Notably, this measure was also implemented in 2012 as a preventive measure and potentially compensatory measure should the taxable entity not pay the due tax. The good idea was, however, so problematic in practice that it was abolished in 2019. The problem lay in establishing the risk taxable entities[73] and the sum of the guarantee, which ranged from EUR 1,000 to EUR 500,000, without making the criteria publicly available and thus unreviewable and breaching the principle of legal certainty.[74]

The first action plan in 2012 was followed up with the Action Plan for Combating Tax Fraud 2017–2018,[75] which added other tax measures, such as expanding the legal measures of the Financial Administration Criminal Office to support the issuance of a decision on a preliminary measure; the introduction of the Tax Reliability Index; the issuance of a summary report from the tax inspection on interconnected transactions of tax subjects, in which a violation or circumvention of tax regulations was detected; and the shortening of the assessment procedure in order to prevent its abusive prolongation by tax subjects. The so-called 'shortened assessment procedure' was established in 2017 to accelerate decisions on cases in which the tax entity did not cooperate in removing errors in the tax return

69 Popovič, 2018, pp. 180–181.
70 Štrkolec, 2020, p. 183.
71 Act No. 289/2008 Coll. on the use of electronic cash registers and on amendments to Act No. 511/1992 Coll. on the administration of taxes and fees and on changes in the system of territorial financial authorities, as amended.
72 Štrkolec, 2020, p. 186.
73 Among which there were also persons not yet supplying goods or services at the time of filing the application for tax registration, but only performing preparatory activities for business, which might be frequent in situations where the person needs to be VAT registered since beginning their activities.
74 Dobrovičová and Štrkolec, 2013.
75 Resolution of the Government no. 206/2017 of 26 April 2017.

(the so-called 'assessment order') without the need to carry out a tax audit (which was required before the amendment). However, these action plans also contained measures in the areas of criminal and commercial law; this is essential, as Štrkolec[76] emphasises that 'as a tax evasion, but rather in an economic sense, it is also possible to perceive the ordinary insolvency of a tax entity, or the absence of a property substrate, the enforcement of which could ensure the payment of the tax, which is the final purpose of tax administration'.

Efforts to limit tax evasion were therefore clearly focused first on VAT and partly consumption taxes, and only later on preventing the evasion of direct taxes. Notably, Hrabčák[77] perceives this delay negatively. Later activities were performed as separate measures or packages of measures rather than broad action plans, where, especially within the framework of direct taxation (i.e. income tax), amendments were predominantly induced by the adoption of European legislation. We deal with these components in more detail below.

Evaluating the established trend based on objective data, since 2012, when the SR reached the maximum values in these indicators, the estimated tax gap gradually decreased from 36.7% to 12.1% in 2021 for VAT[78] and from 50% to 10.9% in 2019 for CIT,[79] indicating that measures gradually taken to reduce the incidence of tax evasion and fraud have an effect. Furthermore, making risk management more effective and intensifying the fight against tax and customs fraud is one of the four strategic goals of the Financial Administration of the SR for 2021–2024. However, the need to understand the entire spectrum of tax legislation in which the potential for tax evasion arises cannot be neglected. As stated by Štrkolec,[80] the tax legislation and financial administration do not pay adequate attention to the impact of illegal work, the Švarc system, and related questions on tax evasion in the context of income from dependent activities.

3.2. The implementation of anti-tax avoidance measures in the EU

Although the anti-tax avoidance package was introduced only in 2016,[81] Slovak tax legislation in the area of income taxation began to be amended in response to aggressive tax planning even sooner. Since 2014, Act No. 563/2009 Coll. on Tax Administration (Tax Procedure Code) was supplemented by GAAR, mainly under the influence of Art. 4 paras. (2) et seq. of the Recommendation of the European Commission from 6 December 2012 in connection with aggressive tax planning

76 Štrkolec, 2020, p. 181.

77 Hrabčák, 2022, p. 60.

78 *Open Data (portal of Ministry of Finance of SR)* [Online]. Available at: https://opendata.financnasprava.sk/mi/opendata/search (Accessed: 10 June 2023).

79 Ministry of Finance of the Slovak Republic, 2021, p. 17.

80 Štrkolec, 2020, p. 188.

81 For more details, see: Bonk and Románová, 2018, p. 227.

(C(2012) 8806 final),[82] which, even though ambiguous in interpretation,[83] can be considered ground-breaking in terms of addressing aggressive tax planning.[84] Newly introduced were an increased withholding tax rate and an increase in the amount of tax security (35%) for taxpayers from the so-called non-treaty states.[85] Additionally, this regulation also expanded the concept of the real employer to cover individuals performing work for an employer on his behalf and under his responsibility without being expressly obliged to comply with his instructions and orders – this configuration allows for the evasion of tax obligations by abusing the exception specified in Art. 15 para. (2) of the relevant double taxation treaty through the so-called international hiring of labour ('hiring-out of labour'). Since 2015, thin capitalisation rules have been introduced and in 2016 a new anti-abuse provision in relation to dividend taxation[86] was introduced as one of the 'post-BEPS' measures under Directive (EU) 2015/121 amending the Parent and Subsidiary Directive; moreover, for dividends, in the next period, the regulation was further tightened (e.g. by increasing the level of taxation in relation to non-contracting states from 2017). The business conditions of related entities (transfer pricing) also gradually tightened. The SR also became a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI), resulting from Action 15 BEPS on 15 June 2017, which came into effect on 1 January 2019, and which was implemented in the SR through separate amendments to pre-existing contracts.

The ATAD I directive adopted in 2016 was implemented in the Slovak legal system ahead of the deadlines specified in the directive. The CFC rules came into effect in 2019 and the rest as early as 2018. Thus, new institutes entered the Slovak legal system, particularly exit taxation, CFC rules, and hybrid mismatches. The existing GAAR was revised, and as far as the thin capitalisation rules were concerned, these were left to the extent that they had been introduced in 2015. In the last case (the transposition of Art. 4), the option from Art. 11 para. (6) of the directive – namely, to keep existing national rules within the provisions of Art. 21a of the Income Tax Act – was communicated with the European Commission. This was due to minor differences between the directive's rules and the Slovak adaptation of the thin capitalisation rules. For example, the Slovak Income Tax Act has a slightly stricter fixed test than the one in the ATAD Directive (25% instead of 30% of EBITDA) and a narrower

82 Bonk and Románová, 2018, pp. 216−217.

83 Románová, 2015; Bonk, 2016.

84 Hrabčák, 2022, p. 61.

85 Some states are not listed on the so-called 'white list' maintained by the Ministry. This list contains states with which the SR has concluded a double taxation treaty or a treaty on the exchange of information related to taxes and states that are contracting states of a treaty containing provisions on the exchange of information for tax purposes. Bonk and Románová, 2018, p. 219.

86 'If the taxpayer obtains a share of the profit on the basis of a measure or several measures, which, taking into account all the related facts and circumstances, cannot be considered real for the purposes of this Act and their main purpose or one of the main purposes is to obtain an advantage for the taxpayer, which is contrary to the object or purpose of this Act, this share of the profit is subject to tax.' Art. 50a of the Income Tax Act.

scope of coverage (the Slovak rule applies exclusively to 'credits and loans', while the ATAD includes 'all forms of debt').[87]

The Slovak legislator included exit taxation in the Income Tax Act by means of a special tax base in the sense of adhering to the 'minimum standard of protection' enshrined in the directive. Meanwhile, the national legislation thoroughly reflects Art. 5 of the directive and its individual paragraphs. As part of the consultations during the legislative process, the most serious questions emerged as to how fair value would be calculated, what would actually be taxed, and whether 'tax security' would be paid at the time of departure, as the tax could also be paid in instalments. In the case of the SR, the possibility of establishing a tax lien is preferred. In addition to the high interest burden, the inconsistency of the 'special' legal regulation of exit tax also lies in the inconsistent application of both the special regulation (deferral of tax payment) and the general regulation of the Tax Procedure Code (interests).[88]

The most significant criticism[89] was directed at the revision of the existing GAAR (which was criticised even before this amendment), which came into effect on 1 January 2018; specifically, the wording of this revision[90] did not correspond to the recommended wording of the directive – it went significantly beyond its scope based on the fact that it is enough that tax evasion is at least one of the purposes of the transaction even if it is not a fundamental one. Such interpretive ambiguity strengthens the position of tax administrators when assessing borderline situations and, on the contrary, makes the position of the taxpayers more difficult when exercising their rights, as it significantly extends the interpretation of the purpose test.[91] Kačaljak[92] points out that there may be potential problems in the context of double taxation treaties (e.g. possible exclusion of the application of such a treaty).

As far as the implementation of the rules for hybrid mismatches is concerned, despite the fact that the second sentence of point 4 of the directive clearly states that it is not desirable to extend the scope of this directive to types of entities that are not subject to corporate income tax in the relevant Member State (as it also admits in the explanatory report), in the partial regulation of hybrid mismatches of Art. 9, this rule was implemented for all taxpayers who determine the tax base according to Art. 17 para. (1) of the Income Tax Act, including natural persons; however, it only applies to situations that arise between controlled persons (natural and legal persons) and its purpose is to prevent tax evasion.[93]

87 Kačaljak, 2017, pp. 198–199.
88 Bonk and Románová, 2018, pp. 233–234.
89 See, for example: Bonk, 2018a, pp. 54–55.
90 'For a legal act or several legal acts or other facts performed without a proper business reason or another reason that does not reflect economic reality and at least one of the purposes of which is to avoid the tax obligation or to obtain a tax benefit to which the tax subject would not otherwise be entitled, shall not be taken into account in tax administration.' Art. 3 para. (6) of the Tax Procedure Code.
91 Babčák, Sábo and Štrkolec, 2018, p. 136; Bonk, 2018b.
92 Kačaljak, 2017, p. 196.
93 Vartašová, 2020, p. 253.

Another new introduced rule was that for controlled foreign companies that functioned as a special rule against abuse.[94] During the implementation, the transaction principle was chosen and not the categorical one, although the definition of the mechanism which is not real used in the directive is ambiguous and complex, and Kačaljak[95] suggests evaluating the categorical approach as a simpler, more unambiguous and administratively less demanding criterion. The SR chose this option to prevent tax evasion, as it did not consider it appropriate to apply the exceptions specified in Art. 7 para. (4) of the directive, which allows foreign companies or permanent establishments to be excluded from this rule if they reach the amount of accounting profit established by the directive. The tax base of the taxpayer, a Slovak legal entity, will thus include the tax base of the controlled foreign company to the extent that it is attributable to the assets and risks related to the performance of significant functions by the taxpayer who manages and controls the controlled foreign company. The Ministry justified this, stating that the transactional approach is more suitable for promoting SR as an environment favourable to holdings.[96] In accordance with the objectives of the directive, this rule was also not applied to natural persons, despite attempts to go in this direction in the legislative process and a lack of negative evaluations of such an expansion.[97] This regime has changed since 2021, when the CFC rules were extended to natural persons; the latest development is the re-exclusion of the application of the CFC rules for natural persons, which came into effect on 1 August 2023.

As an amendment to the ATAD, the ATAD II extended the anti-avoidance rules to hybrid mismatches with third countries. As with ATAD I, the directive was transposed in the case of the SR early on 1 January 2022 as the ATAD II set a deadline of 31 December 2021 and planned for it to take effect on 1 January 2024. With this new amendment, taxation of the income of a domestic transparent entity was introduced; this taxation is in part attributable to the partner or recipient of this income, in which it is not taxed according to Slovak or foreign tax regulations if the domestic transparent entity is a reverse hybrid subject.[98]

3.3. Information exchange and mandatory disclosure rules as tools for fighting tax avoidance and fraud

Tax evasion and avoidance represent a problem as a result of which individual states lose a substantial part of their revenue, as taxes represent the main revenue to the state budget.[99] The exchange of information is of paramount importance in taxation, and Slovakia's membership in the EU has increased tax revenues, at least initially. Between 2005 and 2008, the overall financial efficiency

94 Duračinská and Duračinská, 2017, p. 125.
95 Kačaljak, 2017, p. 202.
96 Kačaljak, 2017, p. 202.
97 See, for example: Kačaljak, 2017, p. 202; Bonk and Románová, 2018, p. 240.
98 For more, see: Vartašová, 2020, pp. 258–259.
99 Čunderlík and Szakács, 2023, p. 13.

of the information exchange carried out by the Slovak Tax Directorate grew by an annual average of almost 50% (from SKK 192 million in 2005 to SKK 740 million in 2008).[100]

The history of modern international assistance and cooperation in the administration of taxes (in the EU context) began in 2012, when an eponymous act was adopted in Slovakia (Act No. 442/2012 Coll. on international assistance and cooperation in the administration of taxes) to implement the then-new Council Directive no. 2011/16/EU on 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (i.e. DAC 1) in the SR. Its amendments, DAC 2 to DAC 7, were implemented between 2015 and 2022 under the newly adopted Act No. 359/2015 Coll. on the automatic exchange of information on financial accounts for tax administration purposes, amending certain acts,[101] and amending Act No. 442/2012 Coll.[102] and the Tax Procedure Code.[103] Čunderlík and Szakács discuss the main aspects of these regulations in detail.[104] What is important to note here for our purposes is that, together with the Convention on Mutual Administrative Assistance in Tax Matters, which was ratified by Slovakia in 2013 and has been effective in the SR since 1 January 2015, and the system of bilateral double taxation treaties and tax information exchange agreements,[105] these changes gave rise to a complex system of mutual cooperation among states in taxation matters.

Between 2012 and 2017, the direct financial effectiveness of the international exchange of information achieved by the Slovak tax administration, based on the amount of additional tax levied (or reduced entitlement to excessive deductions) and penalties determined based on information obtained through the international exchange of information, increased from EUR 21.88 million to EUR 155 million. Although there has been a slight downward trend over the last four years, the annual positive effects (approximately EUR 52 million, on average) indicate the power of international cooperation. Traditionally, the largest exchanges of information have occurred with Hungary, the Czech Republic, Germany, and Poland.[106] However, the presented data do not contain the effects of tax liability enforcement with the assistance of foreign authorities. Above all, the indirect and incalculable yet highly significant effect of international information exchange is its preventive effect and

100 Ministry of Foreign and European Affairs of the Slovak Republic, Annual report on the membership of the Slovak Republic in the European Union of 2006 and of 2008.

101 DAC 2 and the Foreign Account Tax Compliance Act (FATCA).

102 DAC 3, DAC 4, DAC 6 and DAC 7.

103 DAC 5.

104 Čunderlík and Szakács, 2023, p. 13.

105 Slovakia expressed a few reservations, especially towards social security contributions, local taxes, real estate taxes, gift and inheritance taxes, and other tax categories.

106 Financial administration of the Slovak Republic, Annual reports between 2012 and 2022. See: *Výročné správy FS* [Online]. Available at: https://www.financnasprava.sk/sk/financna-sprava/vyrocne-spravy/_1 (Accessed: 10 June 2023).

promotion of voluntary compliance with tax obligations.[107] Thus, the aim of fighting tax evasion and avoidance is achieved through both the direct and indirect effects of such regulations. However, the potential of automatic information exchanges has not yet been realized. As was concluded in the Report from the Commission to the European Parliament and the Council on overview and assessment of the statistics and information on the automatic exchanges in the field of direct taxation (COM/2018/844 final), the SR spent a large amount of money on systems ensuring the automatic exchange of information, but did not do enough with the information obtained; for example, it did not evaluate this information sufficiently and did not use it to verify the facts relating to the taxpayer's tax affairs.[108]

The most effective tool for fighting tax evasion seems to be the automatic exchange of information in the field of taxation as a form of administrative cooperation.[109] The most recent DAC amendments (6, 7, and 8) were targeted at automatic exchanges of particular information (DAC 6 on cross-border reportable arrangements, DAC 7 on the income of active sellers achieved through digital platforms, and DAC 8 on taxpayers using crypto assets and electronic money).

DAC 6 was transposed into the Slovak legal system under Act No. 305/2019 Coll., which amended Act No. 442/2012 Coll. and took effect between 1 January and July 2020. It introduced automatic exchanges of information between competent authorities of EU Member States on cross-border measures subject to notification; that is, measures related to potentially aggressive tax schemes that could lead to tax evasion or fraud. Information about such cross-border measures, which meet at least one distinctive feature defined for this purpose (listed in Annex No. 1a), must be submitted by so-called 'obliged persons' – that is, an intermediary or a taxpayer; thus, these measures primarily affect tax advisers or lawyers.

In preparing for the fulfilment of the new obligations of financial administration resulting from the amended directive, the Ministry assumed that these obligations would have both positive and negative effects on the budget and the business environment. On the state expenditure side, in addition to new wage expenditures, there was a plan to build a system within the Financial Directorate of the SR that would receive information from obliged persons and send and exchange this information with competent authorities of other Member States. Capital expenditures of EUR 2.5 million and, as a potential benefit, sanctions for breach of obligations and limitations on aggressive cross-border tax planning were identified. The obligation to provide information on cross-border arrangements subject to notification was intended to deter intermediaries and taxpayers from using potentially aggressive tax

107 Financial administration of the Slovak Republic, Annual reports of 2014 and 2015. See: *Výročné správy FS* [Online]. Available at: https://www.financnasprava.sk/sk/financna-sprava/vyrocne-spravy/_1 (Accessed: 10 June 2023).

108 Koroncziová, Cibuľa, and Hlinka, 2019, p. 217.

109 Čunderlík and Szakács, 2023, p. 13.

planning practices, thereby achieving fair taxation and increasing tax transparency. According to official documents, this issue is a priority for the SR.[110]

Meanwhile, regarding, the legislation itself, it is a transposition of the law in which national legislation does not exceed the minimum requirements of the EU. As part of the consultations for the preparation of the draft law, the most significant comments concerned the preservation of the obligation to maintain the confidentiality of consultancy providers – that is, intransigence; in particular, these comments were raised by professional organisations, such as those of lawyers and tax advisors, and chambers of commerce.[111] Indeed, in accordance with the wording of the directive, each Member State can take the necessary measures on the basis of which intermediaries are granted the right to an exemption from providing information on a cross-border measure subject to notification if the notification obligation violates that of confidentiality under the national legislation of the given Member State and, at the same time, takes the necessary measures to obligate intermediaries to immediately inform every other intermediary (or relevant taxpayers) about their obligation to report information. Therefore, in Slovak legislation, the intermediary is not an obligated person if the notified measure is subject to the obligation to maintain confidentiality according to special regulations[112] or a similar obligation in another Member State. In such a case, it is obliged to immediately inform all intermediaries involved in the notified measure about their obligation to submit information about the notified measure, to the extent established by law, to the competent body of the SR Ultimately, if all intermediaries involved in the notified measure are obliged to maintain the confidentiality of the notified measure, then the user (not the intermediary) becomes the obliged person. Similarly, Slovak legislation, in accordance with the mandate of the directive, enshrined that if several intermediaries who are obliged persons are involved in the same notified measure, all intermediaries are obliged to submit information about the notified measure to the competent authority of the SR.

DAC 7 was transposed by the SR and came into effect on 1 January 2023 with Act No. 250/2022 Coll., which amended Act No. 442/2012 Coll. This change also partially affected the Tax Procedure Code regarding the joint controls mentioned below. This change follows the previously discussed dynamic development in the field of the automatic exchange of information and introduces a new type of automatic exchange of information related to sellers' use of platforms to help tax administrators correctly calculate the taxable income of persons who make sales via digital platforms without a physical presence. Specifically, it introduces the obligation of required platform operators to collect and provide information about notifiable sellers, who actively

110 Ministry of Foreign and European Affairs of the Slovak Republic, Annual report on the membership of the Slovak Republic in the European Union of 2018, p. 22.

111 Explanatory report to the draft of Act No. 305/2019 Coll., p. 10.

112 See, for example: Act no. 78/1992 Coll. on tax advisors and the Slovak Chamber of Tax Advisors, as amended, Act No. 586/2003 Coll. about advocacy.

sell goods and provide services through platforms, whether the platform facilitates the sale of goods, the rental of means of transport and real estate, or the provision of various services (e.g. accommodation, transport, catering), to the competent authority of the SR.[113] The goal of these changes is to increase tax transparency and improve the functioning of existing administrative cooperation tools in the context of economic digitalisation. The introduction of the Institute of Joint Control is also significant. When the directive was adopted, Slovakia supported these changes and provided a compromise. The SR supported the expansion of the substantive scope of the directive to include information on sellers and their platform-based income, considering it a valuable source of information to ensure the fulfilment of tax obligations. Further, the SR particularly welcomed the introduction of a new tool of closer cooperation between Member States in the form of joint controls.[114]

According to the explanatory report on the bill of Act No. 250/2022 Coll., national legislation does not go beyond the minimum requirements of the EU. This was a complete or minimal transposition of the EU legislation directive. The bill assumed both positive and negative effects on the state budget and business environment. This legal regulation should have a significant positive impact on the state budget because controlling taxpayers' fulfilment of their tax obligations was limited by the lack of information necessary to verify whether they also declared income obtained through digital platforms. A positive impact on the state budget can be expected both within the framework of the verification of received information (not only from abroad but also from platforms in the SR used by Slovak sellers) and within the framework of the voluntary fulfilment of tax obligations, as taxpayers will be informed that the financial administration will have information about their income earned through digital platforms and will declare and tax this income in its interest. The received information can also be used to check the declared and paid VAT, as well as to check local taxes.

Another source of increased income could be the revenue from the imposed sanctions. The expected cost of the changes in the relevant electronic systems was calculated to be over EUR 1.2 million. In relation to the business environment, the changes are expected to increase the administrative burden due to the expansion of information obligations, regarding which Priateľová[115] emphasises the difficulty of the in-depth verification process. A positive impact on the business environment is expected in the form of increased legal certainty for platform operators (and sellers), as reporting rules in all Member States have been unified and unilateral reporting obligations, introduced by some Member States in the past, have been eliminated.

The last proposal is the DAC 8, which addresses the automatic exchange of information on taxpayers using cryptographic assets and electronic money. This proposal

113 See, for more detail: Priateľová, 2021.

114 Ministry of Foreign and European Affairs of the Slovak Republic, Annual report on the membership of the Slovak Republic in the European Union of 2020, Appendix, p. 65.

115 Priateľová, 2021, p. 299.

responds to the latest developments in the field of investments. This directive prioritises tax transparency, which is a basic condition for an effective fight against tax fraud, tax evasion, and avoidance of tax obligations, as well as tax equity, the creation of equal conditions, and better and more efficient tax collection in Member States.[116]

The SR published a preliminary opinion on the original proposal of the Council Directive, amending Directive 2011/16/EU on administrative cooperation in the field of taxes,[117] on 16 March 2023 (LPEU/2022/729). According to this, the SR generally supports the goals of the directive and positively perceives the inclusion of the revision of the CRS in the draft directive, as well as the expansion of the scope of the standard to include electronic money; however, the SR also raised several concerns.[118] On the one hand, it was in favour of harmonising the wording of the proposed directive with the international standard (OECD CARF) as much as possible to avoid excessively increasing the administrative burden of the financial administration and reporting operators of crypto asset services (due to the fundamental differences between the two frameworks), arguing that since the OECD rules represent a compromise reached at the international level, deviations from these rules would make international cooperation in practically implementing these rules inefficient.[119] It preferred to leave the area of sanctions in the competence of the Member States, who would determine the amount of sanctions in accordance with national principles and adapt it appropriately to the financial situation in the economy, especially because the proposed minimum sanctions were significantly higher than those currently applied in the relevant (Slovak) legal regulations. Further, there were also reservations about the proposed definitions of the terms 'wealthy individuals' and 'non-custodial dividend income'; specifically, critics argued that these terms were too general and must be clarified to enable their practical applications. The SR also requested that the automatic exchange of information about life insurance products not be mandatory (the Slovak Financial Administration currently does not have the required information on the increase in the administrative burden available). Additionally, the SR asked to keep the existing wording in Art. 8 so that Member States should strive to exchange data on VAT numbers, but not absolutely, since these are not always available. Regarding the proposed obligation for Member States to send a list of purposes to other Member States, the SR held a reserved position, since the introduction of the possibility to voluntarily send such a list is only valid from January 2023 and no information is yet known about its practical use by the Member States. The SR considers it a more appropriate solution to keep the existing wording of the DAC 7 directive, which includes the possibility for the Member State to send

116 For more details, see: Szakács, 2021.

117 COM(2022) 707 final, p. 54.

118 Several fundamental comments were raised by the Club 500 (all of which were accepted and incorporated into the opinion of the SR).

119 However, slight deviations can be considered given the close connection of the draft directive with the EU regulation (MiCA).

such a list of other purposes if it decides to do so after evaluating the benefits and costs. It also evaluated how the submission of efficiency evaluation reports would increase the administrative burden. The resulting costs for financial administrative and business entities were not specified; the SR only concluded that it expected the directive to increase the burden (e.g. state costs for computerisation, costs for entrepreneurs to fulfil their obligations, applied sanctions). Meanwhile, the SR did anticipate that the directive will impact competitiveness and productivity, as the introduction of automatic exchanges of information by service providers of crypto assets did not create barriers in the market.

In May 2023, the finance ministers reached a compromise on the wording of the draft directive, which implemented the OECD rules for reporting crypto assets, skipping the provisions on the harmonisation of minimum sanctions. Moreover, the disputed provision on the exchange of advance cross-border rulings in relation to wealthy individuals was replaced by rulings in relation to the transactions above the set limit and those that determine whether the given person is considered a tax resident (the time frame of the issued ruling was also changed). DAC 8 will go into effect on 1 January 2026 with a few exceptions, with these excepted elements coming into effect between 1 January 2028 and 2030.

3.4. Peculiarities in domestic legislation: Rules that apply in addition to or that deviate from EU laws

Regarding the tools for the fight against tax avoidance, beyond the framework of EU law implementation, we highlight three types of measures. The first set comprises those that actually existed in the tax legislation or were added not only as special tools to fight against tax evasion but also to secure the general purpose of tax administration (levying and collecting taxes in an appropriate and timely manner). For example, these measures influenced tax auditing institutes, tax enforcement (which was extended in 2020 by the new method of withholding of driving licences), various security institutes (e.g. liens), the securing and forfeiture of property, interim measures,[120] assessment of tax by so-called ‘tools’, and the simplified assessment procedure implemented in 2017. The second set comprises those that were implemented following international initiatives like the BEPS Project,[121] such as tightening transfer pricing rules or refining the definitions of permanent establishments (e.g. construction sites, agencies, digital PE) and taxing gains from virtual currencies. The third set comprises so-called ‘motivation measures’ or the pro-client approach towards taxpayers by which tax administrations not only sanction law-breaching taxpayers but also motivate taxpayers who are or may be willing to follow the rules. Here, we may mention measures such as the implementation of the Tax Reliability Index in 2018, which enables the assessment of tax entities based on their compliance

120 See: Štrkolec, 2017.

121 For more, see: Vartašová, 2020, pp. 264–265.

with their obligations to the financial administration (based on which they are entitled to preferential treatment, e.g. more favourable time periods, individualised payment of advance tax, preference of other means instead of tax enforcement, preferring local enquiry over tax audit). The list of reliable taxpayers has been made public since 2021; this may also have had a motivating effect. Another measure that may be mentioned is the reduction of sanctions in the case of filing a supplementary tax return after the start of a tax audit, applicable from 2016. As of 2024, a new regulation will enter into force, which will introduce a so-called ‘second chance for fines’; that is, tax authorities will first send taxpayers a warning about failing to fulfil their tax obligations instead of immediately sanctioning them.

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4. Conclusions

Tax sovereignty is an important element of state sovereignty. A state’s tax sovereignty may be thrown into question when a state becomes part of a broader community – an organisation of more states. This is the case with the EU’s Member States. Based on the history of the SR’s membership in the EU, we conclude that the SR has generally supported EU activities. Regarding taxation, the SR has generally perceived EU initiatives with a positive attitude and thus largely supported EU tax-related proposals – more precisely, the SR’s attitude may be understood as ‘support with a bit of caution’, as the SR has also kept in mind the economic effects of the proposed/adopted legislation. This chapter discussed a few examples of the SR’s resistance to the EU’s amendments to the status quo (e.g. CCTB project). However, it must be made clear that the SR does not typically demonstrate this resistance and instead generally holds a welcoming attitude towards most of the EU’s legislative tax proposals, even in the sphere of direct taxes, which has attracted increased attention in recent years. Ultimately, the SR seems to hold the attitude that most EU activities do not hinder its tax sovereignty but represent coordinated collective steps in its exercise.

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