ETAF
European Tax Adviser Federation

Overview of existing regulations against abusive tax avoidance in ETAF members

Based on a questionnaire

1. Do you have something in your national legislation/professional law against tax avoidance, more precisely against tax schemes which are as such legal but dubious and harmful? If yes, please elaborate.	
BStBK (Germany)	There is **no** regulation in the **Tax Advisory Act** or in the professional **Code of Conduct** on tax avoidance. Regardless of the Tax Advisory Act (StBerG), there is of course the **general regulation of § 42 of the tax code** (abuse of legal tax planning possibilities) as well as a number of individual abuse avoidance standards, not least through the implementation of the ATAD. ➔ A few examples: • § 6 Exit taxation of the Foreign Tax Act • § 4k Income Tax Act: Deduction of business expenses in case of mismatches in taxation / hybrid arrangements • § 4h Income Tax Act: Interest barrier • § 7-14 Income Tax Act: Inbound taxation • As a preventative measure and yet to be implemented: global minimum corporate taxation
DStV (Germany)	Same answer than BStBK.
CSOEC (France)	As long as the scheme is legal, there is nothing in France against tax avoidance.
ITAA (Belgium)	**<u>List of general anti-avoidance rules applicable in Belgium</u>** **Income Tax Code (ITC)** (entered into force in the fiscal year 2013): A general anti-avoidance rule (GAAR) has been inserted into the Belgian Income Tax Code (ITC) as from 1993. The said rule has been replaced by an updated version of the GAAR in 2012 (the predecessor version was perceived as ineffective). The GAAR allows the Tax administration to deny to the taxpayer the free choice of the 'least taxed route' when the tax law has been 'abused'. ➔ **Article 344 §1**: In order to apply the GAAR, the Belgian Tax Administration (BTA) should be able to show that the taxpayer has used a (series of) legal act(s) which allow him: (i) to avoid the application of a tax-increasing measure in the ITC or the Royal Decree thereto, or (ii) to obtain the application of a tax benefit included in the ITC or the Royal Decree thereto, whereas such result is incompatible with the purpose of these provisions (the so-called "objective component").

	Secondly, the taxpayer should have chosen for said (series of) legal act(s) precisely in view of obtaining a tax benefit (the so-called "subjective component"). If the BTA meets this burden of proof, the taxpayer can still provide counterproof by evidencing sound business motives for the transaction (other than obtaining a tax benefit). If such counterproof cannot be procured, the BTA can ignore a specific legal act or series of legal acts establishing the same transaction, whereby the taxes may be levied as if the abuse had never occurred. ➔ As the scope of article 344 §1 is very broad and potentially far-reaching, caselaw will have to finetune the application in practice by defining boundaries for both taxpayers as well as Tax Authorities. **Registration Duties Code (RDC)** (entered into force on 1st June 2012) – **article 18 §2**: Same principles as in article 344 §1 of the ITC but inserted in the Registration Duties Code. **Inheritance Tax Code** (entered into force on 1st January 2013) - **article 106**: Application of article 18 §2 of the Registration Duties Code. **Valued Added Tax Code (VATC)** (entered into force on 7 August 2006) – **article 1 §10**: Same principles as in article 344 §1 of the ITC but other applicable rules. **Code of Various Duties and taxes (CVDT)** (entered into force on 26 February 2021 for all other duties and taxes of the CVDT) - **article 202**: A general anti-abuse rule has been introduced in the CVDT, the wording of which is similar to the GAAR existing in other tax codes. 1. Reducing the taxable value of a securities account by using alternative forms and means of investment, but pursuing the same goal, only to circumvent the threshold of EUR 1 million per securities account, is contrary to the objective of the tax. For instance, would be contrary to the objective of the law an investor having initially two securities accounts, one of EUR 1,5 million and the other of EUR 200.000, makes transfers from one to the other such that both securities accounts are below the taxable threshold without reducing the total value of his accounts. 2. The GAAR would also apply where the taxable value of a securities account is no longer increased in order not to increase the tax levied. 3. The GAAR is not limited to the application of the new tax on securities accounts but applies to all other duties and taxes of the CVDT, i.e: • Writing duties: notary deeds, acts of judicial officers, bank writings, other writings; • Various taxes: tax on stock exchange transactions (TSET) and deferrals, annual tax on insurance operations (IPT), annual tax on profit sharing, long-term savings tax, display tax, annual tax on credit institutions, annual tax on collective investment undertakings (so-called net asset tax), annual tax on insurance companies. **EU ATAD Directive** (entered into force on 1st January 2019) - **article 6**: As a member of the EU, Belgium has implemented the measures included in the Anti-Tax Avoidance Directives ("ATAD I and II"), i.e.: • Measures neutralising hybrid mismatches (within the EU and towards third countries): A 'hybrid mismatch' means a situation between associated enterprises that form part of the same enterprise or that act in the framework of a structured arrangement where the following outcome is achieved: (a) a deduction of the same payment, expenses or losses occurs in two jurisdictions or (b) a deduction of a payment occurs in the jurisdiction in which the payment has its source without a corresponding inclusion for tax purposes of the same payment in the other jurisdiction ('deduction without inclusion'). Measures: denial of deduction of payments or the inclusion of income that would otherwise not be taxed. • CFC legislation:

A CFC-rule intends to tackle profit shifting (out of the residence state or even out of third states) and long-term deferral of taxation that a taxpayer achieves via structures with low taxed companies without substantive activities. If the conditions of the CFC-rule are fulfilled, the non-distributed profits realized by such foreign companies will immediately become subject to tax in the hands of the Belgian parent company.
A Belgian taxpayer should report in its tax return that it has a foreign subsidiary or PE that qualifies as a CFC if the income is subject to tax in the hands of the Belgian taxpayer pursuant to the CFC rule.

- Exit taxation:

Via the Act of 1 December 2016, the existing provisions on exit taxation were brought to a large extent in line with the requirements on exit taxation laid down in the ATAD I. More precisely, Belgium introduced a deferred payment regime of 5 years for companies subject to exit taxes on (EEA) outbound cross-border transfer of assets/business, tax residence and restructuring.

- Interest limitation rule (limitation of the interest deductibility):

The interest limitation rule foresees that exceeding borrowing costs will be deductible in the tax period in which they are incurred only up to the higher of 30% of the taxpayer's EBITDA or EUR 3.000.000 ('threshold amount').

Double Tax Treaties (2020): Implementation of BEPS measures established at the level of the OECD. These measures are, among others, intended to fight the implementation of aggressive tax planning resulting in the artificial transfer of profits to destinations where they remain untaxed or more lightly taxed. The BEPS measures were already enshrined in the multilateral convention, adopted at the initiative of the OECD by more than 100 jurisdictions worldwide, including Belgium. The provisions of the multilateral convention were incorporated in the current Franco-Belgian treaty in 2019, following notifications to that effect from the Belgian and French States, and have recently entered into force.

Numerous specific anti-abuse measures (non-exhaustive list)

Over the decades, the Belgian legislator also worked out a set of rules to combat tax avoidance in well-specified cases.

Belgium has inserted into its tax legislation several provisions targeting avoidance mechanisms involving international transactions. Some of these provisions are specifically designed to address international tax evasion, while others are more general, and cover abusive schemes both in domestic and international situations.

Income Tax Code (ITC) – article 26: This provision allows the Belgian Tax Administration to add, « abnormal or gratuitous advantages, » to the taxable profits, whether they have been granted to interdependent companies or to third parties. Benefits like these can come in the form of expenses or ensue from a lack or shortage of income. This provision therefore constitutes a fundamental exception to the principle that only profits are taxable.

ITC – article 54: This provision establishes a presumption under which certain types of payments (interests on bonds or loans, royalties for the right to use patents, manufacturing processes or other similar rights or fees for services) paid or granted to non-residents (or to foreign establishments of foreign companies located in tax havens) are fictitious or excessive. Thus, article 54 of the ITC deems that payments of this type are not deductible as professional expenses unless the taxpayer proves that the payments correspond to real and genuine transactions and do not exceed the normal limits.

	ITC - article 185 § 2, a) (transfer pricing rule): This provision introduces the, « at arm's length, » principle, which entails that where two companies are, in their commercial or financial relations, linked by conditions agreed upon between independent companies, the profits that one of these companies would have made without these conditions, but not because of those conditions, may be included in the profits of that company. **ITC – articles 202 and 203 (definitely taxed income)**: The system of definitively taxed income (DTI) referred to in articles 202 and 203 of the ITC was introduced into Belgian tax law to stamp out certain adverse effects in relation to tax on corporate dividends. These are in fact at risk of being subject to a cascading tax if the shareholders of the company paying out the dividends are themselves companies who remunerate their own shareholders. Thus, a system that prevents this cascading taxation was put in place. Under this DTI system, if the dividend is taxed at the base, it will pass through all the other companies without being subject to tax. However, various conditions must be met before these dividends can qualify for the DTI system, one being that the dividends must come from a company that is liable for corporation tax or a comparable tax. Definitively taxed income can consequently not be deducted if it is attributed or paid by a company that is not liable for corporation tax or a comparable foreign tax or which is located in a country where the provisions of common law in matters of taxation are considerably more favorable than in Belgium, i.e., in a tax haven. The code also provides for a number of other exclusions **ITC – article 207 alinea.7**: Article 207, Alinea 7 of the ITC opposes any deduction or compensation (by way of investment-related deductions, tax losses and so on) on that part of the results of the tax period that are (notably) generated by abnormal or gratuitous advantages. Such advantages may be derived, directly or indirectly, from a company located in Belgium or in a country other than the country where the company in question is located and with which the company in question has a direct or indirect link of interdependency. The purpose of this provision is to prevent a company moving profits generated by one company to another company so as to allow the other company to offset the profits by means of a physical deduction (definitively taxed income, earlier tax losses, etc.). **ITC – article 344 §2**: This provision allows the tax administration to disregard transactions having respect to transfers of assets made by individuals or companies to non-residents established in low-tax jurisdictions.
CECCAR (Romania)	Yes, in the **National Tax Code Chapter III**: • **Article 401**: Rules against tax avoidance practices that directly affect the functioning of the internal market • **Article 402**: Rules limiting the deductibility of interest and other costs equivalent to interest from an economic point of view: *(1) For the purposes of this Article, the difference between the excess borrowing costs as defined in Article 40^{1}(2) and the deductible ceiling referred to in paragraph 4 shall be deducted limited in the tax period in which it is incurred, up to the level of 30 % of the basis of calculation determined in accordance with the algorithm referred to in paragraph (2).* • **Article 403**: Tax regime for transfers of assets, tax residence and/or economic activity carried out through a permanent establishment for which Romania loses the right to tax. • **Article 404**: General anti-abuse rules: For the purposes of calculating tax obligations, no consideration shall be given to an approach or series of steps which, having regard to all the relevant facts and circumstances, are not honest, being undertaken for the sole purpose or one of the main purposes of obtaining a tax advantage contrary to the object of purpose pursued by the applicable tax provisions. Furthermore, the Tax Procedures Code covers the reporting issue by transposition of the European Directives, namely DAC 6 provisions, regarding the cross-border tax arrangements.

MOKLASZ (Hungary)	There are **general and specific anti-tax avoidance rules** applied in the Hungarian tax legislation. Only the main rules are summarized below. Before the implementation of the measures in the Anti-Tax Avoidance Directives (ATAD I and II) in Hungary general anti avoidance rules (GAARs) have already been introduced in the Act on Tax Procedures as well as in the Act on Corporate and Personal Income Tax. According to the principles of the **Act on Tax Procedures** following general anti avoidance rules are applicable: • Prohibition of abuse of rights (1 §): A contract or legal transaction with the purpose of circumventing the tax laws does not constitute a normal exercise of rights. • Substance over form (2 §): In the tax procedures, the tax authority classifies contracts, transactions and other similar acts according to their true content. • Classification of a transactions according to economic result (3 § (1)): An invalid contract or other legal transaction is relevant for tax purposes to the extent that its economic result can be determined. • Classification of contracts between related parties (3 § (2)): for tax purposes, transactions between associated enterprises must be classified on an arm's length basis. • National subject to tax rule (4 §): If a different interpretation of the provisions of an international treaty between states results in income from a given legal relationship not being considered taxable by any state, Hungary does not exempt this income from taxation. According to **3006/2018 NTCA** (National Tax and Customs Administration) Guideline which is of binding effect, violation of issuing of invoices, receipts and retention obligation (which is deemed the most often case of tax avoidance) the default penalty is up to 1 million HUF. **Act XLV. of 2020 on retail tax**: Tax-base shall be consolidated among related parties to prevent tax-avoidance. Since 2019 the **Corporate Income Tax Act** determines that tax advantage (tax exemption, tax reduction) may be applied and enforced to the extent that the underlying legal transaction (series of transactions) is in compliance with the tax advantage, that is based on real economic and commercial reasons in terms of its purpose and content. If the main purpose or one of the main purposes of the legal transaction is a tax advantage that is contrary to the object or purpose of the applicable tax law, the cost incurred under the legal transaction (series of transactions) is not considered to be a cost incurred for the benefit of the business and no tax advantage can be claimed (1 § (2)). In addition to the **CFC-legislation** interest limitation rule and exit taxation rules, special anti-avoidance measures are also included in the Corporate Income Tax Act: ➔ Hungary has applied the arm's length principle on transactions between related companies implemented in 18 § since 1996. ➔ Furthermore, a provision was already introduced in 2012 according to which dividends received from abroad are subject to taxation in Hungary if the distributing company recognizes this as an expense in the determination of its profit (4 § (28) (b)). The **Hungarian Personal Income Tax Act** contains an anti-abuse rule for transactions involving individuals. In this respect, a tax relief that results in a reduction in the tax liability of an individual may be applied or claimed to the extent that the content of the underlying contract, legal transaction or other similar act achieves the purpose of the tax relief (1 § (4)). Furthermore, the arm's length principle applies to the transactions of individuals (1 § (4) 3 § 9). A CFC legislation concerning the income of individuals was also implemented (28 § (12)-(13)).

	Hungary has ratified the **MLI** which is applicable as of July 1, 2021. Thus, the principal purpose test (PPT) in Art 7 (1) MLI for the prevention of treaty abuse and tax avoidance will be included in Hungary's tax treaties.
KSW (Austria)	**Austrian tax and duty law** contains general provisions on abuse including stipulations in the Criminal Tax Law (Finanzstrafgesetz, FinStrG) and the Federal Fiscal Code (Bundesabgabenordnung, BAO; see in particular § 22 BAO). These include the relevant provisions that prohibit the tax advisor from contributing to or participating in non-legal arrangements, otherwise he or she would commit a contributory offence. In an international context the **EU Mandatory Reporting Law** (EU-Meldepflichtgesetz, EUMPfG) to implement Council Directive (EU) 2018/822 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements addresses these issues. In our opinion in a just about acceptable way. EU-MPfG stipulates cross-border arrangements that meet certain criteria to be reported to the competent authorities. According to EU-MPfG a marketable or customized cross-border arrangement is reportable under section 5 or section 6 if it presents a risk of tax avoidance or evasion of the reporting requirements of the common reporting standard (section 5(5)) or of preventing the identification of the beneficial owner. **Professional law** does not contain a definition of "dubious" or "harmful" in connection with "tax models". The determinacy requirement of a developed constitutional state dictates that clear boundaries be drawn between legality and illegality - both for state authorities and for subjects and users of the law. Vague terms such as "dubious" or "harmful" are unsuitable for such a demarcation in the present context, all the more so as this is made subject to the prerequisite of "legal", i.e., lawful. Such an "intermediate level" between legal and illegal would lead to arbitrary official action. The tax advising profession in Austria is subject to professional law with comprehensive professional duties and rules of practice. An essential professional duty is the explicit legal requirement *"to carry out the assumed matters, tasks, representations and defences in accordance with the law".* This explicit professional duty already means that tax advisors may not contribute to unlawful acts and thus may not provide advice that involves unlawful tax models. This professional principle is reflected in the vow required by law for the public appointment as a tax advisor. In this vow, each prospective tax advisor vows that he/she *"... will always faithfully and conscientiously observe the laws of the Republic of Austria"*. Thus evident, fidelity to the law is the highest good of practicing the profession. Professional law places this principle of compliance with the law directly before another central principle of professional practice, namely **the duty of loyalty** to the client. This obliges tax advisors *"... to pursue the rights of their clients with loyalty and vigour. They are [thereby] authorized to use all legal means of attack and defence available to their clients".* It is the duty and obligation of the members of the profession to help their clients not to pay more taxes than is legally obligatory for them under the applicable laws. This is inherent in the tax advising profession as a central function. In connection with the principle of fidelity to the law, the tax advisor profession contributes significantly to securing tax revenue and the correct application of tax laws, which means that his/her activities are also in the public interest - however, he/she is obliged to his/her clients and not to the state. As a party representative, the tax advisor has to be "biased" and represent the interests of the client and the best - admissible - legal position for them. On the contrary, every advisor and representative would put himself/herself in danger of liability towards his/her clients if he/she did not fulfil this task in the best possible way, carefully and conscientiously.
2. Do you have in your national legislation/ professional law a general prohibition of "aggressive tax planning" or similar? Do you have any kind of definition of "aggressive tax planning" or similar? If yes, please elaborate.	
BStBK (Germany)	There is no regulation and no general definition of aggressive tax planning or aggressive tax arrangements.
DStV (Germany)	Same answer than BStBK.
CSOEC (France)	A project of law tried to implement an obligation of disclosure to the tax administration for professionals but was finally never issued.

ITAA (Belgium)	Not as such but the Belgian legislation closely follows the **DAC6 Directive** requirements (transposed in 2019 in the Belgian legislation and entered into force on 1 July 2020) and defines a reportable cross-border arrangement exactly in line with the Directive. Cross-border arrangements may be reportable if they meet at least one of the hallmarks set out in the law, which are identical in wording to the list of hallmarks in the appendix to the directive. In recent doctrine, the technique of the Hallmarks themselves is criticized when motivated through the invoked difficulty of defining an aggressive cross-border arrangement.
CECCAR (Romania)	No.
MOKLASZ (Hungary)	Hungary has implemented the requirements of the **DAC 6 Directive** in the Act on International Cooperation with Administrations in the Field of Taxes and Levies (No. XXXVII of 2013). In the National Law, the term of cross border arrangement of the DAC 6 Directive has been adopted in the Hungarian translation. There is no other legislation that would define the term aggressive tax planning or similar in Hungary.
KSW (Austria)	**Professional law does not contain a definition of "aggressive tax planning" or the like**. If one understands this to mean the reduction of tax liability through measures that are legal but contradict the [supposed] intention of the legislator, it is the task of the legislator to provide clarity through clear regulations. It is unacceptable to pass on the effects of deficiencies in legislation to those subject to the law and those who apply the law (advisors as well as authorities). If legal provisions are not completely unambiguous, if they contain ambiguities as to the scope of the wording and if, in addition, a supreme court ruling is not available as an aid to decision-making, it is solely a matter of whether the decision taken can be described as justifiable on the basis of due consideration. This justifiability of a legal opinion also represents the limit for the consulting and representation activities of tax advisors. The "intention" of the legislator only plays a role in the application of the law if the wording of the law or the application of a provision to a specific situation is unclear due to the wording or the systematic context. Only in the case of ambiguity, the meaning and purpose of a provision can be used as a standard of interpretation in the form of teleological interpretation, i.e., the [presumed] intention of the legislator. If this is not clear either, the limit of the permissible interpretation remains the most possible literal sense of a justifiable legal standpoint in the sense described above. The final assessment of a permissible interpretation of the law, taking into account all methods of interpretation, must remain with the highest courts and must not be restricted already at the level of direct application of the law by the creation of indeterminate terms and vague criteria.
3. Does your professional law foresee any sanction on tax advisers? If yes, which ones and for which reasons?	
BStBK (Germany)	According to the **Tax Advisory Act** we have the following sanctioning possibilities: • Issuance of a reprimand (regional tax adviser chamber) • Fine up to 50.000 €, • Temporary ban from the profession (1-5 years) or, • Exclusion from the profession (imposed by the professional court, see § 90 Tax Advisory Act). However, a professional sanction requires a breach of professional duty. There is no obligation to refrain from aggressive tax planning or not to participate in it. The limit is tax evasion. If a tax adviser fails to point out legal possibilities for tax avoidance to the client, he may make himself liable for damages (civil liability due to inadequate advice).
DStV (Germany)	Same answer than BStBK.
CSOEC (France)	Nothing by now.
ITAA (Belgium)	Initially, the law of April 22, 1999, on the accounting and tax professions (Belgian Official Gazette, May 1, 1999) regulated the professional title of 'tax consultant'. The supervision of the professional practice of tax consultants was entrusted to the Institute of Accountants and Tax Consultants (IAB). The same law also provided for title protection at the level of recognized Bookkeepers-“Fiscalists” through the professional institute of recognized accountants and tax specialists (BIBF). Since 30 September 2020, the IAB and the BIBF have officially merged into the Institute for Tax

	Advisors and Accountants (ITAA). The Institute was established by the law of March 17, 2019, on the professions of accountant and tax advisor (Belgian Official Gazette, March 27, 2019). As a result of the merger the existing title “tax consultant” was given the new name “tax advisor”. Only the title has been regulated, the activities are not. This means that in Belgium, there are professionals providing tax services who are a member of a professional regulatory body (e.g., lawyers, notaries, accountants and tax advisors) and other service providers. The latter are not subject to deontology and disciplinary sanctions. As a disciplinary body, **ITAA** can impose various sanctions, namely a warning; reprimand; prohibition to accept or continue certain assignments; the suspension and termination. The above-mentioned sanctions are generally intended to sanction infringements of the deontological rules that professionals must respect when performing their duties. Such as complete independence, integrity and objectivity, as well as professional competence and diligence, respect for confidentiality and professionalism. It is possible to impose one or more disciplinary sanctions when the members violate the legal, regulatory and normative framework within which the professional activities are carried out. In addition to the aforementioned law and its implementing decrees, the legal, regulatory and normative framework also includes among others the standards and recommendations of the Institute and the law of 18 September 2017 on the prevention of money laundering and the financing of terrorism and the limitation of the use of cash (Belgian Official Gazette, 6 October 2017). The Council of ITAA is empowered to impose administrative measures as provided for in the Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the limitation of the use of cash, such as the withdrawal or suspension of the license. The Belgian legislation applicable to the prevention of money laundering expressly provides that certain supervisory authorities - of which the ITAA is one - determine the procedural rules necessary for imposing the administrative measures and fines as described in Articles 118, 132, §1 to 3 and 135, §3 of the AML and the remedies available.
CECCAR (Romania)	Doesn’t have the answer.
MOKLASZ (Hungary)	The Hungarian professional law for tax advisors is not as well developed as in some other countries in Europe and essentially determines the positions, activities that can be performed with the completion of a tax advisor exam. Besides there are no legal regulations in Hungary for tax advisors and experts related tax secrecy (which obviously means much more administrative burden in case of reporting and due diligence). However, both tax advisors and tax experts’ association ethic rules are quite detailed which serve for sanctions if activities of these professional are not lawful. In general, the provisions of **Hungarian Civil Code** rules are to be applied for general contractual relations. However, in case tax advisors or tax experts have been involved in tax crimes the Hungarian Criminal Code rules for tax fraud are to be applied.
KSW (Austria)	Tax advisors are subject to **disciplinary law**, which provides for warnings and fines (EUR 500 - 15,000, in serious cases EUR 2,000 to 30,000) as well as, in certain cases, the temporary prohibition of independent professional practice. By way of disciplinary law, violations of practice regulations and professional duties are punished.

	Violations of provisions on the prevention of money laundering and terrorist financing are subject to a comprehensive catalogue of sanctions (catalogue of professional offenses in paragraph 128 WTBG), including fines of up to EUR 1 million, a temporary ban on assuming representative functions in tax advising companies or the temporary prohibition of independent professional practice. Violations of the professional duty of confidentiality or breaches of authority are (also) threatened by administrative criminal sanctions (fines of up to EUR 20,000). If the legal requirements for the appointment as a tax advisor cease to apply, the Chamber of Tax Advisors and Public Accountants must revoke the professional license (revocation of the public appointment). The prerequisites for the appointment include, among others, the special trustworthiness, i.e. the absence of criminal convictions. If a tax advisor is condemned by a court of law for a financial offense, the professional license is therefore to be revoked; in the case of punishment by the financial penal authorities only, the professional license is to be revoked if the proper exercise of the profession is endangered thereby and the consequences of the offense are insignificant. This also includes convictions for contributory offenses. In the case non-legal tax avoidance schemes lead to punishments for financial offenses, the tax advisor loses his/her professional license.
4. What do you think of the UK plan to define tax avoidance as *"seeking a tax benefit which was not intended by the legislator"*?	
BStBK (Germany)	No official position.
DStV (Germany)	DStV is very concerned and believe that: • a general definition of aggressive tax planning might cause unnecessary legal uncertainty and furthermore might lead to an unproportionate limitation of consulting, • any attempt to prohibit aggressive tax planning should be carried out by national legislative body on the basis of a concrete negative list (blacklist of aggressive tax planning).
CSOEC (France)	Does not wish to comment.
ITAA (Belgium)	In Belgium, **the right to choose the least taxed route** (as long as there is no simulation) has been acknowledged by the Belgian "Hof van Cassatie". According to the Court, there is no simulation and, therefore, no tax fraud, where, in order to benefit from the most favorable tax regime, the parties make use of the freedom of contract and, without infringing any legal obligation, carry out acts of which they accept all the consequences, even if they are to be regarded as having been carried out for the sole purpose of reducing the tax burden. This right results from two principles: 1) the principle of legality (also known in criminal law as the "nulla poena" principle), which is considered an essential element of democracy and the rule of law. It means that everything the government does must be based on the law (art. 107 Constitution) and also applies in tax matters. If the tax law allows certain choices, these may not be prohibited by the administration. 2) The civil law principle of freedom of contracting. The taxpayer has the right to choose the most advantageous tax regime for him when performing legal transactions. In any case, he is not obliged to follow the most fiscally advantageous path for the government. Although regulation against tax avoidance is a legitimate objective for the legislator, the right to choose the least taxed route cannot be affected. Important in this discussion is also that in Belgium the violation of almost every tax regulation is punishable by criminal law. This also has repercussions for the application of the 6th Anti Money Laundering Directive, which states that all tax crimes relating to direct and indirect taxes, as laid down in national law, punishable by deprivation of liberty or a detention order for a maximum of more than one year is considered a "criminal

	activity" (article 2 Directive (EU) 2018/1673). As – for example - article 449 of the Belgian ITC stipulates that all fraudulent violation of the provisions of this Code or its implementation decrees are punished with imprisonment of eight days to five years. Due to the absence of transposition of the 6th AML Directive under Belgian law, all fraud, even "simple" tax fraud is considered as an underlying criminal activity within the framework of the Anti-Money Laundering regulation! The principle of legality in criminal matters requires laws to define, in sufficiently precise, clear and legally certain terms, the acts to be criminalized so that the person who assumes a certain conduct is able to assess in advance in an adequate manner what the criminal consequences of that conduct will be. The requirement of reasonable foreseeability is met if it is possible for the person to whom the criminal provision applies to know, on the basis of that provision, the acts and omissions which render him liable under criminal law. It should be noted that the abovementioned Belgian GAAR (art. 344, §1, ITC), does not imply criminal sanctions, but lead to the application of taxes as if the abuse had never occurred. Internationally there is no clear definition of tax avoidance". Just as well as the DAC 6-regulation uses hallmarks to determine the scope of "aggressive tax planning", instead of a clear definition. However, the DAC 6-regulation does not imply criminal charges to taxpayers or intermediaries for the notified construction. The sanctions relate to the notification on itself. DAC 6 is designed to give EU tax authorities early warning of new cross-border tax schemes so that they can regulate these constructions, if deemed necessary, with respect with the principle of legality. The proposed definition of "tax avoidance" as "seeking a tax benefit which was not intended by the legislator" clearly fails with the principle of legality, certainly when used as a definition leading to a prohibition which will be criminally sanctioned or sanctioned with administrative sanctions with a criminal character. If the legislator doesn't intend a tax benefit and wants to prohibit it, this prohibition should be defined clearly and in a legally certain way in a text of law. This definition, and the room of interpretation that comes with it, leaves it to the judge or to the administration to give an interpretation of the intention of the legislator. ➔ **ITAA would like to stress that it is important that any considered legislation towards intermediaries in tax matters in order to counter tax avoidance should take into account all intermediaries involved and not just tax advisors**.
CECCAR (Romania)	The definition is too general. Not intended by the legislator could mean a lot of things, for example perhaps he did not think about it.
MOKLASZ (Hungary)	The UK plan for the given definition on tax avoidance will allow a wide interpretation for the legislator. It would then at least have to be defined very clearly and precisely what was the intention of the legislator. In Hungary, the Supreme Court has already stated that tax advantages are among the important cost factors of companies. In general, the legislator should accept that tax advantages are part of the fundamental economic considerations of companies and it will always influence corporate decisions. Definitions that allow a broad interpretation of tax avoidance will only lead to long and costly legal discussions. The Commission should decide whether tax competition in the EU internal market should be completely restricted and, if so, whether this is in line with EU fundamental freedoms.
KSW (Austria)	Such a definition is not considered useful and we disagree with this and any definition. The (presumed) intention of the legislator for the application of statutory provisions cannot be used as a standard for interpretation, or only under certain conditions. It is the task of the legislator at most to clarify this and to exclude undesirable results by clear provisions. We strongly disagree with the passing on of such deficiencies of the legislation to tax advisors.

	Such a definition which originates from the Anglo-American legal system of case law is not compatible with continental European, in particular Central European legal systems. Such a definition and the legal consequences attached to it would not comply with the legislative requirement of determinacy and thus also not with the constitutional principle of legality. It is exclusively the task of the legislator to clearly express its will and not that of (financial) authorities to determine a (supposed) intention of the legislator. **More general remarks:** According to the current law in Austria intermediaries are obliged to report but the national tax authorities and ultimately the respective financial courts have to make the final decision on whether an arrangement is 'legal' or 'not legal'. It would violate the principles of the rule of law if such a decision should be the responsibility of tax advisors. Especially if there is to be a third, not clearly defined category, namely 'legal but not desired'. A 'prohibition of implementation' of such tax schemes would ultimately turn the assessment of a substantive tax dispute into a professional obligation, presumably linked to corresponding sanctions. And above all, it would oppose the professional duty of loyalty to the client. In this context, we see from the European Commission on the one hand a tendency to deregulate the tax advisor profession, on the other hand a tendency to regulate their services. At this point we would like to recall our reservations about the AML package, which contains provisions for tax advisors without any EU-wide definition of the term at all. The present proposal reveals the general problem that the profession of tax advisor is not regulated uniformly within the EU, in some Member States not at all. Neither is there a uniform professional profile or understanding of the activities or functions of the tax advising profession, nor are there minimum requirements for training, licensing and practice of the profession. On the contrary, existing regulations are being put under pressure by the EU and are to be eliminated - even if they help to ensure that the profession is practiced and the law applied at a high level of quality and ethics. At the same time, the EU repeatedly identifies issues in which tax advisors are to be called upon to prevent undesirable results - be it the use of legal but undesirable tax arrangements, the prevention of money laundering or other issues. Due to the lack of regulation of the tax advisor profession, the EU is then forced to create points of contact which, however, cannot be reconciled with existing regulations or are not necessary if such regulations exist. Here, too, the importance and value of professional regulation systems for professions that operate in areas of public interest and with an intermediary function between citizens/companies and the state, as is the case with the tax advising profession, becomes apparent. If such professions are associated with appropriate requirements for training, access and practice, there is no need for such questionable concepts as the one at issue here.