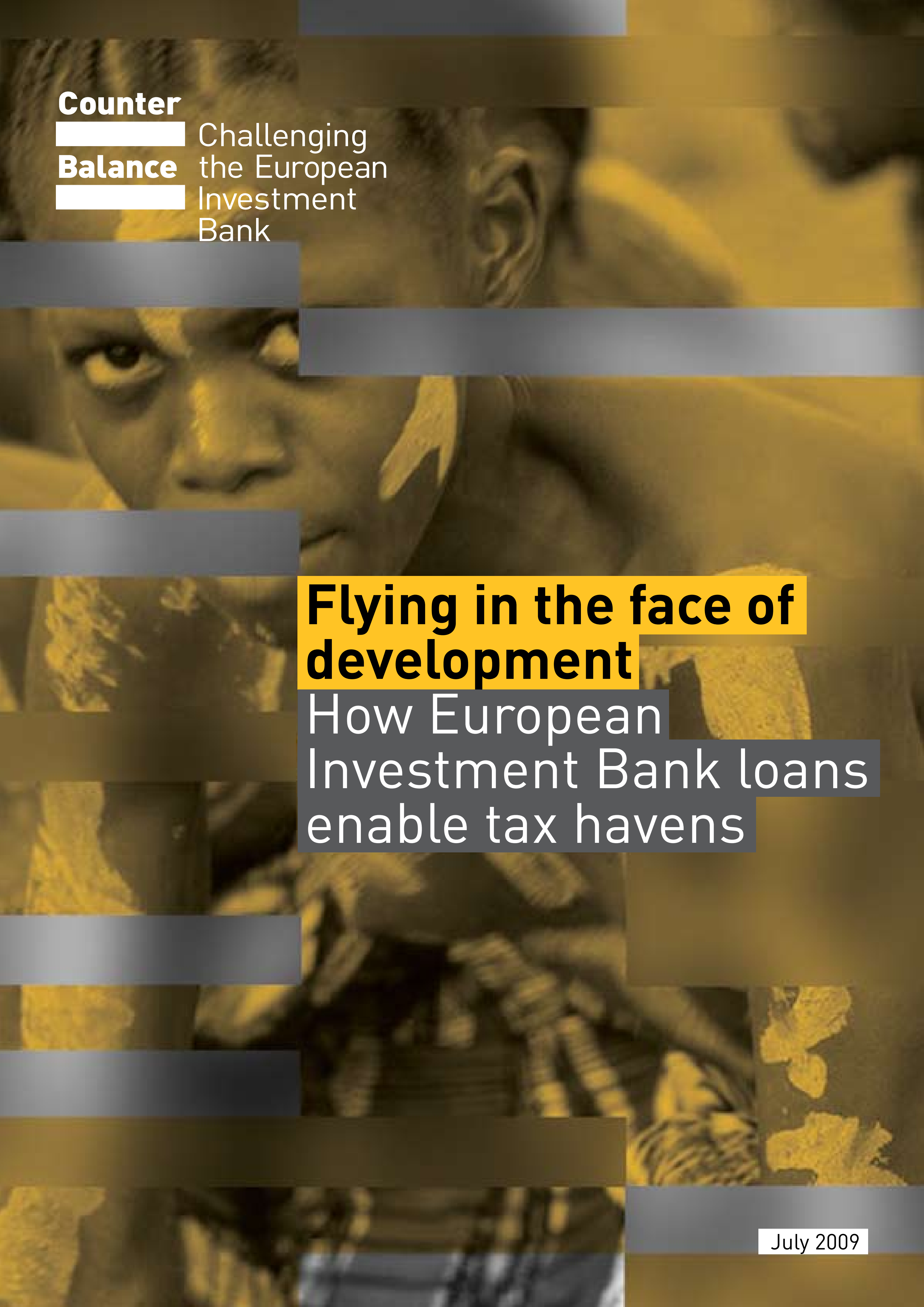

Counter Balance

Challenging the European Investment Bank

Flying in the face of development

How European Investment Bank loans enable tax havens

July 2009

The mission of **Counter Balance: Challenging the EIB** is to make the European Investment Bank an open and progressive institution delivering on EU development goals and promoting sustainable development to empower people affected by its work.

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Executive summary

The fight against tax evasion and tax avoidance, as facilitated by tax havens, is high on the political agenda in the aftermath of the global financial and economic crisis. European leaders have increased the public pressure on tax havens and offshore financial centres. French Prime minister François Fillon has said that tax havens are "black holes that should no longer exist". Swedish Finance Minister Anders Borg has said "tax parasites" must be seriously dealt with.

In 2008 the EU Council committed, *"to implement the principles of good governance in the tax area"* and to *"improve international cooperation in the tax area (...) and develop measures for the effective implementation of the above mentioned principles."*[1] *These principles are "transparency, exchange of information and fair tax competition".*

The Council added *"the need to include in relevant agreements to be concluded with third countries by the Community and its Member States (...) a specific provision on good governance in the tax area"*.[2]

These principles have been ratified by the European Parliament's report on tax fraud which says that Europe should take the lead and make the elimination of tax havens worldwide a priority, and *"invites the Council and the Commission to use the leverage of EU trade power when negotiating trade and cooperation agreements with the governments of tax havens, in order to persuade them to eliminate tax provisions and practices that favour tax evasion and fraud"*. [3]

Tax evasion and avoidance from developing countries represents a significant multiple of global overseas development assistance every year. This leakage is facilitated by tax havens, which provide infrastructure and services to allow secretive transactions.

Tax havens play a key role in global finance. According to the IMF, tax havens represented, in 2004, at least 50% of global financial flows and were involved in more than one third of global investment portfolios. The United Nations Conference on Trade and Development estimates that more than one third of foreign direct investments go to tax havens and explains that this trend has been increasing since the 1990s.

Plugging tax leaks is needed to help maintain and extend public services, redistribute wealth, restore government policy space and enable developing country citizens to exert accountability on their governments. The promotion of progressive tax systems, the strengthening of tax administrations and the fight against tax and regulatory havens are critical in the area of development finance and must be reflected in European investments in developing countries as part of a coherent European development policy.

The European Investment Bank (EIB), the EU's house bank whose role in developing countries is increasing, should therefore comply with these commitments and implement clear regulations to prevent tax evasion and foster good governance in tax matters.

Yet this study shows that many projects and beneficiaries funded by EIB money involve tax havens and transnational companies that use them for tax purposes.

The EIB remains little known to parliamentarians, NGOs and others who track development spending. But the bank is taking a prominent role in the European Union's response to the financial and economic crisis. The EIB will, for example, allocate EUR 2 billion to support Africa in the context of the financial crisis over the next three years, mainly for investments in infrastructure, energy projects and the financial sector.[4]

In accordance with the Cotonou Agreement, EIB lending directed towards African, Caribbean and Pacific (ACP) countries falls within a development mandate. The Cotonou Agreement states that the EIB shall "act in accordance with the objectives of this Agreement" – defined as "reducing and eventually eradicating poverty consistent with the objective of sustainable development and the gradual integration of ACP countries into the world economy."

In recent years the EIB has been trying to improve its policies and procedures. Following the start of the so-called "war on terror" at the beginning of this decade, the EIB introduced a new policy prompted by an international clampdown against money-laundering. This is reflected in the bank's development of an internal policy on "Preventing and Deterring Corruption, Fraud, Collusion, Coercion, Money Laundering and the Financing of Terrorism in EIB Activities".

Now that political attention has turned to the regulation of private finance, in particular the fight against tax evasion and other practices, the EIB is relying on the same policy to guard against allegations that it is complicit in supporting private companies to evade their public duty to pay taxes. The EIB is making efforts to upgrade and improve its policies, but its reforms are so far insufficient.

This study – based on research of EIB documents, plus interviews and accompanying analysis of companies and procedures – shows that there is substantial cause for concern. It identifies:

- Serious loopholes
- Lax implementation
- Specific suspicious projects and transactions.

1 See: www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ecofin/100339.pdf
2 See: www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ecofin/100339.pdf
3 See: www.europarl.europa.eu/oeil/file.jsp?id=5597642

4 www.eib.org/about/press/2009/2009-079-at-least-an-additional-ususd15-billion-to-respond-to-financial-crisis-in-africa.htm

A public bank should not facilitate private tax avoidance. The EIB should ensure that recipients of its loans do not avail themselves of tax havens or use other practices such as abusive transfer pricing which may lead to tax evasion or avoidance.

Yet in the last five years the EIB has loaned EUR 5.66 billion to the top tax haven users from the UK, France and the Netherlands, while EUR 210 million has gone to African funds using tax havens in their strategies. Furthermore, some of the major infrastructure projects financed by the EIB in the name of development happen to have close links with tax havens, which is also the case with financial intermediaries benefiting via the EIB's Global loans.

This research reveals that there is a long list of EIB clients and projects in developing countries which use tax havens and similar secrecy jurisdictions. One of the most used tax havens for investments in the African region is Mauritius. This is particularly contradictory to the development purposes the EIB claims to have in poor countries because secrecy jurisdictions foster tax competition, allow bank secrecy and therefore corruption, and facilitate tax evasion and tax avoidance.

Indeed, Mauritius offers a zero tax regime to foreign investors, provides opacity, and the tax agreements it has signed with African countries contribute to depress tax revenues in these countries. A Norwegian government report on tax havens and development published in June 2009 finds that; "Mauritius offers a location to foreign investors for a nominal fee to the government and for very low taxes protected through tax treaties. This is an example of a harmful structure, whereby Mauritius offers investors the opportunity to establish an additional domicile which allows the investor to exploit a virtually zero tax regime. In reality, the source country is robbed of tax on capital income through this type of structure, while the tax-related outcome for the investor is very favourable".[5]

This study also reveals that the EIB's capacity to assess its clients is limited. The EIB is to be congratulated for successfully screening out four projects in recent years, based on evidence that they were or were intending to practice tax evasion, but the concern is that this represents just the tip of the iceberg.

The EIB is particularly unconvincing in its answers on global loans – which are provided on trust to Europe's biggest banks, the largest users of tax havens.

And on its monitoring of clients and projects following project approval – where again companies receiving EIB money are relied on to report against themselves if there is a significant change, a concept open to broad interpretation.

Combined with the dramatic lack of transparency in the EIB which prevents concerned citizens' groups checking up on the due diligence procedures or the evidence that is used, the EIB fails to make a convincing case that its money is all well-used according to its policy on fraud and corruption.[6]

Even in the rare instances where the EIB does identify tax evasion practices, its sanctions are weak. There is no public announcement of companies that are excluded from finance, and no debarment from tendering for other EIB projects unless or until a final criminal conviction has been achieved. This does little to discourage companies, and is a far weaker approach than that being taken by the World Bank and other similar institutions.

Thus we must conclude that the EIB continues to finance companies that evade taxes. This is problematic not only for European taxpayers who finance the institution but also, most acutely, for developing country citizens who are landed with debts and other liabilities while their states do not build up their fiscal capacity.

The passivity of the EIB when it comes to tax havens and the tax evasion industry may have been encouraged by the difficulties connected with achieving a strong international consensus on robust measures to target tax havens including within the European Union.

However public and political opinion have swung more solidly than ever in recent years behind bold moves against tax evasion and for progressive taxation. The EIB should take the opportunity of updating its policy to ensure that it closes the loopholes identified in this report and ensures that greater transparency and a stronger threat of punishment are used to demonstrate to clients that the EIB is serious about this agenda, and not merely defensive.

On May 27, as a follow up to the G20 summit conclusions on the fight against tax havens and tax evasion, the EIB issued a press release announcing it strictly enforces procedures in this respect but is undertaking a review to ensure its policy is up to date.

Commenting on the Bank's offshore financial centres policy, EIB president Philippe Maystadt said, "The EIB is committed to ensuring that its loans are used for the purposes intended, the promotion of European Union priority objectives".[7] The review "will aim to ensure that the EIB's lending activities continue to mitigate against lost income from assets that are kept hidden in tax havens in developed and developing countries. It will be undertaken in close cooperation with other international financial institutions to ensure that EIB continues to comply with the latest requirements".

Maystadt also announced at the end of June that the EIB strengthened policy would "make loan signature conditional on firms first relocating out of jurisdictions that do not meet international standards on the sharing of tax information".

It is welcome that the EIB is planning to update and upgrade its policies. It has a long way to go.

5 Commission on capital flight from developing countries. "Tax havens and development. Status, analyses and measures". Report from the Government Commission on Capital flight from Poor Countries. Appointed by Royal Decree of 27 June 2008. Submitted to Erik Solheim, Minister of Environment and International development, on 18 June 2009.

6 Counter Balance (2009). The Long Struggle for Accountability of IFIs – the case of the EIB and the World Bank. Available at: www.counterbalance-eib.org/EIB-transparency/

7 EIB reinforces efforts to fight tax avoidance. Available at: www.eib.org/about/news/eib-reinforces-efforts-to-fight-tax-avoidance.htm

Introduction: Tackling tax havens

Tax havens have risen rapidly up the political agenda since the start of the financial crisis. Politicians and commentators realise that multi-national companies and financial institutions have used these jurisdictions to hide liabilities off their balance sheets. This enabled them to escape regulators' scrutiny and avoid paying taxes, taxes that European governments now desperately need to plug their growing budget deficits. Political leaders such as Angela Merkel, Gordon Brown and Barrack Obama have condemned tax havens and called for action. French Prime Minster Francois Fillon has called for "the disappearance of black holes in the financial system".

The G20 summit in London on 2 April agreed some measures on this issue. While clearly inadequate, they mark a small step on the road to eliminating abuses of the tax and regulation system.[8] Governments have also previously agreed that tax evasion and avoidance can be very damaging to developing countries, and have agreed specific measures. At the UN conferences on Financing for Development in 2002 and 2008 all governments previously agreed on the importance of an effective fiscal policy and international cooperation to support the mobilisation of domestic resources.

By complying with development goals in its lending to poor countries and in line with EU member states' commitments on this particular area of development finance, the EIB is also meant to support fiscal cooperation and the mobilisation of domestic resources. However the actions and decisions of European government representatives sitting on the board of the EIB are not consistent with the pledges and statements of the same governments in other fora.

Very little progress has been achieved to help low income countries (LIC) overcome their chronic lack of domestic resources. This makes them dependent on external funding which is conditional and unpredictable. This unpredictability is particularly apparent now, with foreign investment drying up and aid levels declining as a result of the financial crisis.

After 30 years of trade and investment liberalisation, promoted in large part by outside institutions, tax administrations in most LICs are very weak. The average tax revenue in LIC was approximately 13% of their GDP in 2000, less than half of the average 36% for OECD countries. Moreover, the ability to raise direct taxes amounts to 2-6% of GDP in poor countries, compared to 12-18% in developed countries.[9] Under these conditions, the mobilisation of domestic resources through progressive taxation systems remains a huge challenge.

Tax evasion and avoidance from developing countries represents a significant multiple of global overseas development assistance every year. This leakage is facilitated by tax havens, which provide the necessary infrastructure and services to allow secretive transactions.

Plugging these tax leaks will help redistribute wealth, restore government policy space and enable developing country citizens to exert accountability on their governments. The promotion of progressive tax systems, the strengthening of tax administrations and the fight against tax flight and tax havens need to be addressed as a priority within the area of development finance and should therefore be reflected in EIB investments in developing countries as part of a coherent European development policy.

8 Eurodad analysis on G20 communiqué "Some progress on governance and finance but a long way to go". Available at: www.eurodad.org/whatsnew/articles.aspx?id=3539 . See also Eurodad article "The empty OECD list, where did all tax havens go?" available at: www.eurodad.org/whatsnew/articles.aspx?id=3595

9 SOMO. Taxation and Financing for development. p. 2 & 3. October 2008.

1. Illicit capital flows: a developing country and European problem

Illicit flows can be defined as "the deliberate and illicit disguised expatriation of money". [10] By their nature illicit flows from developing countries are hard to estimate since they are done in a manner which escapes national and international controls. Attempts to scope these flows show that they represent a huge amount of money leaving developing countries each year. Recent estimates released by Global Financial Integrity[11] are close to USD 1 trillion per year, an amount that is growing by 18% per year.

The African continent accounts for about 3% of this global amount, meaning that some USD 30 billion illicitly leaves Africa each year. Conservative estimates published by UNCTAD in 2007 show that Sub-Saharan African countries lose an annual average of USD $13 billion in capital flight.[12] The total amount of capital flight between 1970 and 2004 from a 40 country sample amounts to USD 420 billion in real terms. Capital flight represents four fifths of the sample countries' GDP for that period and almost three times the debt stock. The authors conclude that Sub-Saharan African countries are net creditors to the rest of the world and explain that Africa has the highest ratio of privately held capital abroad in the form of capital flight. In 1990, about 40% of African private capital was held abroad.[13]

Illicit capital outflows are comprised of three main components:

- **Bribery and corruption.** The stolen wealth looted by corrupted political leaders, bribes paid to elites and looted in private bank accounts are among the main causes of these illicit flows. This represents around 5% of the global amount.
- **Criminal illicit flows** that include terrorist financing, smuggling, drug money and other crime-related money. These account for about 30% of the problem.
- Commercial transactions encompassing **trade false pricing and false invoicin**g with the aim of escaping taxes. The largest percentage of cross border illicit flows is therefore channelled through commercial activities, and operated through tax havens. These make up 65% of illicit outflows, an estimated $650 billion per year.

10 Definition used by Global Financial Integrity, the Tax Justice Network and other alalysts.
11 Global Financial Integrity. "Illicit financial flows from developing countries 2002-2006", November 2008. See: www.gfip.org/. UNCTAD makes a similar estimate in UNCTAD (2007), Economic development in Africa. See: www.peri.umass.edu/fileadmin/pdf/working_papers/working_papers_151-200/WP166.pdf
12 UNCTAD. Economic development in Africa, 2007.Based on findings from Boyce and Ndikumana. See: www.peri.umass.edu/fileadmin/pdf/working_papers/working_papers_151-200/WP166.pdf
13 Boyce and Ndikumana 2008. Op. cit. P.8

How companies avoid and evade taxes

When addressing illicit flows, much public attention has been given to bribery and corruption, which account for a minor part of the problem, while tax related capital flight generated by transnational corporations and channelled through tax havens remains the biggest problem globally, and in particular for developing countries.

A major way in which this is achieved is the deliberate mis-pricing of transactions between subsidiaries, and the shifting of profits and losses between jurisdictions to minimise tax exposure.[14] Problems occur when transfer pricing becomes a tool to set artificially high or low prices to minimise taxes. This occurs frequently, and more than half of global trade occurs among subsidiaries of the same TNC.[15] According to a survey of 476 TNCs, nearly 80% acknowledge having transfer pricing at the heart of their tax strategy.[16] The parent companies are generally based in northern countries and have subsidiaries in tax havens, where they can shift profits through transfer pricing practices.

More recent research conducted by the Tax Justice Network into 97 of the largest quoted companies in the UK, The Netherlands and France shows that 99% of these companies operate in tax havens[17]. According to their findings, the most popular tax haven in the world is Hong Kong, followed by the Cayman Islands, Singapore, Switzerland, Luxembourg, Bermuda, The British Virgin Islands, Jersey, Mauritius, the Bahamas, Guernsey, the Isle of Man, Panama, Costa Rica and the Netherlands Antilles in this order.

Some of these, particularly Mauritius, are major destinations for EIB funding to developing countries.

Foreign Direct Investment (FDI) is one of the key conduits for external flows to developing countries. Since the 1990s these flows have been increasing and exceed by far any public flows to poorer countries. But FDI presents a number of questions regarding tax evasion and the use of tax havens. A number of FDI are related to so-called "round tripping FDIs". This is a common system of tax evasion whereby a national investor sets up subsidiaries in a tax haven and invests back from there as a foreign investor into his home country, benefitting from more favourable conditions and also escaping taxes. This is how Mauritius has become the biggest investor in India, representing 43% of FDI equity flows into the country.

14 SOMO, 2008. Op. Cit. P. 8.
15 Sony Kapoor "Exposing the myth and plugging the leaks", in "Impossible architecture", Social Watch (2006), www.socialwatch.org/en/informesTematicos/99.html
16 Chavagneux C. and Palan R. 2007. "Les paradis fiscaux". P. 65.
17 Where on Earth are you? See: www.taxresearch.org.uk/Documents/Whereonearth.pdf

What are tax havens?

Tax havens have one or more of the following features. They:

- provide low or zero taxes for non residents,
- provide high levels of secrecy to conceal the beneficiaries of companies, trusts, and bank accounts,
- do not require any economic substance to the transactions booked in the jurisdiction,
- have very weak or no legal cooperation with third countries.

Tax havens where companies and investors are based provide secrecy that prevents any clear, accessible information on:

- What these companies do in these places
- How much trade they undertake in these places
- How many people they employ in tax havens / secrecy jurisdictions
- How much profit they record in tax havens and how much tax they pay.

Despite the fact that the economic activity of tax havens accounts only for about 3% of global GDP, they play a key role in global finance. According to the IMF, tax havens represented, in 2004, at least 50% of global financial flows and were involved in more than one third of global investment portfolios. UNCTAD estimates that more than one third of TNC foreign direct investments go to tax havens and explains that this trend has been increasing since the 1990s. The Tax Justice Network estimates that rich individuals deposit around USD 11.5 trillion in tax havens' bank accounts, trusts or financial institutions, representing a net loss of worldwide government tax revenue of USD 255 billion per year.

Identifying tax havens – the ever shrinking list

The G20 has confided the task of clamping down on tax havens to the Organisation for Economic Cooperation and Development (OECD). The OECD judges whether a country is compliant, intending to be compliant or non-compliant with international norms on tax evasion. This determines whether jurisdictions are placed on white, grey or black lists, respectively.

But the criteria used by the OECD in order to set up the list based on tax information exchange treaties and double taxation agreements have serious shortcomings that jeopardise the ability of developing countries to effectively fight cross border tax evasion.

First, the information exchange is only made upon bilateral agreements and this is not an adequate response to the global challenge that tax havens represent. The bilateral approach makes it very difficult to implement an effective global action against tax evasion and avoidance. It also leaves out developing countries that are not likely to conclude such agreements on a bilateral basis. Multilateral agreements should be the basis for the information exchange.

As explained by the Tax Justice Network, "there are between 50 and 72 secrecy jurisdictions in the world and far more than a hundred countries with which they could negotiate information exchange agreements. Yet by March 2009, only 49 tax information exchange agreements have been signed between OECD countries and secrecy jurisdictions and only 18 have entered into force. Thus, in almost a decade, the thirty most powerful and technically sophisticated states in the world have only negotiated a handful of such agreements each." The same report adds that "It is very unlikely that even a medium-sized developing country like Chile, India or South Africa would have sufficient leverage to strike a deal with, for instance, Switzerland, on similar terms to those struck by the US and Germany"[18].

Second, the information exchange is made upon request, meaning that the burden of proof falls onto the requesting authority, making it very difficult for a country to provide enough evidence to access the requested information. The Tax Justice Network briefing adds on this: "a detailed case must be made, with the criteria set out in a lengthy legal document. (...) the authorities requesting the information must already have a strong case even before they request the information. This sets the bar very high indeed for tax authorities wanting to make a request".

To address these major shortcomings, a multilateral framework should be put in place instead of the current myriad of bilateral agreements. Second, an automatic information exchange should be implemented instead of the current 'upon request' model.

Consequently the black list appears now amazingly empty. Many tax havens that used to be in the OECD's black list, including Mauritius, are now in the white category – meaning that no jurisdiction is said to require sanctions. This judgement is premature by the OECD, which should take account of implementation, not just promises. Some 42 jurisdictions are now on the OECD's grey list. This means that they have "officially informed the OECD that they commit to co-operate in the fight against tax abuse, that this year they will propose legislation to remove the impediments to the implementation of the [OECD tax information exchange] standard and will incorporate the standard in their existing laws and treaties".[19]

This is a vague and insufficient categorisation. An analogy is a burglar who has been thieving for years escaping sanction merely because they promise to soon clean up their act. A brief examination of the OECD list shows indeed that implementation may not follow such promises – several jurisdictions promised reforms in 2000, 2001 and 2002, but have still not delivered.

18 See: www.taxjustice.net/cms/upload/pdf/TJN_0903_Exchange_of_Info_Briefing_draft.pdf
19 OECD progress report on the jurisdictions surveyed by the OECD Global Forum in implementing the internationally agreed tax standard, 19 May 2009. At: www.oecd.org/dataoecd/50/0/42704399.pdf

According to some NGOs, including the Tax Justice Network, the list of European tax havens is much longer than the agreed by official bodies.[20] It is not just small islands or territories that host tax havens. According to several authors *"London is with no doubt the largest tax haven in the world"*.[21] Other European tax havens, according to a broader definition, include Andorra, Monaco, Switzerland and Liechtenstein, Belgium, Cyprus, Germany (Frankfurt), Gibraltar, Hungary, Iceland, Ireland, Italy (Campione d'Italia & Trieste), Latvia, Luxembourg, Malta, the Netherlands, Portugal (Madeira), San Marino, Spain (Melilla).

Many other havens are dependencies or overseas territories of European countries, such as: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Guernsey, Isle of Man, Jersey, Montserrat, (all UK dependencies), Aruba and Netherlands Antilles (dependencies of the Netherlands).[22]

Europe is therefore a key player in the fight against tax havens. It is not sufficient for European governments and European Union institutions simply to follow lowest common denominator thresholds and judgements as applied by the OECD.

The EU Council committed, in 2008, *"to implement the principles of good governance in the tax area" and to "improve international cooperation in the tax area (...) and develop measures for the effective implementation of the above mentioned principles."*[23] These principles are *"transparency, exchange of information and fair tax competition"*. The Council added "the need to include in relevant agreements to be concluded with third countries by the Community and its Member States (...) a specific provision on good governance in the tax area".[24]

These principles have been ratified by the European Parliament's report on tax fraud, where it says that Europe should take the lead and make the elimination of tax havens worldwide a priority, and *"invites the Council and the Commission to use the leverage of EU trade power when negotiating trade and cooperation agreements with the governments of tax havens, in order to persuade them to eliminate tax provisions and practices that favour tax evasion and fraud"*.[25]

The EIB, the EU's major financial institution whose role in developing countries is to be increased in the coming years, should therefore comply with these commitments and implement clear regulations in order to prevent tax evasion and foster good governance in tax matters. Yet this study shows that many projects and beneficiaries funded by EIB money involve tax havens and transnational companies that use them for tax purposes.

Despite strong statements from some EU leaders and commitments from EU institutions, action on tax havens is moving much more slowly than the political rhetoric would imply. Luxembourg's prime minister Jean-Claude Juncker ironically announced when his country was announced as a potential tax haven: *"I look forward to many years of fascinating and fundamental discussion"*.[26]

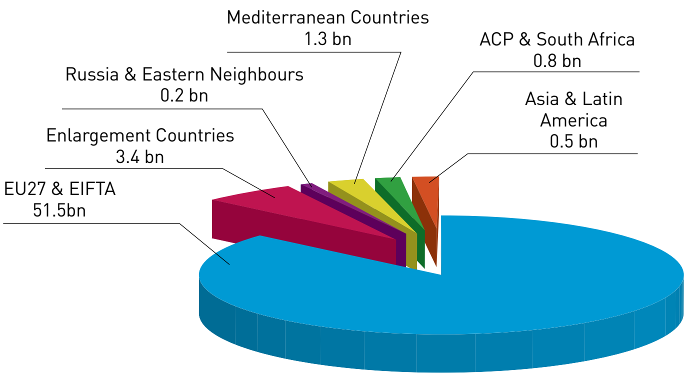
The passivity of the EIB when it comes to tax havens and the tax evasion industry may have been encouraged by the difficulties of achieving a strong international consensus on rigorous measures to target tax havens.

Public pressure grows on Royal Bank of Scotland in spring 2009

20 See full list in the appendix
21 C. Chavagneux and R. Palan. 2007. « Les paradis fiscaux », p.81.
22 See: www.eurodad.org/uploadedFiles/Whats_New/Reports/fact-sheet_capitalflight08.pdf www.eurodad.org/uploadedFiles/Whats_New/Reports/Capital_flight_report.pdf
23 See: www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ecofin/100339.pdf
24 See: www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ecofin/100339.pdf
25 See: www.europarl.europa.eu/oeil/file.jsp?id=5597642
26 Declaration by Prime Minister Jean-Claude Juncker before the Chamber of Deputies regarding banking secrecy, 21/10/2008. See: www.gouvernement.lu/salle_presse/discours/premier_ministre/2008/10-octobre/21-juncker/21-chd-eng/index.html

2. Dubious clients, offshore links: who is the EIB bankrolling?

In 2008, the EIB funded a total of EUR 57.7 billion projects and loans, broken down as follows:



Source: EIB, 2008[27]

The lion's share of EIB investments remain in EU countries, where roughly 87% of EIB business takes place. If the activities of the EIB outside the EU are comparatively small, they are constantly increasing and represent a significant amount considering the enormous portfolio of the EIB[28]. Additionally, the EIB will be playing a stronger role in Africa, Asia and Latin America in the coming years, especially in the current context of the economic crisis, where the EIB has been asked to lend more quickly and flexibly by May's General affairs and external relations Council. Its general portfolio will increase by approximately EUR 20 billion in additional loans in 2009. [29]

The EIB positions itself as a key development actor in Africa as this brief selection of comments makes clear *"The European Investment Bank has been a development partner in most Africa, Caribbean and Pacific (ACP) countries for some 30-40 years. The EIB also supports investment in 20 Overseas Countries and Territories (OCTs)." (...) "The EIB's overriding aim in these regions is to support projects that deliver sustainable economic, social and environmental benefits whilst ensuring strict accountability for public funds"*[30].

Much EIB lending outside the EU, in accordance with the Cotonou Agreement, is directed towards African, Caribbean and Pacific (ACP) countries. The Cotonou Agreement states that the EIB shall "act in accordance with the objectives of this Agreement" – defined as "reducing and eventually eradicating poverty consistent with the objective of sustainable development and the gradual integration of ACP countries into the world economy".

Fundamental principles enshrined in the agreement include ownership of development strategies, participation of a wide range of non-state actors including civil society, the pivotal role of dialogue and mutual obligations and respect for regional differentiation. Other elements include respect for human rights, democratic principles, and the rule of law, as well as contributing to a stable political environment, the sustainable and equitable development of productive resources and essential services and justice.[31]

The EIB states that its goals in these regions are aligned not only with the ACP-EC Partnership Agreement (the Cotonou Agreement), but also with the European Consensus for Development and the United Nations Millennium Development Goals. The EIB sees ACP as a growing region for investments. The rising trend of oil and other commodity prices in recent years and the sustained growth in many of the countries increased private investors' interest in Africa before the global economic crisis forced a rethink. Now the EIB is meant to be part of the solution in getting private finance flowing again into these regions.

This study produces an initial assessment of three categories of EIB financing in the last five years:

- The participation of the EIB in private equity funds
- Loans to specific projects linked to tax havens
- Financial intermediary loans.

EIB loans to developing countries

Some specific projects funded by the EIB in Africa include funding for several investment and private equity funds. Through such investments the EIB not only participates in the different funds, but also supports the involvement of other private investors by signalling its confidence in the funds.

27 www.eib.org/projects/loans/index.htm
28 In 2006, the EIB invested almost EUR 6 billion outside the EIB while the IFC, that has a comparable type of activity at the World Bank, invested less than EUR 5 billion.
29 Council conclusions on Supporting developing countries in coping with the crisis, May 2009. Available at: www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/gena/107918.pdf
30 In 2006, the EIB invested almost EUR 6 billion outside the EU, while the IFC, that has a comparable type of activity within the World Bank, invested less than EUR 5 billion.

31 Bankwatch. "The European Investment Bank's role in development" See: http://bankwatch.org/documents/eib5_fact_sheet_11_03.pdf

Private equity funds – a good model for development finance in Africa?

Many of the projects funded by the EIB in the ACP region involve so called alternative financing partners, namely investment funds, venture capital funds and private equity funds. Private equity funds usually target companies operating in markets that are in the process of liberalisation, boasting high growth rates. They also seek for "commercially acceptable" returns, which are in general between 20 and 30%. As a result, investors will generally prefer to invest in the financial sector rather than in the real economy directly.

This "alternative investment" is becoming increasingly used in Africa, particularly in Ghana. As Oxford business group[32] explains, "Ghana provides an interesting case, showing the effectiveness and impact of tax incentives on private equity. Indeed, dividends for private equity firms are taxed at lower rates, reflecting the higher risks associated. Now discussions are under way at the UEMOA[33] level to reduce the level of taxation on private equity investment in other Western Africa countries." The article adds that the region's central bank is developing a regulatory framework for private equity that would entail a reduction on tax on interest, commissions and other fees collected. It can be deduced from this that one of the key objectives of these alternative investors is to minimise the taxes paid in order to maximise returns, which is in contradiction with the development objective of mobilising domestic resources.

Private equity funds have been strongly criticised by many analysts for their damaging impact on economies and also for the role they've played in the financial crisis with their highly leveraged and speculative short term behaviour.[34] Private equity funds create and manage funds to gain partial or full control of companies. This is often done through the use of leverage, meaning that they borrow additional resources from banks to finance their acquisitions. They often then transfer the debt to the acquired company. Their aim is to "extract" as much value as possible from the acquired company, then to sell it back onto the market realising the highest possible profit. Typically a private equity fund owns a company for a period of 3-5 years, quite often for less time. This behaviour has popularised them as "financial locusts".

Like hedge funds, private equity funds are generally based in low tax and low regulation jurisdictions. As expressed by former Danish prime minister Paul Rasmussen, "Nobody wants to demonise private equity and hedge funds and venture capital's investment in innovative and high-risk new companies. But this accounts for only a minor part (5%) of the private equity industry. (...) The largest part of the industry (60%) is based on leveraged buy-outs and extreme debt."[35]

32 www.oxfordbusinessgroup.com/weekly01.asp?id=4140
33 Union Economique et Monétaire Ouest Africaine.
34 See Eurodad (2008): "Addressing development's black hole. Regulating capital flight", May 2008, at: www.eurodad.org/uploadedFiles/Whats_New/Reports/Capital_flight_report.pdf
See also WEED (2008) Superstars In the Emperor's New Clothes - Hedge Funds & Private Equity Funds. What is at Stake? At: www2.weed-online.org/uploads/hedge_private_equity_funds.pdf
35 "Taming the private equity locusts", The Guardian, Thursday 10 April 2008. www.guardian.co.uk/commentisfree/2008/apr/10/tamingtheprivateequitylo

African Lion Mining Fund, a private equity fund supported by the EIB[36]

African Lion, consists of three specialist mining funds, AFL, AFL2 and AFL3. It has been established to identify, assess and invest in resource projects in Africa. It is based in Australia and Zambia. African Lion defines itself as "a patient equity investor backed by quality shareholders who have the ability to co-invest and provide equity, debt or mezzanine finance".

The latter is considered as an aggressive type of finance that generally seeks high returns of between 20 and 30%.[37] Its objectives therefore don't seem to match development objectives on the African Continent but rather big and quick profits. African Lion also invests in commodities such as precious metals, base metals, industrial minerals and bulk commodities. The Lion Fund's development dimension seems far removed from its priorities.

UNCTAD also comes to the conclusion that private equity funds in developing countries are questionable players: "Investments by private equity firms are often more akin to portfolio investment than to FDI, in that they tend to have relatively short time horizons. This has raised some concerns regarding the impact of such investments, in particular as regards the dismantling of the acquired companies and worker layoffs.[38]

The finance model supported by the EIB is one that fosters tax competition in African countries and also a competition to generate higher returns on investments. This model risks generating serious concerns from a sustainable development perspective. On top of this, given the very worrying precedents of the private equity model at a bigger scale, private equity funds and other investment funds in small and medium enterprises should be very cautiously monitored to prevent similar speculative behaviours. Their strong appetite for high short term returns lead us to conclude that private equity funds tend to support aggressive tax avoidance strategies, through their use of tax havens.

36 www.eib.org/projects/loans/2008/20080031.htm
37 Mezzanine financing is debt capital that gives the lender rights to convert to an ownership or equity interest in the company if the loan is not paid back in time and in full. It is generally subordinated to debt provided by senior lenders such as banks and venture capital companies. Since mezzanine financing is usually provided to the borrower very quickly with little due diligence on the part of the lender and little or no collateral on the part of the borrower, this type of financing is aggressively priced with the lender seeking a return in the 20-30% range. See: www.investopedia.com/terms/m/mezzaninefinancing.asp
38 UNCTAD (2007) "World Investment Report, 2007. Transnational Corporations, Extractive industries and Development", p. 17.

EIB-backed investment funds in Africa

Over the past five years the EIB has funded a total of 11 financial sector projects in the ACP and OTC region, for a global amount of around EUR 210 million – this has involved six beneficiaries[39]. The lion's share of the global amount (EUR 196 million) is allocated to one beneficiary, European Financing Partners. The African Lion Mining Fund (see box in the above section) has received EUR 7 million, Advans SICAR EUR 3.5 million and Shorecap international Ltd. EUR 2.5 million.

Most of these funds use tax havens in their investment strategies:

EDFI-European Financing Partners[40]

The European Investment Bank and the European Development Finance Institutions (EDFI)[41] established European Financing Partners (EFP) as "a joint venture for financing private sector operations in Africa, the Caribbean and the Pacific. EFP funds private sector projects presented by members of EDFI for (reimbursable) private sector development finance".[42] EFP is a private limited liability company whose secretarial and accounting services are provided by the EDFI secretariat in Brussels, while its statutory tasks are undertaken in Luxembourg. More than half of EFP's funds are provided by the EIB and the rest by 12 national EDFI members[43], many of which are directly involved in other EIB projects.

The following two EDFI members generally use tax havens in their investment strategies, which leads us to conclude that other members may use them as well.

One example is UK based development fund, Commonwealth Development Corporation (CDC). In its 2007 annual report it states "our mission is to generate wealth, broadly shared, in emerging markets, particularly in poorer countries, by providing capital for investment in sustainable and responsibly managed private sector business". It also proudly announces that at least 70% of its investments are made in the poorer countries of the world and at least 50% in Sub-Saharan Africa and South Asia. But when looking at its annual report for 2007, one can see that most of its subsidiaries in Africa are based in the tax haven of Mauritius. In Latin America, its two subsidiaries are both based in tax haven Barbados and its only subsidiary in Asia is based in another tax haven, Malaysia.

Another example is Norwegian development Fund Norfund, which uses tax havens like Mauritius, the Cayman Islands, the British Virgin Islands, the Bahamas, Panama and Seychelles for its regional investments in Africa. Following pressure on this, Norfund has recently been banned by Norwegian Development Minister Mr. Eirk Solheim from any new investment in tax havens, accepting the logic that development funds should not support tax evasion.[44] This ban applies to all tax havens outside OECD unless they have an agreement with Norway about exchange of information on tax issues. Most of Norfund's investments in tax havens have been going via Mauritius. One of the major reasons for this is to keep transaction costs low and to avoid double taxation. Indeed, Most European countries have signed tax treaties with Mauritius but not with other African countries.

The Norwegian government has recently released a report[45] that highlights the damaging effects of tax havens like Mauritius in developing countries. These are namely: the loss of tax revenues by developing countries, the contribution to maintain tax havens by providing them with income and legitimacy which, in turn, contributes to lower growth in poor countries, and the contribution to money laundering and tax evasion.

Among its recommendations, the report outlines the following:

- considering whether Norwegian multinational companies should be required to submit more detailed annual statements,
- improving the rules for transfer pricing,
- establishing a Norwegian centre of expertise on tax evasion,
- developing networks with a view to increasing international pressure,
- changing tax agreements to ensure that it is a company's real business that decides in which country it is subject to taxation,
- negotiating an international convention to combat the harmful structures in tax havens,
- supporting efforts to develop new international standards for sound taxation practices under the auspices of the Organisation for Economic Co-operation and Development (OECD).

The report also recommends Norfund to prepare a set of ethical guidelines on the choice of the investment location and on how Norfund should report its operations.

The report responds to the cost-effectiveness justification for the use of tax havens by explaining that the use of tax treaties does not eliminate the damaging effects caused by tax havens.

39 Author's calculation on EIB information disclosed on projects financed up to early May 2009.
40 www.edfi.be/efp.htm
41 EDFI gathers bilateral development finance institutions of the European Union Member States.
42 www.eib.org/projects/press/2003/2003-123-eu-financing-for-private-sector-in-africa,-caribbean-and-pacific.htm
43 BIO (Belgium), CDC (United Kingdom), COFIDES (Spain), DEG (Germany), FINNFUND (Finland), FMO (the Netherlands), IFU (Denmark), NORFUND (Norway), OeEB (Austria), PROPARCO (France), Sifem (Switzerland) and SWEDFUND (Sweden).

44 "Solheim confirms Norfund's tax haven ban". In "Development Today". N° 3/2009.
45 Commission on capital flight from developing countries. "Tax havens and development. Status, analyses and measures". Report from the Government Commission on Capital flight from Poor Countries. Appointed by Royal Decree of 27 June 2008. Submitted to Erik Solheim, Minister of Environment and International development, on 18 June 2009. See: www.regjeringen.no/en/dep/ud/press/News/2009/pm_taxhavens.html?id=567661

"Tax havens are made attractive to foreign companies and investors through the combination of virtually zero tax and the benefit of tax treaties which reduce the tax burden on investments in third countries. The tax planning aspect which the use of tax havens involves runs counter to Norfund's goal of paying full tax on its investments in Africa. The (...) use of tax havens in general conflicts with the overall goals of Norway's development assistance policy, including opposition to corruption and contribution to economic development".

The report goes on, "signing a tax treaty with such jurisdictions does not lead to the establishment of official company and owner registries with a duty to keep accounting information, or the introduction of substantial genuine audit provision." It adds that tax treaties do not provide an incentive to "exercise control over the extensive opportunities for misuse offered by the exemption system".

Advans SA SICAR (EUR 3.5 million)[46]

Advans SA SICAR is a venture capital investment company ("Société d'Investissement en Capital à Risque" or "SICAR") based in Luxembourg, which is considered a tax haven by many analysts.[47] Its 2008 annual report explains that "Advans's modus operandi is to invest as lead shareholder in the creation of financial institutions targeting MSMEs, commonly known as microfinance institutions (MFIs). In addition to equity and debt funding, Advans provides technical assistance to turn these institutions into sustainable and profitable operations".

Looking more in detail at the institutions involved in this company, one finds that Advans Cameroun, set up in August 2006 by Advans, SGBC is in fact the Cameroonian subsidiary of the Société Générale Group. Similarly, Advans Ghana was incorporated in 2007 with Advans as majority shareholder involving SG-SSB (the Ghanaian subsidiary of the Société Générale Group) as co-investor.

Shorecap International Ltd.

Is a private equity investment company that supports micro finance institutions and small businesses banks in developing countries. It is incorporated in the Cayman Islands.[48] More than 70% of SCI's portfolio is private equity and, in 2007, its average return on equity was 21.0% across the portfolio.

Among the main shareholders of SCI we can find some public actors such as the EIB, the Asian Development Bank, The International Finance Corporation (part of the World Bank Group), the Belgian, UK, Dutch and Finnish development funds, the government of Luxembourg and the Swiss development agency. We can also find some private ones like ABM AMRO bank.

46 www.advansgroup.com/fileadmin/user_upload/Annual_reports/0810_RA_AdvansSAWeb.pdf
47 See list in the appendix.
48 www.mixmarket.org/en/supply/supply.show.profile.asp?ett=1214

Mauritius – a development partner or a laundered tax haven?

Mauritius is the biggest foreign investor in India. Together with Cyprus, both countries account for nearly half of India's foreign direct investment (FDI) and portfolio flows. Most of this investment is related to so called "round tripping" practices by which companies in India shift profits to a tax haven (in this case Mauritius) and invest back in India, as foreign investors with tax favourable conditions. India has been trying to renegotiate its treaty with Mauritius for the past few years but round tripping it remains a very hard task to tackle[49].

All companies in Mauritius, whether resident or non resident, are taxed only on their net profits earned in Mauritius. There are no capital gains taxes, and stocks and bonds in publicly traded companies and private companies can be sold tax-free. The tax system in Mauritius is designed to make it a regional warehouse and re-export centre to Africa.

Despite being blacklisted by the OECD for years and still considered as a tax haven by many analysts, Mauritius is now part of the OCED's white list of countries that have "substantially implemented internationally agreed tax standards". But there are many reasons to believe that Mauritius still poses serious problems in terms of secrecy and harmful tax competition.

The justification for the use of Mauritius in the investment strategies in the African region is to secure cost effective handling of transactions, a good and stable legal framework and to avoid unnecessary taxation in third countries. But, as explained in the Norfund case above, the use of tax havens contributes to tax revenue losses in developing countries and therefore is contrary to development goals (namely the mobilisation of domestic resources) in the region. Indeed Mauritius has signed tax agreements with most African countries and these agreements reduce the withholding tax that can be levied by the latter. This is because the country given the right to tax is the one where the taxpayer is domiciled. Furthermore, the existing tax agreements with Mauritius do not prevent the use of damageable structures in this jurisdiction that foster tax evasion and other illicit practices.

The following features are drawn from the Norwegian government's report on tax havens and development.

Mauritius has special regulations for foreign companies that only operate in third countries. These companies benefit from a large number of exemptions, including from the duty of redemption and obligation to indemnify, from the requirement to prepare annual reports and from official inspection of the company and corporate documents. In some cases, companies are also

49 http://www.business-standard.com/india/news/crackdowntax-havens-not-to-yield-much-for-india/354277/

exempted from accounting obligations and from the obligation to use an auditor. But even in cases where companies prepare their accounts, these are not accessible to the public. Furthermore, penalties and sanctions are very low.

The secrecy provided by Mauritius to foreign companies implies also that contractual partners of the company in third countries, creditors and so forth will have no access to the company's operations.

According to the IMF's annual portfolio investment survey, portfolio investments in Mauritius as of 31 December 2007 totalled USD 155 billion. This is much higher than the figure of just over USD 13 billion from the Bank of Mauritius. The difference, according to the Norwegian report on tax havens and development, can probably be explained by the fact that the Mauritius central bank figures do not embrace all the assets in foreign companies, due to the lack of accounting requirements.

Regarding tax regulations, Mauritius has a dual tax regime: one for nationals and another one for foreigners, with lower taxes and reduced reporting requirements. Foreigners pay no tax on capital gains, wealth or royalties nor are they charged with withholding taxes when they transfer money from Mauritius to their country of domicile.

In order to minimise corporate taxes, those foreign companies that are obliged to pay them (others are simply exempted) can credit tax paid abroad – even if it is hypothetical – against their liability in Mauritius. Even if they don't present documented evidence of taxes paid abroad, they receive an automatic discount which corresponds to up to 80% of the nominal tax rate.

Most African countries which tax capital gains apply a 30-35% rate. However, tax treaties assign the right to tax capital gains to the country of domicile (Mauritius). The tax treaties also contribute to reducing withholding taxes on dividends.

The Norwegian government report concludes: "The lack of real activity in these companies makes the use of the domiciliary principle as the basis for the tax treaties extremely dubious. In reality these are shell companies and funds to which Mauritius offers a location for a nominal fee to the government and for very low taxes protected through tax treaties. This is an example of a harmful structure, whereby Mauritius offers investors the opportunity to establish an additional domicile which allows the investor to exploit (...) a virtually zero tax regime. In reality, the source country is robbed of tax on capital income through this type of structure, while the tax-related outcome for the investor is very favourable".

Who are the EIB's clients in 2008/2009?

Many EIB projects to be financed in ACP states as of 2008/2009[50] involve investment funds based in tax havens, indicating that this phenomenon is still not a thing of the past. Again it is disturbing and contradictory that some of these funds are intended to foster development while they in fact undermine developing country states, especially at a time when almost all governments are facing dramatic financial difficulties.

Africinvest Ltd.[51]

The EIB signed a EUR 20 million project on December 2008 with Africinvest Ltd., managed by **Mauritius** based AfricInvest Capital Partners. It focuses on the growth and expansion of small and medium-sized enterprises (SME) in primarily Sub-Saharan West and East Africa. Africinvest is an affiliate of Tuninvest Finance Group,[52] a private equity fund active also in leveraged buy outs. It seeks an average 20% rate of return on investments. Other shareholders of this EIB beneficiary are European development funds FMO and BIO.

Adlevo Capital Africa[53]

In October 2008, the EIB signed a EUR 30 million contract with Adlevo Capital Africa, a **Mauritius** based private equity fund focusing on technology companies operating in sub-Saharan Africa. Mr. Plutarchos Sakellaris, EIB Vice President responsible for lending operations in ACP region, said "We hope this operation will act as a catalyst to develop private equity and foreign direct investment in the region".[54] Does this mean that investments in Africa through tax havens is the model to develop in the region?

Aureos Africa Fund[55]

The beneficiary of a EUR 27 million EIB project designed to make equity investments in companies operating in Africa. Aureos Africa Fund is part of Aureos Capital limited, a joint venture between UK fund CDC and the Norwegian Investment fund Norfund. As stated on Aureos' website: "Aureos has effected 130 exits and the realised and unrealised cash multiple is expected to be around 1.98 times bookvalue".

The Aureos funds seem to do good business in Africa. They have invested USD 130 million in companies across the African continent and have realised almost USD 77 million in cash, equivalent to almost 60% of the total invested capital. "Aureos is on course to achieve cash multiple in excess of 3.5 x on these Funds". Aureos Africa Fund is based in **several African countries** and also has a branch in **Mauritius**[56].

50 www.eib.org/projects/pipeline/index.htm
51 www.africinvest.com/index.html
52 www.tuninvest.com
53 www.eib.org/projects/loans/2008/20080123.htm
54 www.eib.org/projects/press/2008/2008-095-eib-invests-usd-20-m-to-support-small-technology-companies-in-africa.htm
55 www.eib.org/projects/loans/2008/20080111.htm
56 www.aureos.com/our-funds/africa-funds.php

Aureos capital also publicly states that its investment principles include "sustainable profits", meaning internal rates of return of at least 15-20% in dollars. Among their principles is "reducing risk". In order to achieve this they "endeavour to achieve returns in the early stages of a fund's life by focusing not solely on capital gains but also on yield from healthy cash flows". While this all sounds, indeed, very attractive for short term profit- seeking investors, it is not so from a development perspective that requires long term investments that prioritise the generation of stable and decent jobs rather than 20% return rates.

Atlantic Coast Regional Fund[57]

Part of Advanced Finance & Investment Group LLC (AFIG[58]), a private equity and fund management company founded in 2005 in **Mauritius**. Even if this EUR 15 million project falls into the EIB's development objectives under the Cotonou Agreement, the beneficiary seems to have rather different objectives in mind.

Its website reads: "The Fund will target strong growth companies operating in West and Central Africa, preferably with a regional scope. ACRF will consider investments in all sectors, with particular focus on industrial firms, financial institutions and companies investing in infrastructure and other related sectors. Target companies will be mature and cash-flow generative companies operating in sectors with high entry barriers and/or enjoying market dominance". It also makes it even more clear by stating: "ACRF will be able to generate a net annual return on investment rate of 20% to 25% in $US. This corresponds to more than x2 of the capital invested on behalf of the Fund shareholders."[59] Among its investment criteria we can find the "capacity for annual revenue growth of at least 30%, either internally or through acquisitions to achieve competitive economic scale".

Is this in any way related to the EIB's development objectives of delivering *sustainable economic, social and environmental benefits*? At least on the economic side, yes, we can applaud the EIB for supporting the generation of juicy benefits, but for whom? Even should all the benefits be reinvested in other projects in the same countries, this pressure on high return rates can hardly be compatible with socially sustainable projects.

AfriCap[60]

Established in 2001 AfriCap[61] is a **Mauritius-based** investment company operating out of Johannesburg and investing solely in microfinance and microfinance related industries throughout Africa. The EIB funded this entity up to EUR5 million in 2007. The project description is an equity participation in a regional investment company specialising in the creation and acquisition of microfinance institutions.

57 www.eib.org/projects/loans/2006/20060308.htm
58 www.afigfunds.com/about-afig.htm
59 www.afigfunds.com/fonds.htm
60 www.eib.org/projects/loans/2006/20060099.htm
61 www.africapfund.com/pages/

Leapfrog investments[62]

The EIB approved a EUR 20 million project[63] with LeapFrog Investments, a global investment firm based in **Mauritius** and focused on insurance businesses and the related financial needs of low-income people in developing countries. LeapFrog's target countries include fast-growing markets such as India, Pakistan, South Africa, Ghana and Kenya.

EMP Capital[64]

EMP is a world-wide private equity firm active in both developed and developing markets and across many industrial and commercial sectors. EMP's initial focus has been investments in "infrastructure" in emerging market economies. Over time it has expanded this focus to heavy industry, mining, oil and gas and basic materials. EMP's main offices are based in Washington, **Brunei**[65], **Hong Kong** and **Bahrain**[66]. This investment company has also had very close links with AIG, today very well known for its risky speculative positions in the financial markets. Until 2005 "AIG held a minority stake in EMP and served as sponsor of, as well as a major investor in, a number of funds bearing its name for which EMP serves as Principal Adviser".[67]

Microfinance Enhancement Facility SA[68]**. SICAV**[69]

The Microfinance Enhancement Facility (MEF), created by the International Financial Corporation (IFC), a member of the World Bank Group and German development bank KfW, is expected to provide refinancing to more than 100 microfinance institutions in up to 40 countries[70]. MEF is based in **Luxembourg** and Credit Suisse has been appointed custodian and administrative agent.

REGMIFA

The Regional Micro Small and Medium Enterprises Investment Fund for Sub-Saharan Africa[71] was initiated at the 2007 summit of the G8, held in Heiligendamm, Germany, and promulgated in the summit's declaration "Growth and Responsibility in Africa". Its main objective is to provide refinancing to qualified microfinance institutions in Africa. The facility is managed by Blue Orchard Finance, Cyrano Management, and ResponsAbility Social Investments, all of them based in tax havens:

62 http://www.leapfroginvest.com/investment.php
63 www.eib.org/projects/pipeline/2008/20080456.htm
64 www.empglobal.com/index.xml
65 www.offshore-fox.com/offshore-corporations/offshore_corporations_0414.html
66 taxhavenco.com/bahrain.html
67 www.empglobal.com/1132.xml
68 www.eib.org/projects/pipeline/2009/20090021.htm
69 http://devex.com/projects/microfinance-enhancement-facility-project-in-acp-states-worldwide
70 www.symbiotics.ch/en/latest_news.asp?id=b1476
71 www.eib.org/projects/pipeline/2009/20090010.htm

Blue Orchard Finance

BlueOrchard is the world's leading commercial microfinance intermediary, providing loans to microfinance institutions through its subsidiary BlueOrchard Finance S.A. and investing in the equity of microfinance institutions and microfinance network funds through its subsidiary BlueOrchard Investments S.A. Both of them are based in **Switzerland**, in Geneva.[72]

Cyrano Management

A corporation, based in **Panama**,[73] that specialises in financial institutions and investment funds that service small businesses.

ResponsAbility Social Investments

ResponsAbility's products invest in developing countries across a variety of themes such as microfinance, SME financing, fair trade and independent media. Most investments are made in the form of loans and private equity. The fund is based in Zurich, **Switzerland**[74].

Major EIB financial intermediaries in the ACP region

On top of funding specific projects, another key element in the EIB's funding is its channelling of money through so called 'Global loans', which are credit lines provided to intermediaries (banks, leasing companies, or financial institutions), which in turn give loans to local authorities or SMEs for new capital investment projects worth up to EUR 25 million.

Global loans represent up to 30% of EIB lending and to date very little is known about how, ultimately, the financial intermediaries use this significant portion of the EIB's portfolio and for which specific operations. The table below provides some examples of financial intermediaries in the ACP region that are receiving EIB funding.

Some major financial intermediaries benefiting from EIB funding in the ACP region are indeed closely linked with major European banks. This would suggest that the EIB is therefore supporting European firms under its development cooperation objectives. As explained in the box below, most of these banks use tax havens in their investment strategies for tax purposes.

Intermediary	Country	Link with European TNC
Société Générale de Banques au Burkina (SGBB)	Burkina Faso	Member of the Société Générale Group
Banque Internationale pour le Commerce, l'Industrie et l'Agriculture (BICIAB)	Burkina Faso	Part of the BNP Paribas group
Leasafric* * www.leasafric.com/company/index.php	Ghana	Majority owned by C & I Leasing Plc, Nigeria, provides leases and ancillary services to both local affiliates of international companies such as Cadbury, Heineken, Shell, Chevron, ExxonMobil, ENI-Agip, and MTN. The company is also owned by Aureos Wes Africa Fund (see above)
Barclays Bank	Ghana	Barclays Bank
Société Générale	Ghana	Société Générale
Société Générale de Banques au Sénégal (SGBS)	Senegal	Société Générale
Crédit Lyonnais Sénégal (CLS)	Senegal	Crédit Lyonnais
Barclays Bank of Uganda Ltd	Uganda	Barclays Bank
Indebank	Malawi	INDEbank tranformed into a commercial bank in 2002. In 2005, TransAfrica Holdings of Mauritius and Press Trust acquired majority interest in the Bank and together with Admarc Investments own 100% of INDEbank Limited.

Source: EIB website

72 www.blueorchard.com/jahia/Jahia/pid/40
73 www.cyrano-management.com/english/pdf/cyrano_management_prospectus.pdf
74 www.responsability.com/site/index.cfm?id_art=44183&vsprache=EN

Country	Beneficiary	N° of loans over the past 5 years	Amount in €	Total EIB loans for the country in €
UK	Barclays Bank	9	1.5 billion	18.8 billion
UK	Royal Bank of Scotland	4	813 million	
France	BNP Paribas	8	1.6 billion	21.6 billion
France	Société Générale	10	1.55 billion	
The Netherlands	ING	1	200 million	3.9 billion
TOTAL	5	32	**5.66 billion**	**44.3 billion**

Source: EIB 2009

EIB loans in the EU

Some EIB loans to major European banks include banks that have been involved in recent scandals linked to illicit tax practices.

Barclays Bank was recently in the spotlight for a scandal concerning the use of tax havens for tax evasion purposes. Leaked documents have showed executives from Barclays' structured capital markets division seeking approval for a 2007 plan to sink more than USD 16 billion into US loans which would generate profits via an elaborate circuit of Cayman Islands companies, US partnerships and Luxembourg subsidiaries.[75]

The Royal Bank of Scotland has also been involved in complex international tax-avoidance schemes. According to information obtained by the Guardian, these schemes have cost the British and US treasuries more than GBP 500m in lost revenue.[76]

BNP Paribas is the French firm with the most branches/affiliates based in tax havens (189), and **Société Générale** follows in eighth position with 57 affiliates in tax havens.[77]

ING Bank is the top user of tax havens in the Netherlands, with more than 2600 subsidiaries, according to recent research[78].

The top tax haven users from the UK, France and the Netherlands have received a total of EUR 5.66 billion in EIB funds in the last five years.

According to these calculations, around 12% of EIB funds allocated to the three countries above have gone to these five banks, all of them highly suspected (and in some cases convicted) of being involved in tax avoidance and tax evasion schemes. Indeed a March 2009 study by Tax Justice Network – based on a survey of 97 of the largest UK companies quoted on the stock exchange – finds that "without exception banks are the biggest users of tax havens. Barclays, ING and BNP Paribas take top place respectively in the UK, Netherlands and France."[79]

EIB backing for European transnational corporations

The problem of transnational corporations practicing abusive transfer pricing and similar approaches that allow them to minimise their tax burden is long-standing. Now that some 60% of world trade takes place within multinational companies the problem has become acute.

A recent Christian Aid study estimates that poorer countries lose USD 160 billion a year. Christian Aid points out that "If that money was available to allocate according to current spending patterns, the amount going into health services could save the lives of 350,000 children under the age of five every year".[80] An example of the problems is the Nigerian oil industry. In 2007 Nigeria lost GBP 501 million from its burgeoning mineral fuel and oil industry. The sum was lost through the artificial lowering of the final sale price in order to minimise the tax liability in Nigeria. These sort of transfer pricing practices are generally used by tax havens.

Trade mispricing and tax losses to developing countries

The following table shows some examples of losses to poor countries as a result of trade mis-pricing, largely practiced by transnational corporations. The countries chosen are among those that are hosts to EIB projects mentioned in this study. According to Christian Aid research[81], the total lost tax revenue from developing countries to the EU and the US between 2005 and 2007 is conservatively estimated at nearly GBP 2 billion for low income countries. Nigeria, Ivory Coast, Ghana, Kenya, Chad and Senegal are all in the top ten lost tax revenue countries for that period.

This means that much needed resources for poor countries are flying out through transfer pricing from transnational corporations. This problem should be seriously addressed and strong measures should be implemented at the European level in order to prevent EU investments and lending policies permitting these illicit practices that jeopardise development cooperation efforts.

74 www.guardian.co.uk/business/2009/mar/16/revenue-investigates-barclays-tax-mole-claims
75 http://www.guardian.co.uk/business/2009/mar/13/rbs-tax-avoidance
76 www.alternatives-economiques.fr/paradis-fiscaux---le-cac40-et-les-paradis-fiscaux_fr_art_633_42326.html
77 http://www.taxresearch.org.uk/Documents/Whereonearth.pdf
78 Tax Justice Network (2009), p. 7. "Where on earth are you? Major Corporations and Tax Havens". Available at: www.taxjustice.net

80 Christian Aid, 2009. False profits: robbing the poor to keep the rich tax-free. At: www.christianaid.org.uk/Images/false-profits.pdf
81 Christian Aid. "False profits: robbing the poor to keep the rich tax-free", March 2009.

Country	Capital flow resulting from bilateral trade mispricing from non-EU countries to EU countries (million €) 2007	Tax loss (million €) 2007
Burkina Faso	6.16	2.15
DRC	20.25	0.81
Ghana	121.86	42.65
Nigeria	287.76	92.08
Senegal	38.23	12.61
Uganda	20.41	6.12
Zambia	3.94	1.38

Source: Christian Aid, 2009

Below are a few examples of some European transnational corporations that are benefitting from EIB funds to invest in Southern countries. As the EIB's safeguards are not strict enough (see section 3, below) it is likely that some of the companies listed below are evading taxes using EIB money. The fact that most TNCs use tax havens and transfer pricing in order to escape taxes gives great cause for concern.

Automobile Electronics Plant: Continental Automotive systems Costa Rica S.A [82]

The EIB has approved a project with this beneficiary with the aim to support EU presence in Latin America through foreign direct investment. The beneficiary is a subsidiary of German TNC Continental AG[83], the world's fourth largest manufacturer of tyres for cars, trucks, bicycles, and agricultural products and one of the top five automotive suppliers in the world.[84] Continental's Automotive Systems division[85] is its largest segment and makes electronic brake and traction control systems, chassis and powertrain products, and hydraulic brake systems. The company's headquarters are based in Germany but it has subsidiaries all over the world.[86]

Telefonica Móviles Colombia[87]

The beneficiary of a EUR 100 million EIB project[88] for investment in a new mobile phone network operating in the GSM standard. The **affiliate in charge of investment activities is based in Panama** for investment purposes.

Volkswagen India Private Limited[89]

In April this year, the EIB approved a EUR 100 million project in India with Volkswagen. The project is intended to contribute to foreign direct investment in India and strengthen the presence of EU manufacturing companies in the region. Volkswagen is one of the world's leading automobile manufacturers and the largest carmaker in Europe.

82 www.eib.org/projects/pipeline/index.htm
83 http://report.conti-online.com/index_en.html
84 http://en.wikipedia.org/wiki/Continental_AG
85 www.conti-online.com/generator/www/de/en/continental/automotive/general/home/index_en.html
86 www.conti-online.com/generator/www/de/de/continental/automotive/general/download/daten_fakten_pt_en.pdf
87 www.movistar.com.co/sitio/descargables/informe_Anual2007.pdf
88 www.eib.org/projects/press/2006/2006-088-telefonica-colombia.htm
89 www.eib.org/projects/pipeline/2009/20090004.htm

It is present all around the world, including in some prominent tax havens such as: Bahamas, Barbados, Bermuda, and the Cayman Islands.

Some controversial infrastructure projects in Africa funded by the EIB and linked with tax havens

The following cases are examples of projects financed by the EIB that have been pointed out by NGOs not only for their negative environmental and social impacts but also for their link with tax havens and financial structures whose interests are remote from development purposes and are rather linked to speculative actions.

Tenke-Fungurume copper/cobalt mine in DRC: the EIB agreed a preliminary commitment up to EUR 100 million in August 2007. The project involves the Tenke Holding Ltd./Lundin Holding, registered in tax haven **Bermuda**.

The West African Gas Pipeline from Nigeria to Ghana: the project involves the West African Gas Pipeline Company Limited (WAPCo). The company was established by the governments of the four countries as a public-private partnership and is owned by: Chevron-Texaco, Nigerian National Petroleum Corporate, Shell Overseas Holdings Limited and Takoradi Power Company Limited. WAPCo is registered in **Bermuda**, and will operate as an offshore company with major fiscal, environmental and social exemptions specifically allowed through the WAGP Treaty and Enabling Legislations.[90]

The Mopani copper project in Zambia: financed by the EIB with a EUR 48 million loan in 2005. The project involves Mopani Copper Mines plc., which is majority owned by Carlisa investments Corporation, based in the **British Virgin Islands**.

The Bujagali Hydroelectric Dam project in Uganda: the EIB invested USD 136 million in 2007 and the beneficiary was Bujagali Energy Limited, which, according to EIB communication, "is owned by Industrial Promotion Services (Kenya), an investment company of the Aga Khan group and by Bujagali Holdings Ltd., a special purpose company affiliate of the US-based power plant developer Sithe Global Power LLC, majority owned by Blackstone SGP Capital Partners (**Cayman**) IV LP, an affiliate of the Blackstone Group".

90 www.foei.org/en/publications/pdfs/wagp-inet.pdf

3. Mind the gaps: assessing EIB policies and procedures to guard against tax evasion

Concerns about the EIB's policies and procedures to guard against tax evasion and avoidance have been raised by NGOs with the EIB in an exchange of letters and a meeting between March and May this year.

In their initial letter to EIB president Philippe Maystadt, the NGOs asked for a response to the following question: "What is the precise EIB policy on ensuring that the companies which receive EIB support do not participate in tax evasion via offshore centres?" The EIB has responded, including through a press release issued on 27 May.

Maystadt also announced at the end of June that the EIB strengthened policy would "make loan signature conditional on firms first relocating out of jurisdictions that do not meet international standards on the sharing of tax information".

It is promising that the EIB is prepared to engage in this debate and is conducting a review, but it has a long way to go to achieve sufficient policies and practices to ensure its funding is not supporting companies that engage in tax evasion and avoidance.

EIB policy on potential fraud, corruption and tax evasion

On March 2009 the European Parliament adopted a resolution regarding the annual reports of the EIB and the European Bank for Reconstruction and Development.[91] The adopted text stresses that the EIB should pursue a zero tolerance policy in regard to fraud and corruption. This is indeed what the EIB says it practices. In its recent letter to Counter Balance, Eurodad and Tax Justice Network, the EIB says "it is committed to ensuring that its loans are used for the purposes intended and its operations are free from prohibited practices, money laundering and terrorist financing; and applies a zero tolerance policy to such practices".

The European Parliament raised a concern that EIB policies on these issues *"appear to remain largely passive"*. EIB staff interviewed for this study naturally object to this characterisation, saying that they have effective policies in place. While the EIB does seem to be improving its guidelines and putting some energy into improving the application of its procedures, there is still a long way to go to shake off comments such as those from the European Parliament.

In its 2006 guidelines on fighting corruption, fraud, money laundering and financing terrorism, the EIB summarises the main points of its current strategy on this area. The EIB declares that is has *a zero-tolerance policy where credible evidence of fraud, corruption or money laundering exists in connection with EIB financed projects*.[92] These guidelines are supposed to ensure that the bank does not support or undertake any project, structure or investment intended to permit fraud.

The three specific elements of the EIB's policy most relevant to this study are:

- a ban on helping to finance structures that could be conductive to tax evasion and would for that purpose use the jurisdiction of a country identified as a tax haven or as a non-cooperative country;
- vigilance, by requiring documentary checks, and if necessary, on site inspections in the case of a project that appears to have capital-links with the countries concerned; and
- regular reporting to the Board of Directors if a new factor comes to light.

In April 2008 the EIB published an updated policy: the *Policy on preventing and deterring corruption, fraud, collusion, coercion, money laundering and the financing of terrorism in European Investment Bank activities*[93]. In this new document it is noted that the EIB will not tolerate prohibited practices, which include fraudulent practices, in its activities or operations.

Regrettably the treatment of tax havens is weaker and less explicit than in the previous version. Tax is now only included in the general integrity due diligence measures – the need for the Office of the Chief Compliance Officer's opinion on each EIB lending operation prior to approval if any key part of the operation is located in a "monitored jurisdiction". This means the jurisdictions set out in the OECD's updated list (see annex).

But it is worrying that, as explained above, this list leaves out many jurisdictions, including Mauritius, which should be carefully monitored.

According to the European Parliament the EU should "act at once to abolish all tax havens on their territory and to work at international level for the abolition of the rest and for sanctions against companies and individuals resorting to their services". The parliament also calls to go beyond G20 commitments and "recommends that the European Union should adopt its own appropriate legislative framework regarding tax havens and calls on its international partners to do the same"[94]. The OECD grey list should not be seen as a justification for not engaging stronger commitments to fight tax evasion.

91 http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0185+0+DOC+XML+V0//EN&language=EN

92 http://www.eib.org/attachments/thematic/fraud_2006_en.pdf

93 http://www.eib.org/about/documents/anti-fraud-policy.htm?lang=-en

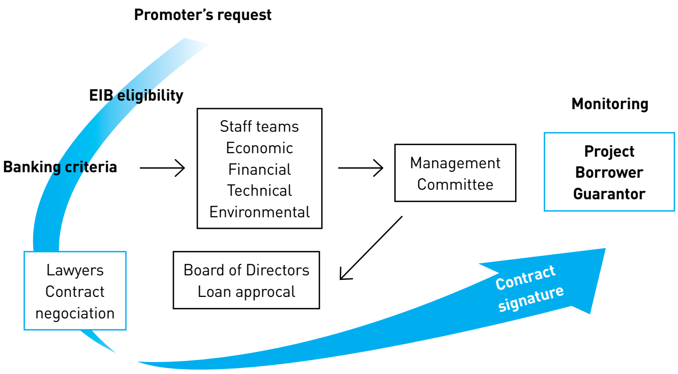
94 See Eurodad's article on EP's resolution on the G20 outcomes: www.eurodad.org/whatsnew/articles.aspx?id=3610

EIB staff contacted as part of the research for this study confirmed that tax matters are still dealt with as part of its due diligence on projects it may support. They explain that following project identification there is an appraisal which assesses economic and technical validity plus also financial acceptability and compliance with EU specific norms. As part of this there is an analysis of links with offshore financial centres. Internal procedures clarify when the chief compliance officer has to be involved. The report to the board of directors states whether the project has been checked on those aspects.

EIB project cycle and due diligence procedures

The following diagram shows the EIB project cycle.

The EIB project cycle



The EIB states that "all projects connected to Offshore Centres must be submitted to the Compliance Office prior to approval. If there is any reason for involving the Compliance Office then either a summary opinion or a full opinion will be provided to the board. An extended opinion is produced for projects where a more detailed due diligence analysis is done."

An EIB employee based in the Office of the Chief Compliance Officer (OCCO) stated that the office "has a broad interpretation of links to offshore centres. It does not just mean that a project is based in one. The OCCO approach is one that assesses incorporation, ownership, control, or other substantial link. It looks at the problem of OFCs as part of a larger debate on projects' structural integrity. The aim is to know who is behind an EIB counter-party, what reasons there may be for structuring the project outside the country of operation, other reasons why practices other than standard market practices are being used".[95]

Another EIB staff member commented that "while they do a 'very detailed financial review' it can be very hard to look into the finances of a group structure [i.e. TNC], especially when they are very complex".[96]

95 Eurodad virtual meeting with EIB staff, 18 May 2009
96 Eurodad virtual meeting with EIB staff, 18 May 2009

Relying on the client: global loans and ongoing monitoring

The exception – some would say 'glaring' exception – to this due diligence rule is the EIB's global loans which are provided to financial companies for on-lending. In these cases the EIB delegates some responsibility to the intermediaries. EIB staff commented that the bank has to "trust that the intermediary has capacity to ensure compliance with environmental and also anti-fraud measures required by the Bank".[97]

On the issue of how the EIB monitors projects once approved, EIB staff also agree that they do not have a watertight system in place. Investigations will be launched if a whistleblower or other third party raises a concern. There may also be check up visits to clients once a year. But, although contracts may specify that clients have a duty to inform the Bank of material changes such as changes in company ownership, "it is difficult to go beyond factual information provided by clients – we are in the hands of the good and bad information provided by counterparts".[98]

Secrecy rules: few specifics

The NGO letter also requested detailed information relating to the specific due diligence carried out by the EIB on the four projects mentioned at the end of the previous section. But the only response received about these concerns was that "due diligence has been carried out by EIB staff, in certain cases also relying on information provided by other lenders".

However "the Bank will not publish the due diligence results". This is justified "on the basis of the Bank's Public Disclosure policy regarding protection of privacy and the integrity of the individual".[99]

In follow up questioning Eurodad also asked in how many cases has the EIB investigated suspicions regarding tax fraud, and tax evasion? The response was disappointing, especially as the question had been tabled long in advance of the meeting: "numbers not to hand for pre-appraisal investigations – they may be sent later by e-mail".

The EIB staff did reveal, however, that four projects requesting EIB backing were rejected in 2008 on the grounds of non-conformity with the EIB's policy. These projects were located outside the EU, but have links back to the EU. This occurred "very early" in the pre-feasibility stage" after the Compliance Office got involved very early on. Bank staff would not give details of the companies involved.

EIB staff also said that some investigations have been concluded recently involving Switzerland, Liechtenstein, and Dubai, all for projects outside the EU.

97 Eurodad virtual meeting with EIB staff, 18 May 2009
98 Eurodad virtual meeting with EIB staff, 18 May 2009.
99 EIB letter to Counter-Balance, Eurodad and TJN, 21 April 2009. Signed by Hakan Lucius and Juan Manuel Sterlin Balenciaga.

Zero tolerance: why no sanctions?

The EIB says that it practices zero tolerance of project sponsors that do not comply with its policy and procedures against fraud and corruption. The policy lists sanctions that are available to the EIB if a breach is proved, including cancelling or suspending the credit, and taking legal steps to recover misapplied funds. However the language on ending business relations with any client who abuses the policies is weak. The EIB only promises to exclude companies from participation "for a reasonable period" if a candidate or tenderer has been convicted by a final judgment in a court.

In a submission to the EIB, Transparency International (TI) has insisted,"on the importance of the EIB expanding the concept and allowing for debarment based on administrative (non res judicata) decisions".[100]

TI points out that "Unfortunately, investigations of corruption cases (as is true for many other crimes as well) take too long, if they happen at all. Debarment can and should be structured as a timely remedy that can contain damage to, and protect the integrity of public funds by keeping corrupt business operators away from public contracts".[101]

These inputs from TI resulted in the EIB "committing to put into place a working debarment system".[102] But there is no timetable and the EIB is showing no urgency.

Finally, corruption is generally considered as a separate problem but tax evasion and avoidance as well as its facilitation should indeed be treated as a type of corruption and should carry the same sanctions. In this regard, an alternative index of corruption that includes this dimension of the problem is being developed by some analysts. This would be a way to tackle this problem in a more comprehensive manner.

Part of the problem, or the solution?

The EIB says it follows international best practices and maintains a close watch on the relevant standards bodies. EIB staff say that the bank "is not a standard setting body". Instead it follows the risk indications by other international bodies which do set and monitor standards – in this case the IMF, OECD, FATF and EU.

100 Transparency International (2007), p.4. Submission to the European Investment Bank on its second draft "Policy on Preventing and Deterring Corruption, Fraud, Collusion, Coercion, Money Laundering and the Financing of Terrorism in European Investment Bank Activities". At: www.eib.org/attachments/strategies/comments_second_round_TI.pdf

101 Transparency International (2006), p. 3. Recommendations for the Development and Implementation of an effective Debarment System in the EU.

102 EIB (2008), p. 7. Policy on preventing and deterring Corruption, Fraud, Collusion, Coercion, Money Laundering and the Financing of Terrorism in European Investment Bank activities.

Asked a specific question on whether the EIB only worries about blacklisted countries or also about those on watch lists or grey lists, EIB staff replied that "attention is on 'monitored countries', if they are grey from one standpoint or another".[103]

One justification put forward by EIB staff to justify support for projects in territories such as Mauritius is that "it is a Cotonou country with a stable legal regime which can act as a base to channel funds to other countries. Mauritius has double taxation treaties with African countries so normally entities should pay taxes where their activities take place". Whether the companies do pay what they should is supposedly checked by the EIB as "Mauritius-based entities applying for EIB funds do trigger a more detailed analysis by the Compliance Office".[104]

But instead of using Mauritius as an African hub for investments in Africa it would be much wiser to invest directly in those countries and sign tax information treaties with them to avoid double taxation rather than keep using tax havens to solve the double taxation problem. By doing this, not only are European countries legitimising secrecy jurisdictions that facilitate massive tax avoidance and exacerbate harmful tax competition, but they also reinforce the exclusion of poorer countries from cooperation against tax evasion. Furthermore, as explained in the section on Mauritius, the tax treaties Mauritius has signed with African countries contribute to lower tax revenues from the latter, therefore undermining domestic resources mobilisation. This is due to the prevailing domiciliary principle, whereby taxes are paid in the domicile country (Mauritius) and not in the host country.

The absence of bilateral tax treaties and agreements between European countries and poor countries gives a green light to investors to use tax havens when investing in the South. As a consequence, many investment operations are made through financial centres and tax havens, depriving host countries of important tax resources. The lack of tax treaties with poor countries also means that developing countries have no chance to effectively combat tax avoidance and tax evasion practices in their countries since they are not able to identify where the untaxed funds are being directed.

Eurodad and many others have been calling for a comprehensive multilateral approach that encompasses automatic exchange of information, otherwise the information exchange upon request is almost impossible to be effectively applied by poor countries (*see section Identifying tax havens*). Without automatic exchange, much stays in the dark.

The EU has already applied such an automatic information exchange model in its European Savings Tax Directive currently under review. This multilateral model should serve as a basis for global automatic information exchange agreements. European countries should be pushing in this direction if they are seriously committed to putting an end to tax havens and their bank secrecy.

103 Eurodad virtual meeting with EIB staff, 18 May 2009

104 Eurodad virtual meeting with EIB staff, 18 May 2009

4. Conclusions and recommendations

The EIB says it is reviewing its policy "in close cooperation with other international financial institutions to ensure that EIB continues to comply with the latest requirements and remains at the forefront of compliance in this respect".[105] The EIB shows false pride about its current position. While it does have a policy, in existence since 2004, on offshore financial centres with useful elements, and, contrary to most of the other IFIs, while the EIB does recognise that any policy outcome of the G20 process should be implemented by the IFIs, there are nonetheless a series of gaps which leave room for grave doubts about the effectiveness of the existing policy approach.

This research reveals that there is a very long list of EIB clients and projects which use tax havens and similar secrecy jurisdictions. Further, that the EIB's capacity to assess its clients by screening them is limited, including a lack of a proactive approach in screening clients' relevant shareholders. The EIB is to be congratulated for successfully screening out four projects in recent years, but the concern is that this represents just the tip of the iceberg.

The EIB is particularly unconvincing in its answers on global loans – which are provided on trust to Europe's biggest banks, the largest users of tax havens. And on the EIB monitoring of clients and projects following project approval – where again companies receiving EIB money are relied on to report against themselves if there is a significant change, a concept open to broad interpretation.

Combined with the lack of transparency in the EIB, which prevents concerned citizens' groups checking up on the due diligence procedures or the evidence that is used, the EIB fails to make a convincing case that its money is all well-used according to its policy on fraud and corruption.

Even in the rare instances where the EIB does identify tax evasion practices its sanctions are weak: there is, for example, no debarment yet in place except following a final criminal conviction, a very high bar indeed and despite the EIB's past public commitment to implement a more advanced debarment procedure in cooperation with the European Commission.

As it stands we must conclude that the EIB continues to finance companies and banks that evade taxes. This is a problem for European taxpayers which finance the institution and for developing country citizens which are landed with debts and other liabilities while their states do not build up their fiscal capacity. Tax havens are a key instrument facilitating capital flight from the South to the North. Any public institution dealing with development cooperation should take this seriously into account and adopt a stringent policy and instruments that are up to the task.

As a first step towards this, the EIB should take the leadership to move beyond the weak current definition of tax havens with its empty OECD black list of tax haven countries. This is important if the EIB wants to follow the strong signals of some European governments to tackle the root causes of capital flight. Counter Balance supports the definition of the Tax Justice Network and its list of tax havens and offshore financial centres as laid out in the appendix to this report and encourages the EIB to take this list as a basis for its policies and definitions.

The introduction of a warranty statement about offshore operations to be signed ex-ante by any client of the EIB and covenanted in project financial agreements – as suggested by some within and outside the bank – would be useful, but not sufficient to prevent illicit flows in the context of EIB-backed operations. In fact, the EIB – as well as the G20 – is not putting the fight against tax evasion and tax elusion in a development perspective. This ought to be mandatory for the EIB since the ground-breaking ruling of the European Court of Justice in November 2008, according to which any operations of the EIB in developing countries has a development priority above any economic and political cooperation goal.

Consequently adequate legal instruments and clauses should be included in project agreements in order to guarantee that host countries will receive an adequate share of project revenues, thus minimising their risks and not just those of investors as happens today. This requires a creative way to analyse precise mechanisms which would make EIB operations contribute to domestic resources mobilisation more than capital flight to rich countries.

Public and political opinion have swung more solidly than ever in recent years behind bold moves against tax evasion and in favour of progressive taxation. EU member states should take the opportunity of the EIB updating its policy to ensure that it closes the loopholes identified in this report and ensures that greater transparency and a stronger threat of punishment are used to demonstrate to clients that the EIB is serious about this agenda, and not merely defensive.

The fact that the current review of compliance with updated regulations will be entirely internal – with no input from stakeholders – indicates that the EIB is not yet ready to open up and shape up.

Instead, any review of the policy should be participatory and open to all stakeholders, including civil society, and be based on minimal principle requirements aimed at discouraging outrageous practices by companies and banks that continue to operate via tax havens and off-shore financial centres.

105 EIB letter to Counter-Balance, Eurodad and TJN, 21 April 2009. Signed by Hakan Lucas and Juan Manuel Sterlin Balenciaga.

The following should be the main objectives of the review:

1. Concerning project financing, the EIB should mandatorily request that any actor associated to any project (planning, implementation, and accounting) not be based in off-shore financial sectors so that any financial flows associated to the project are not transferred through these jurisdictions. Regarding financing for local activities in these jurisdictions which are not connected at all to cross border international financial flows, EIB should prove ex ante positive development impact of this financing.

2. Regarding financial intermediaries, the EIB should mandatorily request that these banks make public any use of the global and framework loans they receive and also ex-ante adopt a stringent policy against the use of tax havens, to be in line with minimal criteria to be defined in the EIB reviewed policy. These should be covenanted in the loan agreement and should include the request that banks and clients report their activities in any individual country they operate.

Such an approach would allow the EIB to screen and prevent financial intermediaries from operating through tax havens, to increase the capacity of citizenship in European and developing countries to monitor EIB financed operations and also to introduce eventual sanctions in cases where these criteria are not respected.

Children in Zambia passing by the EIB-financed Mufulira smelter that separates their neighbourhood from the town. Their Kankoyo neighbourhood receives all the plant's SO2 emissions, destroying all agriculture land and making it difficult to breathe.

Appendix

Table 1: The world's tax havens and offshore financial centres

Jurisdiction	COUNTRY CODE	OECD	FSF-IMF 2000	TJN 2005
1. Andorra	AD	■	■	■
2. Anguilla	AI	■	■	■
3. Antigua & Barbuda	AG	■	■	■
4. Aruba	AW	■	■	■
5. Australia	AU	□		
6. Austria	AT	□		
7. Bahamas	BS	■	■	■
8. Bahrain	BH	■	■	■
9. Barbados	BB	■	■	■
10. Belgium	BE	□		■
11. Belize	BZ	■	■	■
12. Bermuda	BM	■	■	■
13. British Virgin Islands	VG	■	■	■
14. Canada	CA	□		
15. Cayman Islands	KY	■	■	■
16. Cook Islands	CK	■	■	■
17. Costa Rica	CR		■	■
18. Cyprus	CY	■	■	■
19. Dominica	DM	■	■	■
20. Dubai	AE			■
21. Finland (Åland)	FI	□		
22. France	FR	□		
23. Germany (Frankfurt)	DE	□		■
24. Gibraltar	GI	■	■	■
25. Greece	GR	□		
26. Grenada	GD	■	■	■
27. Guernsey, Sark & Alderney	GG	■	■	■
28. Hong Kong	HK		■	■
29. Hungary	HU	□		■
30. Iceland	IS	□		■
31. Ireland	IE	□	■	■
32. Isle of Man	IM	■	■	■
33. Israel (Tel Aviv)	IL			■
34. Italy (Campione d'Italia & Trieste)	IT	□		■
35. Jersey	JE	■	■	■
36. Korea	KR	□		
37. Latvia	LV			
38. Lebanon	LB		■	■
39. Liberia	LR	■		■
40. Liechtenstein	LI	■	■	■
41. Luxembourg	LU	□	■	■
42. Macao	MO		■	■
43. Malaysia (Labuan)	MY		■	■
44. Maldives	MV	■		■
45. Malta	MT	■	■	■
46. Marshall Islands	MH	■	■	■

Table 1 (continued): The world's tax havens and offshore financial centres

Jurisdiction	COUNTRY CODE	OECD	FSF-IMF 2000	TJN 2005
47. Mauritius	MU	■	■	■
48. Monaco	MC	■	■	■
49. Montserrat	MS	■	■	■
50. Nauru	NR	■	■	■
51. Netherlands	NL	□		■
52. Netherlands Antilles	AN	■	■	■
53. Niue	NU	■	■	■
54. Northern Mariana Islands	MP			■
55. Palau			■	
56. Panama	PA	■	■	■
57. Portugal (Madeira)	PT	□		■
58. Russia (Ingushetia)	RU			■
59. Saint Kitts & Nevis	KN	■	■	■
60. Saint Lucia	LC	■	■	■
61. Saint Vincent & the Grenadines	VC	■	■	■
62. Samoa	WS	■	■	■
63. San Marino	SM	■		
64. São Tomé e Principe	ST			■
65. Seychelles	SC	■	■	■
66. Singapore	SG		■	■
67. Somalia	SO			■
68. South Africa	ZA			■
69. Spain (Melilla)	ES	□		■
70. Sweden	SE	□		
71. Switzerland	CH	□	■	■
72. Taiwan (Taipei)	TW			■
73. Tonga	TO	▪		■
74. Turkey (Istanbul)	TR	□		
75. Turkish Rep. of Northern Cyprus				■
76. Turks & Caicos Islands	TC	■	■	■
77. United Kingdom (City of London)	UK			■
78. Uruguay	UY			■
79. US Virgin Islands	VI	■		■
80. USA (New York)	US	□		■
81. Vanuatu	VU	■	■	■

■	Tax Haven OECD, TJN 2007 / Offshore Financial Centre FSF/IMF 2000
□	OECD member country with potentially harmful preferential tax regime as distinguished by OECD 2000
▪	No longer regarded a tax haven according to the OECD 2006

Source: http://www.oecd.org/dataoecd/50/0/42704399.pdf

A PROGRESS REPORT ON THE JURISDICTIONS SURVEYED BY THE OECD GLOBAL FORUM IN IMPLEMENTING THE INTERNATIONALLY AGREED TAX STANDARD[1]

Progress made as at 8th June 2009 (Original Progress Report 2nd April)

Jurisdictions that have substantially implemented the internationally agreed tax standard			
Argentina	Germany	Korea	Seychelles
Australia	Greece	Malta	Slovak Republic
Barbados	Guernsey	Mauritius	South Africa
Bermuda	Hungary	Mexico	Spain
Canada	Iceland	Netherlands	Sweden
China[2]	Ireland	New Zealand	Turkey
Cyprus	Isle of Man	Norway	United Arab Emirates
Czech Republic	Italy	Poland	United Kingdom
Denmark	Japan	Portugal	United States
Finland	Jersey	Russian Federation	US Virgin Islands
France			

Jurisdictions that have committed to the internationally agreed tax standard, but have not yet substantially implemented					
Jurisdiction	**Year of Commitment**	**Number of Agreements**	**Jurisdiction**	**Year of Commitment**	**Number of Agreements**
Tax Havens[3]					
Andorra	2009	(0)	Marshall Islands	2007	(1)
Anguilla	2002	(0)	Monaco	2009	(1)
Antigua and Barbuda	2002	(7)	Montserrat	2002	(0)
Aruba	2002	(4)	Nauru	2003	(0)
Bahamas	2002	(1)	Neth. Antilles	2000	(7)
Bahrain	2001	(8)	Niue	2002	(0)
Belize	2002	(0)	Panama	2002	(0)
British Virgin Islands	2002	(10)	St Kitts and Nevis	2002	(0)
Cayman Islands[4]	2000	(8)	St Lucia	2002	(0)
Cook Islands	2002	(0)	St Vincent and the Grenadines	2002	(0)
Dominica	2002	(1)	Samoa	2002	(0)
Gibraltar	2002	(1)	San Marino	2000	(0)
Grenada	2002	(1)	Turks and Caicos Islands	2002	(0)
Liberia	2007	(0)	Vanuatu	2003	(0)
Liechtenstein	2009	(1)			
Other Financial Centres					
Austria[5]	2009	(0)	Luxembourg[5]	2009	(6)
Belgium[5]	2009	(1)	Malaysia	2009	(0)
Brunei	2009	(5)	Philippines	2009	(0)
Chile	2009	(0)	Singapore	2009	(0)
Costa Rica	2009	(0)	Switzerland[5]	2009	(0)
Guatemala	2009	(0)	Uruguay	2009	(0)

Jurisdictions that have not committed to the internationally agreed tax standard			
Jurisdiction	**Number of Agreements**	**Jurisdiction**	**Number of Agreements**
All jurisdictions surveyed by the Global Forum have now committed to the internationally agreed tax standard			

1. The internationally agreed tax standard, which was developed by the OECD in co-operation with non-OECD countries and which was endorsed by G20 Finance Ministers at their Berlin Meeting in 2004 and by the UN Committee of Experts on International Cooperation in Tax Matters at its October 2008 Meeting, requires exchange of information on request in all tax matters for the administration and enforcement of domestic tax law without regard to a domestic tax interest requirement or bank secrecy for tax purposes. It also provides for extensive safeguards to protect the confidentiality of the information exchanged.
2. Excluding the Special Administrative Regions, which have committed to implement the internationally agreed tax standard.
3. These jurisdictions were identified in 2000 as meeting the tax haven criteria as described in the 1998 OECD report.
4. The Cayman Islands have enacted legislation that allows them to exchange information unilaterally and have identified 12 countries with which they are prepared to do so. This approach is being reviewed by the OECD.
5. Austria, Belgium, Luxembourg and Switzerland withdrew their reservations to Article 26 of the OECD Model Tax Convention. Belgium has already written to 48 countries to propose the conclusion of protocols to update Article 26 of their existing treaties. Austria, Luxembourg and Switzerland announced that they have started to write to their treaty partners to indicate that they are now willing to enter into renegotiations of their treaties to include the new Article 26.

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