



**UNIVERSITY  
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# **BEFIT and EU Tax Harmonisation: Legal Frameworks, Challenges, and Implications for Harmful Tax Competition**

OT00BG63 Re-examining the Foundations of EU Law

Master's thesis

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For much of the past century, the European Commission has sought to establish a comprehensive framework for tax harmonisation in corporate taxation. Despite numerous efforts, including the notable Common Consolidated Corporate Tax Base (CCCTB), these initiatives have encountered persistent resistance from Member States, ultimately resulting in their failure. In 2023, the Commission unveiled its latest proposal—*Business in Europe: Framework for Income Taxation* (BEFIT).

This thesis dives into one of the EU's most important challenges: finding ways to reduce harmful tax competition while creating a cohesive corporate tax system among its Member States. BEFIT is central to this exploration, designed to reshape the EU's fragmented tax landscape. By harmonising the corporate tax base, BEFIT offers the potential to diminish profit-shifting, improve legal clarity, and ensure fair competition in the EU's single market.

The study employs doctrinal methodologies, focusing on the relevant provisions of the Treaty on the Functioning of the European Union (TFEU), particularly Articles 113 to 115, as well as broader legal principles that have consistently shaped EU tax policy. By examining diverse academic and legal resources, the research evaluates BEFIT's capacity to transform tax coordination while confronting major political and legal obstacles, for example, the unanimous consent needed in direct taxation.

The findings indicate that BEFIT represents an initial move against harmful tax competition; however, the enduring influence of national tax rates and political opposition limits its effectiveness. Legal limitations and the difficulty of reconciling various political priorities within the EU hinder the proposal's full potential.

In conclusion, this thesis highlights that while BEFIT is a starting point, there's room for further refinement for it to become effective. BEFIT has the potential to become the cornerstone of a more unified corporate tax system, but this will depend on the EU's ability to navigate the intricate political landscape and tackle its multilevel challenges.

**Key words:** European Union, BEFIT, Tax Harmonisation, Harmful Tax Competition

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Fiat Chrysler Finance Europe and Ireland v European Commission (Joined Cases C-885/19 P and C-898/19 P, EU:C:2023:578)

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## List of Abbreviations

ATAD	Anti-Tax Avoidance Directive
BEFIT	The Business in Europe: Framework for Income Taxation
BEPS	Base Erosion and Profit Shifting
CCCTB	Common Consolidated Corporate Tax Base
CCTB	Common Corporate Tax Base
DAC	Directive on Administrative Cooperation
EU	European Union
GAAP	Generally Accepted Accounting Principles
IFRS	International Financial Reporting Standards
OECD	Organisation for Economic Co-operation and Development
OSS	On-Stop-Shop
QMV	Qualified Majority Voting
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
VAT	Value Added Tax

# 1 Introduction

## 1.1 Introduction

Harmful tax competition continues to pose an ongoing challenge within the European Union (EU), primarily stemming from the fiscal sovereignty of Member States. While some degree of tax competition can be beneficial, as it encourages efficiency and innovation in tax systems, it becomes harmful when states utilise preferential tax regimes, low corporate tax rates, or targeted tax advantages to attract multinational corporations at the expense of others.<sup>1</sup> These practices disrupt the functioning of the Single Market, jeopardising the EU's aim for greater integration and a more balanced economic environment.

One significant consequence of harmful tax competition is that it distorts resource allocation in Member States. Governments lose tax revenue as Multinational Corporations shift profits to lower-tax jurisdictions.<sup>2</sup> Competitive tax policies reduce overall revenues, limiting funding for essential public services. Smaller businesses, which typically lack the means for complex tax planning, are disadvantaged.<sup>3</sup> This results in a "race to the bottom," as countries lower rates or offer incentives to attract businesses, undermining fair tax policies. Ultimately, this erodes public trust in tax systems, weakens the EU's fairness in corporate taxation, and increases economic disparities.<sup>4</sup> Instead of fostering cohesion, harmful tax competition fragments the EU's tax landscape, reinforcing fiscal imbalances between high and low-tax jurisdictions.

Additionally, harmful tax competition erodes national tax bases. By exploiting regulatory mismatches and applying aggressive tax planning strategies, multinational enterprises can minimise their liabilities in higher-tax jurisdictions. While this may increase short-term investment in some low-tax Member States, it undermines fair competition and deepens economic divergence across the EU. Larger corporations gain an unfair advantage through access to tailored tax planning mechanisms. As a result, small and medium-sized enterprises often face a heavier relative tax burden, undermining tax fairness and market integrity.<sup>5</sup>

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<sup>1</sup> Teather, 2002, pp. 58–63.

<sup>2</sup> OECD, Addressing Base Erosion and Profit Shifting, 2013.

<sup>3</sup> OECD, Report on Harmful Tax Competition, 1998.

<sup>4</sup> Devereux-Vella, 2014.

<sup>5</sup> European Commission, Communication from the Commission to the European Parliament and the Council: Business Taxation for the 21st Century (COM/2021/251 final).

Although the EU has introduced measures to address these problems, current measures have not fully tackled the root causes of harmful tax competition, since it still occurs. For instance, state aid enforcement under Article 107 of the Treaty on the Functioning of the European Union (TFEU) has been employed to challenge selective tax advantages. However, this approach is reactive, dealing with individual cases rather than providing a systemic solution.<sup>6</sup> Furthermore, initiatives like the Anti-Tax Avoidance Directive (ATAD) and the Code of Conduct on Business Taxation (the Code of Conduct) have mitigated aggressive tax planning. However, their limited binding effect and reliance on soft law mechanisms limit their ability to harmonise national tax systems.<sup>7</sup> Member States retain considerable discretion over their corporate tax policies without a unified framework, resulting in persistent disparities.

The EU's most recent initiative to tackle these issues is the Business in Europe: Framework for Income Taxation (BEFIT). This initiative seeks to create a unified corporate tax base by replacing the 27 distinct national tax base calculations with a single set of standards for multinational corporations with annual revenues exceeding EUR 750 million. By eliminating discrepancies in the determination of taxable income, BEFIT minimises opportunities for profit shifting and regulatory arbitrage, which may decrease tax competition that relies on preferential tax systems.<sup>8</sup>

This approach builds on earlier efforts, particularly the proposed Common Consolidated Corporate Tax Base (CCCTB)<sup>9</sup> and its preliminary stage, the Common Corporate Tax Base (CCTB)<sup>10</sup>. The CCCTB proposal, first introduced in 2011 and relaunched in 2016, also envisioned a harmonised tax base and profit allocation through formulary apportionment. However, political resistance and legal complexity stalled its adoption<sup>11</sup>, and the Commission withdrew the initiative and introduced BEFIT, which focuses on simplification and gradual implementation,<sup>12</sup> reflecting a more pragmatic and flexible framework that responds to lessons learned from the CCCTB process.

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<sup>6</sup> Kyriazis, 2022, pp. 279–313.

<sup>7</sup> Paulus, 2022, pp. 529–546.

<sup>8</sup> European Commission, Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/234 final).

<sup>9</sup> European Commission, Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) (COM/2016/683 final).

<sup>10</sup> European Commission, Proposal for a Council Directive on a Common Corporate Tax Base (CCTB) (COM/2016/685 final).

<sup>11</sup> Cobham - Janský – Jones – Temouri, 2021, pp. 29–50.

<sup>12</sup> European Commission, Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/234 final).

BEFIT represents a significant shift in the EU's tax coordination strategy, progressing from specific measures, like anti-tax avoidance rules, toward a more comprehensive approach.<sup>13</sup> By standardising key elements of corporate taxation, the proposal enhances legal certainty, limits the use of tax incentives for competitive purposes, and supports a more predictable and cohesive tax environment across the EU. As such, BEFIT may mark a progressive step in reshaping the EU's approach to corporate taxation, promoting fiscal stability and supporting the fair functioning of the Single Market.<sup>14</sup>

This thesis investigates BEFIT's potential to address tax competition, focusing on two central research questions:

1. How does BEFIT address harmful tax competition within the EU?
2. To what extent can it serve as an effective mechanism for tax coordination?

The study outlines its research objectives, scope, and methodology while situating BEFIT within the broader context of EU tax harmonisation. It aims to evaluate how BEIT may serve as a structural and forward-looking response to the challenges posed by tax competition, aggressive tax planning, and profit shifting. Chapter 2 explores the foundations of EU tax harmonisation to provide the necessary legal foundation, focusing on Articles 113–115 TFEU, which regulate tax coordination among Member States. The chapter also discusses the principles of subsidiarity, proportionality, and unanimity, while examining the principle of enhanced cooperation and qualified majority voting as an alternative to the unanimity requirement. Additionally, it reviews the evolution of EU tax harmonisation, identifying the limitations of past efforts and the need for more effective coordination mechanisms.

Chapter 3 offers an in-depth analysis of BEFIT's proposal, addressing its design, objectives, and mechanisms for addressing harmful tax competition. It examines how the proposed common tax base and formulary apportionment method aim to reduce disparities in effective taxation across Member States. The chapter also evaluates BEFIT's effectiveness in combating harmful tax competition.

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<sup>13</sup> European Commission, Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/234 final).

<sup>14</sup> European Commission, Impact Assessment: Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/235 final).

Building on this analysis, Chapter 4 considers BEFIT's broader implications for EU tax policy. A key focus is on redistributing the corporate tax base across Member States, identifying potential winners and losers. The chapter also examines possible resistance from low-tax jurisdictions and the risk that Member States turn to non-tax incentives, such as subsidies or regulatory advantages. Finally, Chapter 5 synthesises the thesis's findings, evaluating the effectiveness and limitations of BEFIT as a tool for tackling harmful tax competition. It reflects on the legal, political, and institutional challenges to implementation and explores how the framework could be refined to strengthen its impact and sustainability. The conclusion demonstrates the broader implications of BEFIT for the future of EU tax harmonisation and corporate tax fairness.

## **1.2 Methodology**

This thesis employs doctrinal legal analysis and theoretical evaluation to examine BEFIT and its role in addressing harmful tax competition within the EU tax system. These methods offer a systematic approach to understanding BEFIT's legal framework and its potential impact on tax coordination and corporate taxation.

Doctrinal legal analysis is used to examine the relevant legal framework governing corporate taxation within the EU. It focuses on key provisions in the TFEU, which define the EU's competence to harmonise tax rules. The BEFIT proposal is analysed to determine its alignment with EU legal principles, including subsidiarity, proportionality, and unanimity. Other relevant legal sources, such as the ATAD, state aid and earlier CCCTB proposals, are reviewed to contextualise BEFIT within the broader trajectory of EU tax policy. The analysis also considers international developments, including the OECD's BEPS project and Pillar Two, to assess how BEFIT fits within global efforts to curb harmful tax practices.

In this context, the detailed examination of BEFIT's transfer pricing rules is excluded from the scope of this research. While transfer pricing is essential in corporate taxation, BEFIT shifts from traditional transfer pricing methods to a formulary apportionment system. This shift, central to BEFIT's framework, makes an in-depth analysis of transfer pricing mechanisms unnecessary for this study, which instead focuses on the broader legal and institutional changes introduced by BEFIT and their implications for EU tax coordination.

A theoretical evaluation is used alongside legal analysis to assess BEFIT's potential effects on tax competition and corporate taxation. Insights from the economic literature on tax

competition help to understand how states design tax policies to attract mobile business activity and how such strategies may lead to harmful outcomes. The policy rationale behind tax harmonisation in the EU context is examined to determine whether BEFIT can balance coordination objectives with preserving Member States' fiscal autonomy. A cost-benefit approach is also employed to weigh the potential benefits of BEFIT, such as simplification, reduced compliance burdens, and enhanced fairness, against likely drawbacks, including administrative challenges and political resistance.

AI-based language tools were employed in a limited and transparent manner to support the writing and revision process. These tools assisted in enhancing linguistic clarity, ensuring terminological consistency, and translating legal concepts between English and Finnish when necessary. Furthermore, they were utilised to explore alternative formulations of arguments and improve the structure of theoretical discussions. All AI-generated content was critically reviewed and edited by the author to ensure accuracy, uphold academic integrity, and comply with the principles of doctrinal legal research. AI has also been used to manage sources. The use of AI is disclosed here in accordance with the University of Turku's guidelines on artificial intelligence in studying and teaching (3/2023).

## 2 Legal Foundations of Tax Harmonisation in the EU

### 2.1 Legal Foundations of BEFIT

Direct taxation, such as corporate taxation, remains primarily under the control of Member States, preserving their sovereignty in this area.<sup>15</sup> Therefore, the EU currently lacks a unified corporate tax system. Instead, the 27 Member States maintain their approach, leading to considerable differences in tax rates, bases, and administrative practices. While this allows countries to shape their tax policy according to national priorities, it also creates challenges such as harmful tax competition, profit shifting, and legal uncertainty for multinational enterprises.<sup>16</sup> To address these issues without infringing on national autonomy, the EU has introduced various coordination measures to curb harmful tax practices and foster fairer competition. The BEFIT proposal is the latest step in this effort, seeking to create a more consistent corporate tax framework while allowing room for national flexibility in implementation. BEFIT aims to change the mismatch of different tax systems by establishing a harmonised framework for determining the taxable income of EU businesses in the Member States where they operate.<sup>17</sup> Rather than introducing a new tax, BEFIT aims to standardise corporate tax rules to support the internal market.<sup>18</sup> The initiative reflects the increasing need for robust and sustainable tax bases while reducing complexity within the EU.<sup>19</sup>

While the absence of a single common regulatory framework can create challenges for companies expanding into new Member States, the EU has already established specific frameworks related to other areas of taxation. For example, the TFEU has provisions that govern the harmonisation of indirect taxation (such as VAT) and the coordination of direct taxes across member states.<sup>20</sup> These articles provide the foundation for EU-wide tax rules to prevent tax discrimination and ensure a level playing field for businesses. This section will outline how the EU structures its tax policy and harmonisation efforts, focusing on relevant provisions of the TFEU and the key principles of subsidiarity, proportionality, and unanimity.

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<sup>15</sup> See European Court of Justice, Case C-446/03 *Marks & Spencer plc v David Halsey (HM Inspector of Taxes)* [2005] ECR I-10837, para 29.

<sup>16</sup> Alexander – De Vito – Jacob, 2020. pp. 309–41.

<sup>17</sup> European Commission, *Impact Assessment: Business in Europe: Framework for Income Taxation (BEFIT)* (COM/2022/235 final). pp. 6.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> Feranecová – Manová – Meheš – Simonidesová – Stašková – Blaščák, 2017, pp. 191–199.

Article 115 TFEU grants the Council the authority to adopt directives for the approximation of national laws, regulations, and administrative provisions that directly affect the internal market. Measures under this special legislative procedure require unanimity. The BEFIT proposal aligns with this provision, as it seeks to harmonise tax base rules among Member States while possibly leaving the enforcement and tax rates under national control.<sup>21</sup>

According to the Commission's Impact Assessment, BEFIT appropriately falls within the scope of Article 115 TFEU, as it addresses direct taxation with significant cross-border implications. By establishing a unified rulebook for calculating taxable income for large multinational groups operating in the EU, the proposal aims to streamline compliance, reduce market distortions, and increase legal certainty.<sup>22</sup>

The legal debate surrounding Article 114 arises from concerns that tax disparities can distort competition within the internal market. While Article 114 has been widely used to harmonise various aspects of economic regulation, its application to tax harmonisation is more limited due to the specific provisions on taxation in the TFEU.<sup>23</sup> The European Court of Justice (later the Court) has acknowledged that tax measures can have market-distorting effects, which could justify harmonisation efforts beyond Article 115's unanimity requirement.<sup>24</sup> However, there are arguments that corporate tax disparities could sometimes be addressed under Article 114. Since differences in national tax systems can influence corporate decision-making, distort competition, and affect the free movement of goods, services, and capital, tax policies that create competitive imbalances in the internal market could be seen as an obstacle to proper functioning.<sup>25</sup>

For initiatives like BEFIT, Article 114 could theoretically be invoked to justify harmonisation measures if significant tax differences between Member States distort competition within the internal market. However, taxation is typically seen as a sovereign matter, and past EU tax initiatives have relied more on Article 115, which requires unanimous approval by Member States. Therefore, while Article 114 could provide a potential legal route for tax

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<sup>21</sup> European Commission, Impact Assessment: Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/235 final).

<sup>22</sup> Ibid. pp. 20.

<sup>23</sup> Craig - de Búrca, 2020, pp. 736–742

<sup>24</sup> See *Case C-491/01 British American Tobacco (Investments) Ltd and Imperial Tobacco Ltd v Secretary of State for Health* [2002] ECR I-11453, para 60.

<sup>25</sup> Traversa, 2014.

harmonisation under specific circumstances, its use in this context remains controversial and legally uncertain.

The European Union's legal and policy framework is grounded in fundamental principles designed to promote cohesion, cooperation, and the effective functioning of the internal market.<sup>26</sup> Regarding taxation, a few key principles will be discussed in more detail: subsidiarity, proportionality, and unanimity. These principles are crucial in shaping EU policies, where national and EU interests intersect. The subsidiarity principle ensures that the EU intervenes only when the Member States cannot adequately achieve policy objectives independently. The proportionality principle restricts EU action to cases where harmonisation is necessary for the functioning of the internal market. Meanwhile, the unanimity requirement limits decision-making by requiring the agreement of all Member States for tax-related measures.<sup>27</sup>

The principle of subsidiarity is a cornerstone of EU governance, ensuring that decisions are made as closely as possible to citizens. This principle is outlined in Article 5(3) of the Treaty on European Union (TEU): The EU should act only to the extent and in the areas where a particular action can be more effectively carried out at the Union level rather than at the level of the Member States. The principle of subsidiarity applies only to areas where the EU does not have exclusive competence, that is, in areas of shared competence. Shared competence means that both the EU and the Member States have the power to make binding laws in a specific area. However, Member States can only do so if the EU has not already used its power or has chosen not to use it.<sup>28</sup> The Commission's proposal for BEFIT explains in detail how the initiative takes subsidiarity into account. The principle of subsidiarity ensures that the EU intervenes only when Member States cannot achieve objectives alone and when Union-level action adds value. As stated earlier, in corporate taxation, the fragmentation of different tax systems creates inefficiencies, high compliance costs, and harmful tax mismatches that national action cannot resolve effectively. A harmonised corporate tax framework would mitigate these issues by reducing distortions, simplifying compliance, and preventing tax avoidance. These are outcomes that unilateral or bilateral efforts cannot fully achieve. Since

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<sup>26</sup> Craig – de Búrca, 2020.

<sup>27</sup> Schön – Schreiber – Spengel, 2008.

<sup>28</sup> Raitio, 2013, p. 243

these cross-border challenges exceed national capacities, EU-level coordination provides significant benefits while respecting national fiscal autonomy.<sup>29</sup>

The principle of proportionality, found in Article 5(4) TEU, ensures that EU measures do not go beyond what is necessary to achieve the goals set out in the Treaties. This is particularly important in direct taxation, where the EU has limited powers and Member States retain control over key aspects like tax rates and enforcement. The BEFIT proposal reflects this principle by focusing only on elements essential to improve the functioning of the internal market and to support fair and efficient corporate taxation across the EU.<sup>30</sup> This targeted approach is not only mandated by EU law but also shows that the EU is not currently seeking to centralise taxation, but rather to provide a legal framework that addresses the inefficiencies and distortions caused by fragmented national tax systems.

As discussed earlier, BEFIT outlines some standard rules for calculating the tax base of large multinational groups operating in the EU instead of aiming to harmonise corporate tax systems completely. This allows Member States to control their tax rates and enforcement policies. The harmonised rules will only apply to the determination of taxable income and specifically for those companies already covered by the Pillar 2 Directive.<sup>31</sup> Taking this selective and targeted approach ensures the proposal stays within necessary limits. It also reflects the Commission's commitment to respecting the balance between EU objectives and national competences. In this way, BEFIT can be viewed as another valuable test case for exploring how far the EU can go in pursuing deeper integration in direct taxation while minimising pushback from Member States.

In addition, BEFIT relies on existing financial accounting standards (such as GAAP<sup>32</sup> and IFRS<sup>33</sup>) as the basis for the new common tax base. Since these standards are already widely used across the EU, their use helps reduce the need for businesses to change their existing systems. This helps lower compliance costs and avoids unnecessary disruption. Furthermore, Member States can still adjust the tax base after it has been calculated at the EU level, which

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<sup>29</sup> European Commission, Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/234 final).

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Generally Accepted Accounting Principles <https://accountingfoundation.org/accounting-and-standards/about-gaap/what-is-gaap>

<sup>33</sup> International Financial Reporting Standards <https://www.ifrs.org/issued-standards/list-of-standards/>

gives them some flexibility to reflect national policy choices. However, this flexibility may lead to future legal uncertainty if the scope of permitted adjustments is not clearly defined.

The proposal is mandatory only for a specific group of large companies with strong cross-border activity. The rules would be optional for most other businesses, further limiting the initiative's scope and showing that the Commission has aimed to design a proportionate system that does not place unnecessary burdens on smaller or less complex companies. Although implementing BEFIT may lead to some short-term administrative costs, these are expected to be outweighed by long-term benefits. These include simpler procedures, more consistent tax outcomes across Member States, and lower overall compliance costs for businesses operating in more than one country.<sup>34</sup> This cost-benefit rationale supports the legal argument that BEFIT is a proportionate measure.

Overall, BEFIT respects the limits of EU power in the field of taxation and follows the principle of proportionality by keeping its scope narrow, using familiar rules, and applying only where necessary. It is designed as a practical tool to support tax coordination within the EU without undermining national sovereignty. At the same time, the limited scope of BEFIT may also be seen as a constraint on its effectiveness, particularly if Member States continue to diverge significantly in their tax base adjustments or resist standard administrative practices. Nonetheless, its success may also shape the future direction of EU tax policy. If BEFIT proves workable and politically acceptable, it could pave the way for more ambitious steps towards corporate tax integration in the long run.

Lastly, I will examine one of the potentially biggest obstacles for BEFIT: the unanimity requirement. Under this principle, all Member States must agree unanimously to adopt a proposal, meaning the Council must vote unanimously on several policy areas that the Member States consider to be sensitive. These policy areas have been exhaustively listed in the Treaties.<sup>35</sup> This requirement can lead to lengthy negotiations or outright blocking of proposals in the Council.<sup>36</sup> Sometimes, Member States may use their veto not because they disagree with the proposal but as leverage to negotiate concessions on unrelated issues. Therefore, the unanimity requirement can be misused. In the case of BEFIT, unanimity poses

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<sup>34</sup> European Commission, Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/234 final).

<sup>35</sup> EUR-Lex, Unanimity <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:unanimity>

<sup>36</sup> Decision-making on EU Tax Policy, [https://taxation-customs.ec.europa.eu/decision-making-eu-tax\\_en](https://taxation-customs.ec.europa.eu/decision-making-eu-tax_en)

a considerable challenge, as certain countries may be reluctant to relinquish national tax advantages or "sweetheart deals" with multinational corporations.

This issue has led to growing discussions about whether the unanimity rule should be changed. On 15 January 2019, the European Commission suggested a gradual transition from unanimity to qualified majority voting (QMV) under the ordinary legislative procedure.<sup>37</sup> This could make it easier for the EU to pass tax reforms, reduce political deadlock, and involve the European Parliament more directly, improving democratic accountability. It could also help the EU coordinate tax policy more effectively and create a fairer and more integrated internal market. Still, changing how tax decisions are made raises bigger questions about national sovereignty and the decision-making model the EU wants to follow. While QMV might help the EU act more efficiently, it also requires careful thought about balancing national control with common EU goals.<sup>38</sup>

At the same time, the debate over unanimity highlights deeper issues within the EU. It demonstrates how challenging it is to balance national sovereignty with the need for collective action, especially in areas like taxation. While switching to QMV could help resolve deadlocks, it also raises concerns among smaller or low-tax Member States regarding the potential loss of influence over important decisions.<sup>39</sup> These concerns reflect a broader challenge: how the EU can update its decision-making process without sacrificing trust and unity among Member States. Whether the move to QMV occurs or not, the debate suggests that the current unanimity requirement may not be suitable for the increasing complexity of EU tax policy. From a legal perspective, BEFIT's viability depends on the existing treaty framework, which requires unanimity for direct taxation under Article 115 TFEU. Unless this framework is altered, or alternatives like enhanced cooperation or treaty amendments are considered, the proposal remains vulnerable to political vetoes. The outcome of the QMV debate will have direct consequences for BEFIT. Even well-designed proposals may struggle to advance without reform to the EU's decision-making process. BEFIT demonstrates that legal success in the EU involves meeting the legal requirements while navigating the political landscape and institutional structure. In this sense, BEFIT underscores how legal viability often relies on political will as much as legal fit.

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<sup>37</sup> Decision-making on EU Tax Policy, [https://taxation-customs.ec.europa.eu/decision-making-eu-tax\\_en](https://taxation-customs.ec.europa.eu/decision-making-eu-tax_en)

<sup>38</sup> Ibid.

<sup>39</sup> European Commission, 'Towards a More Efficient and Democratic Decision Making in EU Tax Policy' COM (2019) 8 final, 4–6.

Another potential legal route for overcoming the unanimity requirement in EU tax legislation is the mechanism of enhanced cooperation, established under Article 20 TEU and Articles 326–334 TFEU. This legal instrument allows a minimum of nine Member States to pursue further integration in areas falling within the Union’s non-exclusive competence, provided that the initiative advances the objectives of the EU, respects the integrity of the internal market, and remains open to all Member States wishing to join at a later stage. It has been designed to prevent institutional deadlock in politically sensitive areas where unanimity is challenging.<sup>40</sup> Yet, while enhanced cooperation provides a legal pathway around unanimity, its application can be complex because of how the provision is drafted. It is very vague and open-ended, giving a lack of guidance for deciding which enhanced cooperation law aligns with the internal market.<sup>41</sup>

Although enhanced cooperation has only been successfully used a few times, its precedents are noteworthy. The Rome III Regulation on the law applicable to divorce and legal separation was one of the earliest applications.<sup>42</sup> Similarly, creating the Unitary Patent System under enhanced cooperation allowed participating states to bypass long-standing disagreements, particularly over language requirements.<sup>43</sup> Another relevant example is the proposed Financial Transaction Tax, which was initially advanced through enhanced cooperation but never fully implemented due to sustained opposition from several Member States, primarily centred on fears of economic disadvantage and loss of fiscal autonomy.<sup>44</sup> These examples highlight the mechanism's potential and shortcomings: it can facilitate advancement in political deadlocks, but it is not a cure-all, and its effectiveness is mainly contingent on continued political dedication, the ability to implement changes, and broader economic agreement among involved states.

In the context of EU corporate taxation, enhanced cooperation becomes an increasingly relevant topic, particularly concerning initiatives such as BEFIT. As BEFIT seeks to harmonise the tax base for large multinational groups across the Union, it could face

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<sup>40</sup> EUR-Lex, Enhanced Cooperation [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:enhanced\\_cooperation](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:enhanced_cooperation)

<sup>41</sup> Heber, 2021, pp. 151

<sup>42</sup> Council Regulation (EU) No 1259/2010 (Rome III). For further reading, see, e.g., Heber, 2021, pp. 44 onwards

<sup>43</sup> Regulation (EU) No 1257/2012 implementing enhanced cooperation in the area of the creation of unitary patent protection.

<sup>44</sup> European Commission, "Proposal for a Council Directive on a common system of financial transaction tax", COM (2013) 71 final.

considerable political resistance, especially from low-tax jurisdictions, which perceive tax coordination as a potential threat to their competitive positioning.<sup>45</sup> Enhanced cooperation offers a legally sound and politically practical option for a group of Member States eager to progress, deviating from the necessity of unanimity outlined in Article 115 TFEU.

Integrating enhanced cooperation into BEFIT's legal structure offers several advantages. First, it allows willing Member States to implement a harmonised corporate tax base without being blocked by opposition, thus preserving momentum toward EU tax coordination. Second, it aligns with the principle of subsidiarity, in that it limits EU action to those states that voluntarily opt in, while still advancing Treaty objectives in the internal market. Third, it provides a degree of legal certainty: since enhanced cooperation is grounded in the Treaties, it offers a structured and legally valid pathway for differentiated integration.

However, this legal pathway is not without risks. Enhanced cooperation in taxation could lead to regulatory fragmentation, whereby firms operating across the EU face divergent regimes depending on Member State participation. This might distort investment decisions and undermine one of BEFIT's primary goals: to simplify and unify tax rules for cross-border business activity.<sup>46</sup> Enhanced cooperation could also face enforcement limitations, as it does not entail the full institutional support that a unanimous EU-wide directive would carry, especially regarding implementation oversight or harmonised dispute resolution. In this light, enhanced cooperation appears more as a workaround than a long-term structural solution.

Even so, enhanced cooperation could be one of the most realistic legal instruments for initiating BEFIT, given the possible deadlock in the Council. It allows for progress where unanimity cannot be reached. Also, it signals a willingness among a core group of Member States to strengthen tax coordination and reduce harmful tax competition, even if this means advancing without complete consensus. As BEFIT's legal design evolves, enhanced cooperation could serve as a transitional mechanism, enabling initial implementation among a subset of countries while leaving the door open to broader adoption.<sup>47</sup> The risk is that Member States outside the framework may become increasingly disengaged from broader EU tax reform efforts, weakening the long-term viability of BEFIT as a truly Union-wide initiative.

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<sup>45</sup> European Parliament, "Taxation: New EU rules for fair corporate taxation", 2023.

<sup>46</sup> De la Feria, 2020 p. 125–158

<sup>47</sup> European Commission, Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/234 final).

While enhanced cooperation does not fully resolve the tension between national tax autonomy and the EU's goal of a more integrated and coherent corporate tax framework, it represents a legally proportionate and politically flexible instrument. Its use in the context of BEFIT could test the boundaries of EU legal capacity in direct taxation, and its success or failure may shape the trajectory of future tax harmonisation efforts. In this sense, enhanced cooperation is not merely a legal tool, but a reflection of the broader political realities shaping the Union's fiscal future.

## 2.2 Historical and Theoretical Foundations of BEFIT

The European Union has long struggled with the challenge of corporate tax harmonisation. As an economic and political union, it seeks to balance the benefits of tax coordination with the fiscal autonomy of Member States. BEFIT is not the first attempt to harmonise taxation in the EU, and if it fails, it is unlikely to mark the final attempt. Efforts to harmonise taxation have long been linked to fostering economic integration among Member States.<sup>48</sup> However, while the financial benefits of tax coordination seem straightforward, the political reality is more complex. There is tension between supranational regulation and national sovereignty, which remains a significant barrier. BEFIT is no exception in this regard.

One of the key objectives in establishing the European Community, the predecessor of the EU, was to accelerate economic growth across Member States.<sup>49</sup> This has remained a core value of the EU through the years. While the term "harmful tax competition" only entered the EU discourse in the late 1990s, the cross-border implications of national taxation had already been a significant concern during the early years of the European Economic Community.<sup>50</sup> In this section, I will provide an overview of the BEFIT framework, tracing its origins and situating it within the broader context of the EU's tax harmonisation efforts. The goal is to explain why BEFIT emerged, how it relates to previous initiatives, and its theoretical foundations. Moreover, this discussion will reflect on the successes and failures of the prior attempts at harmonisation, identifying the recurring obstacles that have hindered progress and assessing whether BEFIT has the potential to overcome them. This reflection underscores the complexity of the challenge at hand: past efforts, despite their intentions, good or bad, have

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<sup>48</sup> Terra – Wattel, 2012, pp. 19–22.

<sup>49</sup> Pastukhov, 2023, pp. 159.

<sup>50</sup> Kyriazis, 2023, pp. 35.

been met by political and economic realities. BEFIT, while potentially more refined, will still have to navigate similar challenges.

The European Commission has long recognised the challenges posed by differing corporate tax systems across Member States, prompting various initiatives to assess and address these disparities. However, the evolution of tax harmonisation has not been a straightforward process. In the early 1990s, the Commission established the Ruding Committee, which presented the Ruding Report. The Report contains various interesting findings regarding corporate taxation. More specifically, the Committee found that there were substantial differences in the corporate tax systems of Member States, and ‘considerable variations’ in their corporation tax rates and tax bases.<sup>51</sup> These discrepancies were seen as barriers to fair competition and economic efficiency within the internal market. The Ruding Report can be considered one of the earliest attempts to comprehensively assess the impact of tax competition, laying the groundwork for later discussion on tax harmonisation.

A few years after the Ruding Report, the Commission published a document (later referenced as the Verona Report), whose principal point was to highlight the main challenges for taxation policy in the EU and persuade Member States of the need for more coordination.<sup>52</sup> The Verona Report identifies ‘unfair competition in the tax area’ as a significant concern, highlighting its potential to erode the tax base, contribute to fiscal degradation, and destabilise Member States’ tax revenues. However, the report does not yet provide a clear definition of harmful tax competition.<sup>53</sup> This illustrates the challenge of moving beyond theoretical discussions to practical implementation, which persists in the contexts of BEFIT. Despite this, it marks a crucial shift in the Commission’s approach to corporate taxation, as it demonstrates a growing awareness of the risks posed by unregulated tax competition and the necessity for coordinated action at the EU level.

In the early 2010s, the Commission began harmonising corporate taxation by introducing the Common Consolidated Corporate Tax Base (CCCTB) in 2011. This was the Commission’s first attempt to harmonise EU corporate taxation and control unwanted competition. The CCCTB aimed to establish a harmonised corporate tax framework to reduce compliance costs, minimise tax arbitrage, and streamline corporate restructurings across the EU.<sup>54</sup> The 2011

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<sup>51</sup> Kyriazis, 2023, pp. 35.

<sup>52</sup> Ibid., pp.37.

<sup>53</sup> Ibid., pp. 35.

<sup>54</sup> HJI Panayi, 2013, pp. 82.

proposal sought to create a unified set of tax rules, enabling businesses to treat the EU as a single market for taxation, thereby simplifying cross-border operations and promoting trade and investment. Additionally, it aimed to facilitate the comprehensive consolidation of profits and losses at the EU level.<sup>55</sup>

However, this initiative ultimately failed. The 2011 CCCTB proposal differentiated tax treatment based on a company's location. EU-based companies opting into the system would be subject to corporate tax on all income, regardless of where it was generated. In contrast, third-country companies adopting the CCCTB would be taxed only on income from activities conducted through a permanent establishment within an EU Member State.<sup>56</sup> This distinction led to concerns about fairness, competitive disadvantages, and potential distortions in the tax system, ultimately contributing to the proposal's rejection. Moreover, several Member States, particularly those with low corporate tax rates, resisted the initiative, fearing that harmonisation would undermine their ability to attract foreign investment.<sup>57</sup> The failure of CCCTB can be partially attributed to political resistance from Member States with low corporate tax rates, which feared losing their competitive advantage. Moreover, the CCCTB proposal introduced a complex apportionment formula that several Member States considered overly intrusive, threatening their fiscal sovereignty. These combined issues led to the rejection of CCCTB, highlighting the political difficulty of securing consensus on such a complex and far-reaching proposal.

After the failure of the 2011 CCCTB, the Commission relaunched the CCCTB initiative in 2016. Taxing multinational enterprises in a global market requires accounting for real economic circumstances when determining the tax base. The re-launch of the CCCTB followed a two-step approach, with the European Commission introducing interconnected proposals: one for a Common Corporate Tax Base (CCTB) and another for a Common Consolidated Corporate Tax Base (CCCTB).<sup>58</sup> The 2016 CCCTB proposal builds on the 2011 CCTB by introducing an apportionment formula to allocate the consolidated tax base among Member States. It also presents key definitions, including single taxpayer, principal taxpayer, group member, consolidated tax base, apportioned share, competent authority, and principal

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<sup>55</sup> European Commission, Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) COM (2011) 121 final.

<sup>56</sup> HJI Panayi, 2013, pp. 85.

<sup>57</sup> Spengel - Ortman-Babel – Zinn – Matenaer, 2012.

<sup>58</sup> European Commission, Proposal for a Council Directive on a Common Corporate Tax Base (CCTB) COM (2016) 685 final; and Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) COM (2016) 683 final.

tax authority. The proposal establishes rules on parent companies and qualifying subsidiaries, consolidation effects, timing, elimination of intra-group transactions, withholding taxes, and other source taxation. Additionally, it provides guidelines on fixed assets, long-term contracts, provisions, revenues, and deductions when entering a group, as well as depreciation timing, treatment of fixed assets and losses when exiting a group, and group termination rules.<sup>59</sup> Despite these refinements, the 2016 CCCTB proposal faced political and economic challenges similar to those of its predecessor. While some Member States supported the initiative to reduce tax avoidance and enhance market efficiency, others remained sceptical. Concerns over the appointment formula, revenue distribution, and the impact on national tax policies continued to hinder progress. Consequently, the CCCTB was never implemented, and the debate over corporate tax harmonisation persists.

As the CCCTB faced significant political and technical obstacles, it was eventually withdrawn by the Commission following the launch of BEFIT. In contrast to its predecessor, BEFIT adopts a more pragmatic and incremental approach, starting with a harmonised corporate tax base but postponing complete consolidation. This design reflects a strategic effort to curb tax avoidance while maintaining greater political feasibility. It also demonstrates a significant shift in strategy, learning from the shortcomings of previous harmonisation attempts, which faltered under the weight of concerns surrounding fiscal sovereignty and national control over taxation.

Reflecting on these past efforts, it is evident that BEFIT is not an isolated proposal but an evolution of previous attempts, drawing from past failures and refining earlier methodologies. For instance, the CCCTB is also based on a ‘one-stop-shop’ system for filing their tax returns,<sup>60</sup> a feature BEFIT also adopts. This continuity reinforces that BEFIT comes from something and is not just a spur-of-the-moment proposal. The Impact Assessment states that valuable insights have been gained from many years of Council negotiations and related analysis of taxation files that can now be used to design BEFIT.<sup>61</sup> It shows that BEFIT has a foundation to build on and earlier mistakes and successes to learn from.

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<sup>59</sup> European Commission, Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) COM (2016) 683 final.

<sup>60</sup> HJI Panayi, 2013, p. 82.

<sup>61</sup> European Commission, Impact Assessment: Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/235 final).

However, BEFIT's more modest scope raises a fundamental question about whether a partially harmonised framework effectively resolves the issues the CCCTB was meant to address or if further integration will ultimately be necessary. A central lesson emerging from past efforts is the importance of balancing harmonisation and national autonomy. For BEFIT to succeed where previous initiatives failed, it must precisely navigate these political sensitivities while remaining committed to its core objectives. Although the idea of a unified approach to corporate taxation within the EU has been long discussed, implementation has proven elusive. BEFIT may not represent the final stage of tax harmonisation. Still, it constitutes a meaningful progression towards a fairer, more coherent, and administratively workable corporate taxation system in the internal market.

### **2.3 Legal and Practical Challenges of BEFIT**

For BEFIT to be effective, it must not only introduce a harmonised corporate tax framework but also integrate seamlessly with existing EU tax policies and regulations. Ensuring consistency with current rules is essential to uphold legal certainty, provide businesses with a predictable tax environment, and avoid conflicts with established measures. The EU already has several directives addressing issues such as double taxation, tax avoidance, and cross-border corporate taxation. Any new initiative must be designed to complement these frameworks rather than create additional complexity. Recognising this, the Commission has structured BEFIT to align with key directives and recent policy initiatives regarding direct taxation.<sup>62</sup> This approach helps ensure that BEFIT strengthens the EU's corporate tax system while maintaining coherence with existing regulations.

One of BEFIT's advantages is its potential to enhance legal certainty for businesses. The current system creates substantial compliance costs and legal fragmentation for multinational enterprises in multiple EU countries.<sup>63</sup> By introducing a unified tax base, BEFIT could simplify tax reporting requirements and reduce administrative burdens, aligning with the EU's broader objectives of regulatory simplification and legal predictability.<sup>64</sup> That said, the practical effectiveness of BEFIT in lowering compliance costs will largely depend on its implementation and the willingness of Member States to enforce uniform standards. While a

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<sup>62</sup> European Commission, Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT), COM (2023) 784 final.

<sup>63</sup> European Commission, Communication from the Commission to the European Parliament and the Council: Business Taxation for the 21st Century (COM/2021/251 final).

<sup>64</sup> Barnard, 2019.

unified tax base reduces complexity, challenges may arise if national authorities interpret BEFIT's provisions differently or impose additional reporting requirements. This could unintentionally undermine the directive's goal of regulatory simplification, resulting in continued legal fragmentation rather than resolving it.

From a corporate perspective, BEFIT presents a compelling value proposition. Standardising the tax base across the EU reduces the complexity of dealing with multiple, often conflicting, national tax systems. This simplification could significantly lower compliance costs, minimise legal uncertainty, and streamline internal tax planning. For multinational enterprises, particularly those operating in multiple Member States, BEFIT offers the prospect of interacting with fewer tax authorities, fewer filing obligations, and clearer guidance on profit allocation. Highlighting these benefits may be key to gaining the support of the business community and promoting BEFIT as not only a regulatory measure but also a tool for enhancing operational efficiency and competitiveness in the internal market.

For BEFIT to succeed, it must be consistent with existing EU policies in direct taxation, a factor the Commission has explicitly considered in its proposal. The initiative aligns with several current regulations<sup>65</sup> and clarifies its interaction with them. Key directives, such as the Parent-Subsidiary Directive, the Interest and Royalties Directive, and the Merger Directive, were introduced to address double taxation for cross-border companies. BEFIT builds on these efforts by aiming to provide a more comprehensive and unified approach to corporate taxation within the EU.<sup>66</sup> Additionally, the proposal highlights its complementarity with more recent initiatives,<sup>67</sup> such as the Debt-Equity Bias Reduction Allowance (DEBRA) proposal, which seeks to address the debt-equity bias in corporate taxation by incentivising equity financing,<sup>68</sup> and the "UNSHELL" proposal, which introduces anti-tax avoidance measures to prevent the misuse of shell entities.<sup>69</sup> These complementary initiatives reinforce BEFIT's broader objectives and introduce potential coordination challenges. Since BEFIT operates alongside other regulatory efforts, ensuring these measures function cohesively without

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<sup>65</sup> European Commission, Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/234 final) pp. 3.

<sup>66</sup> Ibid.

<sup>67</sup> European Commission, Proposal for a Council Directive Laying Down Rules on a Debt-Equity Bias Reduction Allowance and on Limiting the Deductibility of Interest for Corporate Income Tax Purposes (COM/2022/216 final).

<sup>68</sup> European Commission, Proposal for a Council Directive Laying Down Rules to Prevent the Misuse of Shell Entities for Tax Purposes and Amending Directive 2011/16/EU (COM/2021/565 final).

<sup>69</sup> European Commission, Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/234 final). pp. 3.

overlap or contradiction will be crucial. If the interaction between BEFIT and existing directives is not carefully managed, businesses may face unexpected compliance burdens or legal uncertainties when navigating overlapping regulations.

Alongside the regulation already discussed, BEFIT must also align with ATAD. The current proposal guarantees this compatibility. The interest limitation rule is one specific area where consistency is required (Article 4 of the ATAD).<sup>70</sup> To address this, BEFIT includes Article 13, which accommodates the rule within the framework of a cross-border group rather than applying it on a company-by-company basis.<sup>71</sup> This change marks a notable shift in EU tax law, transitioning from an entity-based framework to one focused on the group level. While this adjustment may simplify compliance for multinational enterprises, it could also introduce challenges in enforcement. Tax authorities would be tasked with evaluating interest deductions at the consolidated group level, rather than for each company. BEFIT considers this, and to ensure adequate oversight, new supervisory and auditing systems are suggested in the Commission's Impact Assessment.<sup>72</sup> This monitoring system is essential for guaranteeing group-wide compliance and preventing companies from exploiting any potential gaps in the system.

With differing interpretations of BEFIT rules across Member States, dispute resolution mechanisms would need to be robust to resolve conflicts about tax liabilities and the allocation of profits. The European Commission has emphasised that BEFIT would facilitate cross-border investment by eliminating mismatches in tax rules that currently create distortions in corporate decision-making.<sup>73</sup> Nevertheless, the success of BEFIT's dispute resolution mechanisms will depend on how efficiently they can address conflicts between tax authorities. If Member States continue to prioritise national tax interests over uniform EU enforcement, disputes may persist despite BEFIT's harmonisation efforts. This highlights the importance of ensuring that a clear and enforceable framework backs BEFIT for resolving tax disputes at the EU level.

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<sup>70</sup> European Commission, Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/234 final). pp. 3.

<sup>71</sup> Ibid. pp. 4.

<sup>72</sup> European Commission, Impact Assessment Accompanying the Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) SWD (2023) 261 final.

<sup>73</sup> European Commission, Communication from the Commission to the European Parliament and the Council: Business Taxation for the 21st Century (COM/2021/251 final).

A balance between tax harmonisation and national tax sovereignty is essential when implementing BEFIT. As a directive, BEFIT must be transposed into national law, allowing each country to adapt its provisions to domestic legal systems.<sup>74</sup> However, this flexibility can lead to varied interpretations and applications of the rules, potentially undermining the uniformity BEFIT aims to achieve. At the same time, permitting Member States a degree of discretion could make them more inclined to endorse the directive, improving its political feasibility. This trade-off between harmonisation and sovereignty is a recurring challenge in the EU tax policy. While flexibility enhances political agreement, it simultaneously raises concerns about enforcement. If Member States use this discretion to maintain preferential regimes under a different guise, BEFIT may struggle to achieve its objectives of reducing harmful tax competition.

Moreover, the EU's existing mechanisms for ensuring uniform interpretation, such as preliminary rulings by the Court, Commission guidance, and administrative cooperation frameworks, may prove inadequate for BEFIT's technical and legal complexity. These tools rely heavily on Member State initiative and cooperation, and they were not necessarily designed to enforce a centralised, formula-based system. The preliminary ruling procedure, for example, is reactive and dependent on national courts, while Commission guidance lacks binding force.<sup>75</sup> Without a robust enforcement mechanism or a central authority capable of issuing uniform, binding interpretations, divergent practices across Member States may persist.<sup>76</sup> As a result, BEFIT risks perpetuating a fragmented corporate tax landscape rather than establishing a coherent legal framework.<sup>77</sup> Thus, the question remains whether political compromises will dilute the directive's effectiveness or whether subsequent refinements will be necessary to ensure meaningful uniformity. The EU should implement robust safeguards, such as detailed Commission guidance and stronger oversight, to ensure coherence across jurisdictions.

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<sup>74</sup> European Union, 'Summary of EU Legislation: Directives – Transposition into National Law' (EUR-Lex) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:114527>

<sup>75</sup> Art 267 TFEU, which grants the Court the authority to issue preliminary rulings, is a key mechanism for ensuring uniform interpretation of EU law. However, this system relies on national courts referring cases to the Court, and it does not offer proactive enforcement of uniform standards across all jurisdictions.

<sup>76</sup> See, e.g., Kovacevic, 2024

<sup>77</sup> Regulation (EU) No 904/2010 of the European Parliament and of the Council of 7 October 2010, on administrative cooperation and combating fraud in the field of VAT [2010] OJ L 288/1, which details the EU's administrative cooperation framework but highlights that the model is geared more toward cooperation than binding enforcement, particularly when Member States resist applying uniform standards.

Additionally, BEFIT could limit national fiscal flexibility, restricting governments' ability to tailor tax policies to their economic needs. While a harmonised tax base enhances fairness, it may also reduce the diversity of fiscal policies, which some argue is a key advantage of decentralised tax systems.<sup>78</sup> This tension highlights a fundamental issue: whether the anticipated benefits of greater tax certainty, fairness, and reduced compliance costs justify the potential reduction in fiscal autonomy. While BEFIT seeks to create a level playing field, it could also eliminate specific policy tools that governments use to respond to economic crises, incentivise investment, or support key industries.<sup>79</sup> Policymakers must assess whether the long-term gains in stability outweigh the potential constraints on national tax strategies.

Furthermore, there is a risk that BEFIT may lead to new forms of tax avoidance. Although it aims to reduce profit shifting within the EU, multinational corporations may still engage in jurisdictional arbitrage, exploiting differences in non-EU tax rules or restructuring their operations to benefit from possible loopholes within the harmonised system.<sup>80</sup> This underscores the persistent challenge of designing a system that is both comprehensive and resilient against evolving tax planning strategies. While BEFIT is designed to address current weaknesses, it could create new opportunities for aggressive tax planning, particularly if profit allocation rules can be manipulated or if disparities between BEFIT and external tax regimes remain significant. The success of BEFIT will depend on how well it anticipates and mitigates these risks through robust anti-abuse measures and its ability to adapt over time.

While BEFIT aims to simplify tax compliance for multinational corporations, it may lead to legal uncertainties regarding defining a company's tax base, determining the appropriate allocation of profits, and establishing where businesses should pay taxes.<sup>81</sup> Aligning the EU's diverse national tax regimes under a unified BEFIT framework presents significant practical challenges, given the wide variation in Member States' tax rates, structures, and fiscal policies. Although BEFIT seeks to address these complexities, the discussions around its design reflect the underlying tension between harmonisation and national autonomy.

Central to BEFIT's administrative framework is the application of the One-Stop-Shop principle. This concept, designed to simplify regulatory compliance, would allow businesses

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<sup>78</sup> Hohenwarter – Mayr, 2024, pp. 439.

<sup>79</sup> Ibid.

<sup>80</sup> Fuest – Spengel – Finke – Heckemeyer – Nusser, 2013,

<sup>81</sup> European Commission, Impact Assessment: Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/235 final).

to interact with a single designated tax authority rather than multiple national authorities. In the BEFIT context, this would mean that a company would interact with a single tax authority in one Member State rather than dealing with multiple national tax administrations. However, implementing the OSS model raises fundamental questions about which Member State should act as the primary tax authority. Possible criteria include the location of the company's headquarters, its primary revenue-generating activities, or the size of its workforce. The choice of jurisdiction could significantly impact revenue distribution among Member States, potentially leading to disputes over tax collection rights.<sup>82</sup> Without transparent and fair allocation rules, resistance to the OSS model could emerge, again threatening BEFIT's effectiveness.

One of BEFIT's main objectives, widely supported during the public consultation phase, is to reduce compliance and administrative costs. To achieve this, BEFIT proposes a system in which the Filing Entity, which could be either the EU Ultimate Parent Entity or another designated BEFIT group member, would handle key administrative responsibilities, overseen by the Filing Authority.<sup>83</sup> This centralised approach reflects the EU's broader efforts to streamline cross-border tax compliance. Nevertheless, the system's success depends heavily on effective cooperation between national authorities, an area where previous EU tax initiatives have faced difficulties.<sup>84</sup>

Three models for the administrative framework are under consideration: an Advanced OSS, a Limited OSS, and a Hybrid OSS.

The Advanced OSS would fully centralise compliance: the Filing Authority would act as the sole point of contact for all group members, receiving both the BEFIT Information Return and all individual tax returns, and then distributing the tax revenues to Member States. The Filing Authority would also manage revisions across the entire group in audits or disputes.<sup>85</sup> While this model offers significant simplifications, it raises concerns about impartiality and fairness, particularly if the Filing Authority is in a Member State with markedly different tax policy

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<sup>82</sup> European Commission, Impact Assessment: Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/235 final).

<sup>83</sup> Ibid.

<sup>84</sup> HJI Panayi, 2021, pp. 203–206.

<sup>85</sup> European Commission, Impact Assessment: Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/235 final).

preferences. Transparency and robust oversight mechanisms would be crucial to mitigate these risks and ensure trust in the system.

On the other hand, the Limited OSS would decentralise compliance. Each BEFIT group member is to handle its administrative processes locally. In this system, each group member would submit their BEFIT Information Return and individual tax return to their respective national tax authorities instead of a single Filing Authority. A coordination mechanism within BEFIT Teams would assist in ensuring consistency.<sup>86</sup> This approach preserves national control but could result in inefficiencies, particularly for large multinationals that must navigate multiple tax administrations. It also raises questions about whether Member States will interpret BEFIT provisions consistently. If national authorities apply differing compliance standards, businesses could face fragmented enforcement, undermining the directive's goal of harmonisation.

The Hybrid OSS seeks to compromise, combining elements of both models. It could also introduce new layers of bureaucracy if coordination mechanisms are not well-defined. Ultimately, the choice of administrative model will require delicate negotiations.<sup>87</sup> BEFIT's success in achieving meaningful harmonisation will largely depend on the willingness of Member States to compromise and the EU's ability to enforce a uniform implementation.

However, concerns remain regarding the complexity of transitioning to BEFIT. Businesses and tax administrations must adapt to new systems, likely incurring short-term compliance costs and legal uncertainty during implementation.<sup>88</sup> Moreover, Member States that rely on tax incentives to attract investment may resist BEFIT's implementation, fearing a loss of competitiveness. A carefully structured transition phase will thus be critical. A gradual rollout, temporary opt-outs, staggered implementation deadlines, or financial support for Member States facing significant revenue losses may be necessary to ensure a smoother adaptation process.

In its Impact Assessment, the Commission considers the compliance costs that BEFIT can incur. The complexity of navigating multiple tax regimes increases compliance costs and tax uncertainty, discouraging cross-border investment and placing EU businesses at a competitive

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<sup>86</sup> European Commission, Impact Assessment: Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/235 final).

<sup>87</sup> Ibid.

<sup>88</sup> Barrios - d'Andria - Gesualdo, 2020

disadvantage compared to counterparts in similarly sized markets. Moreover, fragmented national systems create loopholes and inefficiencies, enabling aggressive tax planning and increasing the risk of double or over-taxation.<sup>89</sup> Empirical studies indicate that corporate tax compliance costs have increased significantly.<sup>90</sup> This is especially heavy for small and medium-sized enterprises that might lack the resources to manage complex cross-border obligations. Therefore, BEFIT's goal of simplifying tax rules and reducing costs is essential to creating a more integrated and competitive internal market.<sup>91</sup> However, whether BEFIT will successfully reduce compliance burdens in practice remains uncertain. Larger multinationals may ultimately benefit from streamlined rules, but the short-term adjustment could prove disproportionately costly for smaller companies.

Achieving consistency across Member States in key concepts such as taxable income, deductions, and exemptions would require extensive coordination and compromise. These challenges highlight a broader tension within EU tax policy: balancing uniformity with national flexibility. Negotiations on the final framework of BEFIT will likely revolve around these trade-offs, with some countries advocating for greater standardisation and others pushing for flexibility to accommodate national tax preferences.

Setting up a new system for BEFIT will undoubtedly entail substantial initial costs. However, compliance costs will decrease overall, making BEFIT a more efficient framework for tax authorities and multinational corporations.<sup>92</sup> Once operational, BEFIT could enhance legal certainty, reduce administrative burdens, and minimise the potential for disputes, fostering a more competitive European economy.<sup>93</sup> Nonetheless, the success of BEFIT in achieving these goals will depend on effective enforcement mechanisms and consistent application across all Member States. If complete alignment is not achieved or enforcement mechanisms remain weak, BEFIT risks falling short of its objectives. Continuous monitoring, flexibility for periodic revisions, and strong oversight structures will be necessary to ensure that BEFIT adapts to emerging challenges and remains a viable solution to corporate tax fragmentation in the EU.

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<sup>89</sup> European Commission, Impact Assessment: Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/235 final).

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

### 3 BEFIT and Harmful Tax Competition

#### 3.1 Defining Harmful Tax Competition in EU and International Contexts

Tax competition is a natural consequence of economic integration and capital mobility, allowing Member States to shape their fiscal policies in ways that attract investment. While some tax competition can be positive by promoting economic efficiency and encouraging governments to maintain competitive tax systems, it becomes harmful when it distorts market conditions, erodes national tax bases, and leads to unfair advantages for multinational corporations.<sup>94</sup> Tax competition occurs at global and regional levels, driven by increasing economic integration.<sup>95</sup> Ensuring fair taxation is a priority for the EU, as it secures sustainable revenue, fosters a competitive business environment, and supports long-term financial stability through growth, employment, and investment.<sup>96</sup> The challenge for policymakers is to distinguish between acceptable and harmful tax competition. However, a universally accepted international definition of harmful tax competition has yet to be established<sup>97</sup>, making it harder for policymakers to draw clear regulatory boundaries, ensure consistent enforcement, and coordinate effective responses across jurisdictions.

At the heart of the debate is whether tax competition should be entirely eliminated or merely regulated. Scholars fall into three main categories: those who argue tax competition is never harmful, those who view all tax competition as detrimental, and those who take an intermediate stance, acknowledging both positive and negative effects.<sup>98</sup> This thesis adopts the third perspective, as it provides the most balanced framework for evaluating whether measures like BEFIT can effectively curb harmful tax competition while preserving fiscal sovereignty and economic competitiveness.

In the early years of the European integration process, tax competition was considered a controversial but unavoidable consequence of the development of the internal market.<sup>99</sup> As previously discussed, the term harmful tax competition entered the conversation in the 1990s, as concerns shifted from the simple implications of tax dumping to a broader understanding of

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<sup>94</sup> See, e.g. Devereux – Lockwood – Redoano, 2008.

<sup>95</sup> Perotto, 2021, p.310

<sup>96</sup> Ibid.

<sup>97</sup> OECD, Harmful Tax Competition: An Emerging Global Issue (OECD 1998) 23.; European Commission, Communication from the Commission to the European Parliament and the Council on Business Taxation for the 21st Century COM (2021) 251 final, 6–7.

<sup>98</sup> Kyriazis, 2023, p.30.

<sup>99</sup> Van Cleynenbreugel, 2021, pp. 226

its negative effects, including tax evasion, tax avoidance, and aggressive tax planning.<sup>100</sup>

Growing awareness of tax dumping, where Member States artificially lowered corporate tax rates to attract investment, sparked discussions on its long-term economic consequences. The debate evolved from merely recognising tax competition to addressing its harmful implications, such as profit shifting and the erosion of national tax bases.<sup>101</sup>

Multinational corporations increasingly exploit disparities between Member States' tax regimes, using accounting strategies to shift profits to low-tax jurisdictions while maintaining operations in higher-tax states. This practice erodes national tax revenues and distorts competition, giving firms that engage in aggressive tax planning an advantage over businesses that pay taxes where their profits are generated.<sup>102</sup> The rise of digital business models, which allow companies to operate in multiple jurisdictions with minimal physical presence, further heightens these challenges.<sup>103</sup> While tax evasion is outright illegal, tax avoidance often involves exploiting legal loopholes, such as transfer prices or tax havens, to minimise tax burdens in ways legislators did not intend.<sup>104</sup> This distinction fuelled concerns that multinational corporations were not paying their fair share of taxes, depriving Member States of critical public services and infrastructure revenues.<sup>105</sup> The relationship between tax avoidance and competition is complex, as both are driven by the same desire to minimise tax liabilities. However, unlike tax competition, tax avoidance involves strategic decisions by corporations to take advantage of existing gaps or mismatches in tax systems, often across multiple jurisdictions.<sup>106</sup>

Consequently, the European Commission has intensified efforts to regulate tax competition through various legislative and enforcement mechanisms. As cross-border economic activities within the EU increase, disparities between Member States' tax regimes become more pronounced, allowing multinational corporations to exploit these differences for financial advantage.<sup>107</sup> To address these ongoing challenges of harmful tax competition and corporate tax avoidance, the EU has progressively developed a combination of soft-law instruments and

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<sup>100</sup> Perotto, 2021, pp. 314.

<sup>101</sup> Alexander – De Vito – Jacob, 2020, pp. 309–41

<sup>102</sup> Fuest - Spengel - Finke - Heckemeyer - Nusser, 2013, pp. 307–324.

<sup>103</sup> Olbert – Spengel, 2017, pp. 5.

<sup>104</sup> European Commission, Communication from the Commission to the European Parliament and the Council on Tax Good Governance in the EU and Beyond COM (2020) 312 final, 1–2.

<sup>105</sup> Scherer – Schmiel, 2021, pp. 32.

<sup>106</sup> European Commission, Communication from the Commission to the European Parliament and the Council on Tax Good Governance in the EU and Beyond COM (2020) 312 final, 1–2.

<sup>107</sup> Genschel – Kemmerling – Seils, 2011, pp. 588.

binding legislative measures, such as the Code of Conduct<sup>108</sup> and the ATAD, which introduced a set of legally binding anti-avoidance measures for all Member States. The Commission has been applying state aid rules under Article 107 TFEU more actively, targeting selective tax advantages granted to corporations that might give them unfair advantages and harm competition in the internal market. Despite these efforts, there are still disparities in national tax systems, enabling continued profit shifting and aggressive tax planning.<sup>109</sup> This shows the limits of relying on national rules alone and highlights the need for stronger EU-level coordination.

Another vital document in the discourse on tax competition is the OECD's 1998 Report on Harmful Tax Competition, which acknowledges the distinction between acceptable and harmful tax competition.<sup>110</sup> However, identifying harmful tax measures remains challenging due to the lack of consensus on whether tax competition is ultimately beneficial or harmful.<sup>111</sup> Both the OECD and the EU acknowledge the existence of good tax competition, defining it as tax measures adopted by sovereign countries that comply with internationally accepted standards.<sup>112</sup> The EU's commitment to addressing harmful tax practices is evident in its adoption of the Code of Conduct. This initiative underscores Member States' recognition of harmful tax competition and the need to mitigate its effects.<sup>113</sup>

The Code of Conduct was introduced to address harmful tax competition within the EU, although it does not provide a strict definition of what constitutes harmful tax practices. The Code of Conduct specifies several criteria for identifying harmful tax provisions. Generally, a tax regime is considered harmful if it leads to effective taxation that is substantially lower than the taxation normally applied in the concerned member state. The Code further indicates that a tax provision may be deemed harmful if it: grants special advantages exclusively to non-residents or regarding transactions concluded with non-residents; provides benefits that are entirely isolated from the domestic economy, resulting in no impact on the national tax base; offers benefits even when no genuine economic activity or substantial economic presence exists in the grantor state; establishes rules for calculating the profits of multinational businesses that deviate from internationally accepted general principles,

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<sup>108</sup> Council of the European Union, Code of Conduct for Business Taxation [1998] OJ C2/2.

<sup>109</sup> European Commission, Communication from the Commission to the European Parliament and the Council on Tax Good Governance in the EU and Beyond COM (2020) 312 final, 1–4.

<sup>110</sup> Habimana, 2021.

<sup>111</sup> Kyriazis, 2021, pp.30.

<sup>112</sup> Habimana, 2021.

<sup>113</sup> Ibid.

especially those adopted by the OECD; or provides benefits that lack transparency, including situations where statutory rules are applied in an overly flexible or transparent manner.<sup>114</sup>

Beyond the EU, the OECD's BEPS initiative<sup>115</sup> and the Pillar Two global minimum tax proposal<sup>116</sup> reflected a broader international push to limit harmful tax competition. Despite these efforts, the issue of tax competition remained a persistent challenge. The rise of global tax havens, the digitalisation of the economy, and the growing complexity of international corporate structures added new layers of difficulty in addressing tax avoidance effectively. As a result, the EU has recognised that a more comprehensive, binding framework is needed to address tax competition and the broader issues of tax harmonisation, state aid violations, and ensuring fair contributions from multinational corporations.<sup>117</sup> This recognition has paved the way for the development of BEFIT.

However, some scholars, such as Perotto, argue that the EU's approach should focus less on defining harmful tax practices and more on curbing the incentives that drive profit shifting.<sup>118</sup> Perotto suggests that direct tax harmonisation, such as BEFIT, may be a more effective tool than relying on state aid enforcement or loosely coordinated anti-tax avoidance measures. Critics caution that it may face political resistance from low-tax jurisdictions and raise concerns about national tax sovereignty.<sup>119</sup> This debate underscores the broader challenge of balancing tax harmonisation with Member States' fiscal autonomy. Resistance from low-tax jurisdictions highlights the persistent fragmentation in EU tax policy, raising questions about whether a harmonised system can be both politically viable and economically equitable. The success of BEFIT may hinge not only on its legal design but also on the EU's ability to address Member States' concerns and foster a cooperative approach to corporate taxation.

Member States have actively sought to attract businesses by lowering corporate tax rates within the internal market's free movement principles. However, some argue that these trends risk triggering a race to the bottom, where Member States continuously lower corporate tax rates, potentially approaching zero, to retain or attract businesses. While the likelihood of such an extreme outcome remains debated among economists, research suggests that Member

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<sup>114</sup> Pastukhov, 2010 pp. 162.

<sup>115</sup> OECD, Addressing Base Erosion and Profit Shifting (2013) <https://www.oecd.org/tax/beps/>

<sup>116</sup> OECD, Tax Challenges Arising from Digitalisation – Report on Pillar Two of the OECD/G20 Base Erosion and Profit Shifting Project (2020)

<sup>117</sup> See, e.g. Igbinenikaro – Adewusi, 2024.

<sup>118</sup> Perotto, 2020, pp. 313.

<sup>119</sup> Ibid., pp.312.

States are increasingly aware of their neighbours' tax rates, leading to a pattern of direct tax competition.<sup>120</sup> However, in the past, lowering tax rates has often been accompanied by broadening the tax base, which has generally been seen as beneficial. After the introduction of BEFIT, this relationship may no longer hold, as BEFIT would reduce Member States' autonomy in adjusting their tax base. This raises the question of whether BEFIT might inadvertently exacerbate tax competition, since Member States might still lower corporate tax rates to remain competitive, without the ability to offset these reductions through base-broadening measures.

BEFIT can potentially mitigate the risk of a race to the bottom by introducing a common tax base for Member States and corporations, thereby limiting the incentive for jurisdictions to engage in aggressive tax rate reductions. By ensuring that corporate profits are allocated based on economic activity rather than tax rate arbitrage, BEFIT could reduce the effectiveness of preferential tax regimes designed to attract multinational enterprises. Additionally, a harmonised approach to corporate taxation may foster greater transparency and predictability for businesses operating in multiple jurisdictions, ultimately strengthening the EU's single market.<sup>121</sup> According to the BEFIT Impact Assessment, in-scope companies would benefit from a tax environment where competition remains fair and free from harmful practices designed solely to attract investment through tax incentives.<sup>122</sup> However, BEFIT's impact may be limited by the continued flexibility for Member States to adjust their tax rates and the potential for non-tax incentives to remain a competitive tool.

### **3.2 Mechanisms for Addressing Harmful Tax Competition through BEFIT**

Tax competition between Member States is a natural consequence of a system that lacks uniformity in taxation policies.<sup>123</sup> In recent years, aggressive tax planning, base erosion, and the strategic exploitation of regulatory mismatches have become central topics in European legal and political discourse.<sup>124</sup> Multinational companies often take advantage of lower tax rates and loopholes in certain jurisdictions, undermining the tax bases of other Member States

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<sup>120</sup> Van Cleynenbreugel, 2021, pp. 233.

<sup>121</sup> European Commission, Communication from the Commission to the European Parliament and the Council: Business Taxation for the 21st Century COM (2021) 251 final, 6–7.

<sup>122</sup> European Commission, Impact Assessment: Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/235 final). pp. 24.

<sup>123</sup> Perotto, 2021 pp. 336.

<sup>124</sup> Ibid., pp. 311

and contributing to a race to the bottom in corporate tax rates.<sup>125</sup> This highlights a core dilemma in the EU tax policy: while competitive tax systems may attract investment, uncoordinated tax incentives create distortions, erode revenue bases, and generate systemic inefficiencies that weaken the EU's financial stability.

In response to these challenges, the EU has sought to introduce binding legal instruments to foster tax coordination and curb harmful tax practices. BEFIT represents the EU's effort to create a fairer, unified tax environment across Member States. Its general objectives aim to simplify tax rules for businesses, to stimulate growth and investment, and to ensure fair and sustainable tax revenues in the EU.<sup>126</sup> These goals may significantly influence tax competition, particularly regarding harmful tax practices. For instance, BEFIT's proposed common tax base and formulary apportionment method could substantially reduce the ability of multinational corporations to shift profits to low-tax jurisdictions within the EU. By allocating profits based on real economic activity, such as sales, assets, and labour, rather than where companies choose to register their profits, BEFIT would limit the effectiveness of tax incentives offered by certain Member States to attract corporate headquarters or intellectual property rights.<sup>127</sup> This shift could weaken the appeal of preferential tax regimes and align corporate taxation more closely with economic substance, thereby addressing a key driver of harmful tax competition.

Unlike previous frameworks such as the CCCTB, which failed to gain consensus, BEFIT's design reflects a conceptual shift from optional coordination to mandatory harmonisation. ATAD and the Directive on Administrative Cooperation (DAC), which target specific avoidance schemes or enhance transparency, BEFIT's structural approach addresses the root legal fragmentation that enables harmful tax behaviour. Its apportionment formula offers a proactive means of limiting base erosion, rather than reacting to distortive tax practices *ex post*.

BEFIT's specific objectives aim to, for example, reduce distortions that influence decisions, mitigate fragmentation in the internal market, and level the playing field for businesses in the internal market.<sup>128</sup> Therefore, it could be said that one of the aims is to reduce harmful tax

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<sup>125</sup> Fuest - Spengel - Finke - Heckemeyer - Nusser, 2013, pp. 307–324.

<sup>126</sup> European Commission, Impact Assessment: Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/235 final). pp. 23.

<sup>127</sup> *Ibid.*

<sup>128</sup> European Commission, Impact Assessment: Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/235 final). pp. 25.

competition. However, the extent to which it can effectively curb tax competition depends on its implementation. If Member States retain significant control over tax rates and incentives, there is a risk that existing disparities will persist, limiting BEFIT's ability to create a level playing field.

BEFIT's design marks a transition in EU tax policy, shifting from reactive enforcement, exemplified by state aid rules, to proactive legal standardisation. While state aid enforcement addresses preferential tax measures post-factum, BEFIT establishes a framework to prevent these measures before they occur. This transition signifies a change in EU tax governance, integrating legal and administrative mechanisms to foster a more consistent and equitable regulatory environment.<sup>129</sup> By minimising opportunities for aggressive tax planning, BEFIT restricts companies' ability to engage in jurisdictional arbitrage and reduces the incentive for Member States to lower tax rates in competition for multinational corporations. However, without complementary measures, such as a harmonised minimum corporate tax rate, BEFIT's capacity to eliminate profit-shifting incentives remains uncertain. While a unified tax base simplifies compliance and curtails tax planning complexity, businesses may still exploit discrepancies in tax rates and other incentives. This scenario underscores the need for additional regulatory safeguards.

In this evolving framework, the role of the Court remains central. As the ultimate interpreter of EU law, the Court plays a pivotal role in determining the compatibility of national tax provisions with fundamental EU freedoms. It strikes down a tax provision that restricts fundamental freedoms or discriminates between residents and non-residents unless the Member State can justify such restriction or discrimination with a legitimate general interest that cannot be assured by less restrictive means. The Court has found many anti-abuse measures incompatible with fundamental freedoms.<sup>130</sup> This judicial scrutiny has rendered numerous anti-abuse measures incompatible with EU law, limiting the tools available to Member States to combat tax avoidance independently. Moreover, while strict state aid enforcement has historically curbed harmful tax practices, loosening this oversight could risk enabling the competitive dynamics BEFIT seeks to address.<sup>131</sup> As such, effective judicial

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<sup>129</sup> Ibid. pp. 9-11.

<sup>130</sup> Pastukhov, 2010, p.172.

<sup>131</sup> See, e.g., *Cadbury Schweppes plc and Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue* (Case C-196/04) EU:C:2006:544, which limited the UK's CFC rules; and *Marks & Spencer plc v Halsey* (Case C-446/03) EU:C:2005:763, on cross-border loss relief.

enforcement and consistent interpretation will be crucial to upholding the integrity and objectives of BEFIT within the broader legal architecture of the EU.

As stated, BEFIT aims to create a unified corporate tax framework within the EU, replacing the current fragmented national tax systems. Different policy approaches have been proposed to achieve this, each varying in the degree of harmonisation and implementation. These approaches have been categorised into three versions: Comprehensive, Composite, and Light. The choice between these models significantly impacts tax administration, compliance costs, and legal certainty for multinational corporations.<sup>132</sup>

The Comprehensive Version represents the highest level of harmonisation, where BEFIT would fully replace national corporate tax systems for businesses within its scope. This approach ensures maximum simplification, as it introduces a common tax base and a standardised allocation formula, eliminating disparities between national rules. Additionally, it would establish a centralised administrative system, where a single tax authority (Filing Authority) would oversee compliance for an entire BEFIT group. This version also includes a new risk assessment tool, based on a "traffic light system," to regulate transactions between BEFIT members and entities outside the group.<sup>133</sup> While this approach offers the most significant benefits in terms of simplification and fairness, its feasibility depends on the political will of Member States to cede control over their corporate tax policies. Resistance from Member States that benefit from tax competition may limit its chances of full adoption.

In contrast, the Light Version offers minimal harmonisation, allowing Member States significant flexibility in implementing BEFIT rules. Under this approach, companies would still need to comply with some common principles, but many aspects of corporate taxation would remain subject to national discretion.<sup>134</sup> While this version reduces the burden of transitioning to a new tax system, it may fail to provide the full benefits of simplification and legal certainty. The absence of uniform corporate tax rules could lead to continued disparities among Member States, limiting the effectiveness of BEFIT in addressing tax avoidance and ensuring a level playing field.<sup>135</sup> This version may serve as a politically viable starting point,

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<sup>132</sup> European Commission, Impact Assessment: Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/235 final).

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

but it risks being insufficient in tackling deeper structural problems associated with tax competition and avoidance.

The Composite Version represents a middle-ground solution, combining elements of both approaches. It seeks to achieve a sufficient degree of uniformity while maintaining some national flexibility. Key aspects, such as tax base calculation and filing requirements, would be harmonised, whereas others, such as specific adjustments and administrative processes, would allow for some national variation.<sup>136</sup> This aims to balance simplification and national sovereignty, making it a pragmatic compromise. However, a hybrid approach may create complexities in enforcement, as variations between Member States could still lead to regulatory arbitrage and disparities in compliance.

Each of these policy versions carries different implications for businesses and tax authorities. A higher degree of harmonisation, as seen in the Comprehensive Version, would significantly reduce compliance costs and legal uncertainty but may require a more complex initial transition. While more straightforward to implement, the Light Version may fail to eliminate tax fragmentation, undermining BEFIT's core objectives. Meanwhile, the Composite Version balances these factors, offering moderate simplification while preserving some national flexibility.<sup>137</sup> The ultimate choice will determine how effectively BEFIT can enhance tax certainty, reduce compliance burdens, and foster a more integrated EU corporate tax system. Reflecting on the current trajectory of EU tax coordination, BEFIT appears to mark a pivotal step towards deeper integration. However, its success will depend on whether the EU can overcome political resistance and enforce a model that limits harmful tax practices while respecting Member State autonomy.

### **3.3 Theoretical Evaluation of BEFIT's Effectiveness in Combating Harmful Tax Competition**

As established, introducing BEFIT is another significant step toward EU corporate tax harmonisation. However, its theoretical effectiveness remains subject to debate, particularly regarding its alignment with EU tax harmonisation goals, its role in addressing harmful tax competition, its implications for legal predictability and compliance, and its challenges regarding political feasibility and unintended consequences. As no initiative like BEFIT has

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<sup>136</sup> European Commission, Impact Assessment: Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/235 final).

<sup>137</sup> Ibid.

come into force, it isn't easy to estimate its effectiveness beforehand. However, the time could be right for a tax framework such as BEFIT. The success of BEFIT will ultimately depend on whether it can strike a balance between efficiency, fairness, and political acceptability.

Harmonising corporate taxation within the EU has long been considered a necessary yet politically sensitive objective. While indirect tax coordination has seen substantial progress, direct taxation has mainly remained within the competence of Member States. BEFIT represents the latest attempt to address this gap by introducing a harmonised corporate tax base while avoiding the politically contentious issue of tax rate unification. However, questions remain about whether BEFIT can achieve harmonisation without eventually leading to pressures for tax rate unification, despite its goal of avoiding such a development. Evaluating whether BEFIT can address harmful tax competition without setting a minimum tax rate is also necessary. While the common tax base limits profit shifting through base manipulation, it may intensify competition on tax rates, as Member States retain full autonomy over rate-setting. This shift could undermine the intended level playing field, highlighting the need for complementary mechanisms to ensure that a resurgence of rate-based competition does not offset BEFIT's benefits.

From a theoretical perspective, BEFIT is intended to promote tax neutrality<sup>138</sup> by ensuring that tax base discrepancies across jurisdictions do not primarily drive corporate decisions. BEFIT aims to reduce distortion that favours firms based in countries with more aggressive tax base definitions by standardising the rules for calculating taxable income.<sup>139</sup> However, complete neutrality cannot be achieved without harmonising tax rates, and corporations may still seek low-tax jurisdictions. Nonetheless, harmonised base rules reduce distortions in the Single Market by eliminating artificial profit-shifting incentives, promoting a fairer competitive environment among Member States.<sup>140</sup> Thus, while BEFIT contributes to tax neutrality, its partial scope limits its ability to realise this objective fully.

Reaching an agreement on the specific rules of BEFIT among Member States could present a notable political challenge. Some Member States might resist the new framework due to fears of losing authority over their national tax systems or the potential economic repercussions of alterations to their tax bases, particularly in nations that depend heavily on particular types of

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<sup>138</sup> See, e.g., Hasen, 2012.

<sup>139</sup> European Commission, Impact Assessment: Business in Europe: Framework for Income Taxation (BEFIT) (COM/2022/235 final).

<sup>140</sup> Nerudová, 2015 pp. 135–144.

tax revenue. The trend towards tax harmonisation within the EU may face political pushback from certain Member States, especially those that benefit from low corporate tax rates or maintain unique tax regimes designed to attract foreign investment. The political viability will be essential in assessing BEFIT's long-term influence, as opposition from only a few Member States could hinder its implementation or weaken its effectiveness.

The European Commission has consistently emphasised the significance of tax coordination in ensuring a level playing field within the internal market. By establishing a standardised tax base, BEFIT could help mitigate legal uncertainties and administrative burdens for businesses operating in multiple jurisdictions. Furthermore, it aligns with international efforts such as the OECD's BEPS project, which advocates for reducing tax-motivated profit shifting and artificial arrangements to exploit mismatches between national tax systems.<sup>141</sup> However, its alignment with BEPS does not guarantee success, as the effectiveness of global tax coordination efforts has historically been hindered by differing national interests and enforcement challenges. By establishing base rules with a single EU-wide formula, BEFIT can enhance predictability for businesses operating across borders and lower litigation risks. However, its contribution to legal clarity will depend on how the rules are drafted, interpreted, and enforced. Inconsistent application or legal challenges from national courts may undermine the objective of this effort.

With BEFIT, the EU could have an effective tool to curb harmful tax competition within the EU. Tax competition has long been a feature of the European integration process, as Member States have sought to attract investment by lowering corporate tax rates.<sup>142</sup> Member States have used tax incentives and sweetheart deals to attract companies and investments. This can create harmful tax competition when not all countries have the same ability to lower tax rates, creating better advantages for richer countries.<sup>143</sup> While tax competition can enhance efficiency and fiscal discipline, it becomes problematic when it leads to a "race to the bottom", where governments continuously reduce tax rates to unsustainable levels. BEFIT aims to counteract this phenomenon, but it remains to be seen whether it will be robust enough to prevent Member States from finding alternative ways to attract business through preferential tax measures.

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<sup>141</sup> OECD, *Addressing Base Erosion and Profit Shifting* (2013) <https://www.oecd.org/tax/beps/>

<sup>142</sup> Devereux - Loretz, 2013, pp. 745-773.

<sup>143</sup> European Commission, *Tax Policies in the European Union* (2020) 20–22.

BEFIT's role in addressing harmful tax competition is twofold. First, introducing a common tax base reduces the scope for profit shifting by ensuring that taxable income is calculated under uniform rules across Member States. Second, it complements the EU's state aid enforcement framework, which has been used to challenge preferential tax rulings granted to multinational corporations. The European Commission's high-profile cases against Apple (Ireland)<sup>144</sup>, Fiat (Luxembourg)<sup>145</sup>, and Amazon (Luxembourg)<sup>146</sup> demonstrate how state aid law has been employed to combat selective tax advantages. BEFIT could further reinforce these efforts by providing a more transparent framework for determining taxable profits, thereby reducing the legal ambiguity surrounding selective tax incentives. However, its success in this area will depend on whether enforcement mechanisms are sufficient to ensure compliance across all Member States.

However, the effectiveness of BEFIT in curbing harmful tax competition is contingent on its scope and enforcement. Political resistance could weaken enforcement if compliance relies primarily on Member States' cooperation. To ensure uniform implementation, the European Commission may need greater oversight powers or sanctions for non-compliance. Without vigorous enforcement, BEFIT may not entirely prevent tax-motivated distortions in corporate decision-making. This raises concerns about whether BEFIT can function as intended without further institutional reforms within the EU. The Commission has taken this into account, and in its Impact Assessment, proposes the OSS as a method for enforcement. The OSS models have been discussed in detail in Chapter 2.3.

Despite its potential benefits, BEFIT faces several theoretical and legal challenges. First, the initiative requires political consensus among Member States, which may prove difficult given the historical resistance to direct tax harmonisation.<sup>147</sup> Under Article 115 TFEU, tax legislation requires unanimous approval, making BEFIT vulnerable to vetoes from Member States that perceive it as threatening their fiscal autonomy. This unanimous approval requirement creates a significant obstacle, as many resistant countries have frequently blocked past tax harmonisation efforts.<sup>148</sup> In this respect, the success of BEFIT could lay the groundwork for deeper integration in the future, notably if it demonstrates benefits in administrative efficiency, revenue certainty, and reduced tax competition. Looking ahead,

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<sup>144</sup> European Commission v Ireland and Apple Sales International, Case C-465/20 P.

<sup>145</sup> Fiat Chrysler Finance Europe and Ireland v European Commission, Joined Cases C-885/19 P and C-898/19 P

<sup>146</sup> European Commission v. Grand Duchy of Luxembourg and Amazon.com, Inc, Case C-457/21 P

<sup>147</sup> Hohenwarter – Mayr, 2024

<sup>148</sup> Provencher – Dange – Kuijper, 2024.

BEFIT may serve as a stepping stone towards deeper tax harmonisation. While it avoids rate harmonisation for now, establishing a standard base could eventually create pressure for further alignment, particularly if disparities in national rates continue to distort competition. Therefore, BEFIT's long-term success may hinge on whether it evolves into a more comprehensive framework, potentially including mechanisms for minimum effective taxation or harmonised apportionment formulas.

While BEFIT strengthens the EU's ability to regulate corporate taxation, without harmonised tax rates or additional enforcement measures, its ability to entirely prevent harmful tax competition remains uncertain. Nonetheless, the EU is not without tools to mitigate these issues even in the absence of global coordination. For instance, the EU could further reinforce the BEFIT framework by adopting minimum effective tax rate standards applicable within the Single Market, either through enhanced cooperation or integration with existing measures under Pillar Two of the OECD framework.<sup>149</sup> Additionally, the EU could intensify the use of state aid rules to target aggressive tax practices and discriminatory regimes,<sup>150</sup> and expand transparency and reporting requirements under the DAC framework to enhance scrutiny of national tax incentives.<sup>151</sup> These unilateral mechanisms, if coordinated effectively, could significantly reduce the scope for harmful tax competition, even without comprehensive global cooperation. Ultimately, BEFIT may represent a key step forward, but its long-term impact will hinge on whether the EU can navigate the political and legal complexities of tax harmonisation, leverage its existing legal tools, and progressively strengthen its internal governance framework.

In theory, BEFIT represents a promising step toward greater tax coordination in the EU, addressing concerns related to tax competition, profit shifting, and legal fragmentation. By providing a common tax base, it enhances legal certainty and simplifies compliance for businesses. However, its effectiveness ultimately depends on political feasibility, enforcement mechanisms, and its ability to complement existing tax policies. While BEFIT strengthens the

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<sup>149</sup>Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union [2022] OJ L328/1. See also; European Commission, Proposal for a Council Directive on a common framework for income taxation – Business in Europe: Framework for Income Taxation (BEFIT) COM (2023) 532 final.

<sup>150</sup> Case C-106/09 P Commission v Gibraltar and UK [2011] ECLI:EU:C: 2011:732; see also European Commission, 'State aid: Commission opens in-depth investigation into tax treatment of Inter IKEA systems in the Netherlands' (European Commission Press Release, 18 December 2017).

<sup>151</sup> Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation [2011] OJ L64/1, as amended by Council Directive (EU) 2021/514 (DAC7).

EU's ability to regulate corporate taxation, without harmonised tax rates or additional enforcement measures, its ability to entirely prevent harmful tax competition remains uncertain. Ultimately, BEFIT may represent a key step forward, but its long-term impact will hinge on whether the EU can navigate tax harmonisation's political and legal complexities. Key risks include implementation gaps, Member State resistance, potential conflicts with national sovereignty over direct taxation, and challenges that could undermine uniform application and investor confidence.

## 4 Broader Legal and Policy Implications of BEFIT on Harmful Tax Competition

### 4.1 Legal and Practical Implications of Implementing BEFIT

Implementing BEFIT will require Member States to establish new regulations and systems for calculating, reporting, and collecting corporate taxes. This shift will demand significant changes to administrative frameworks, data-sharing processes, and compliance protocols. While BEFIT seeks to standardise corporate taxation within the EU, its effectiveness depends on addressing legal and technical obstacles, particularly regarding the secure exchange of financial data and the consistent enforcement of tax obligations.<sup>152</sup> One key issue in this regard is ensuring that Member States' tax authorities possess the technical infrastructure and capabilities to manage large amounts of financial data securely and effectively.<sup>153</sup> Building such capacity may prove especially challenging for smaller or less-resourced Member States.

Although harmonisation is essential for addressing harmful tax practices, disparities in digital infrastructure and administrative capacity among Member States present a risk.<sup>154</sup> If national authorities are inadequately equipped, BEFIT could lead to further inefficiencies. There are already many existing technical problems, such as inconsistent data-sharing, underdeveloped digital infrastructures, and a lack of skilled personnel.<sup>155</sup> It can be assumed that they will also affect the implementation of BEFIT. Therefore, there is a concern that BEFIT could worsen these existing challenges. If tax authorities do not possess sufficient resources or expertise, BEFIT's data-sharing requirements might induce inefficiencies instead of improvements. Tax harmonisation cannot occur in a vacuum; it requires ongoing investments in digital infrastructure and administrative capabilities throughout the EU.<sup>156</sup> Without these efforts, gaps in enforcement and compliance may persist, jeopardising BEFIT's primary goals. To facilitate harmonisation, the EU might consider providing direct funding support or

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<sup>152</sup> European Commission, Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) COM (2023) 532 final, 5–6.

<sup>153</sup> European Commission, Impact Assessment Report Accompanying the Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) SWD (2023) 524 final, 35–36.

<sup>154</sup> European Parliament, Exploring the Opportunities and Challenges of New Technologies for EU Tax Administration and Policy, 2021.

<sup>155</sup> Ibid.

<sup>156</sup> European Commission, Communication on Business Taxation for the 21st Century COM (2021) 251 final, 10–11.

coordination platforms, such as technical working groups and cross-border training schemes.<sup>157</sup>

These concerns are not entirely new; similar challenges have been observed under the Directive on Administrative Cooperation (DAC)<sup>158</sup>, which offers important lessons for implementing BEFIT. A crucial component of curbing tax avoidance is enhanced tax transparency, an area where the EU has taken steps, such as adopting public country-by-country reporting. This measure requires multinational corporations to disclose where they generate profits and pay taxes,<sup>159</sup> thereby increasing public scrutiny and regulatory oversight. Greater transparency empowers both regulators and the public to hold corporations accountable. However, the experience with DAC reveals the limitations of transparency in the absence of robust enforcement. Although DAC has improved transparency through reporting mechanisms, its overall effectiveness has been undermined by inconsistencies in how Member States interpret and enforce these obligations. This suggests that BEFIT must go beyond merely relying on existing tools and instead build upon them with greater coordination and institutional support.<sup>160</sup> Transparency alone is not sufficient; without strong follow-up mechanisms, disclosure may simply prompt companies to adjust their tax strategies in ways that remain legally compliant but ethically questionable.

BEFIT's broader scope and ambition could amplify existing inefficiencies if not addressed comprehensively. Requiring too much too fast could prove to be detrimental. The reliance on data-sharing mechanisms underscores a broader concern about the feasibility of implementing BEFIT across Member States. While harmonisation can be essential for simplifying corporate taxation, differences in digital infrastructure may slow its adoption. This emphasises that harmonisation should concentrate on aligning policies and tackling practical implementation challenges, particularly ensuring all Member States are included. Lessons from DAC show the need for improved guidance, interpretive coordination, and maybe even institutional reforms to monitor and standardise implementation.<sup>161</sup>

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<sup>157</sup> European Parliament, Exploring the Opportunities and Challenges of New Technologies for EU Tax Administration and Policy, 2021.

<sup>158</sup> European Commission, Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC4) COM (2016) 681 final.

<sup>159</sup> Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches [2021] OJ L429/1

<sup>160</sup> European Court of Auditors, Special Report No 03/2021: Exchanging Tax Information in the EU (2021)

<sup>161</sup> European Commission, Evaluation of Administrative Cooperation in Direct Taxation (2019)

This underscores a broader challenge in EU tax policy: ensuring that harmonisation efforts do not outpace the technical capabilities of national tax administrations. If tax authorities lack the necessary resources or expertise, BEFIT's data-sharing requirements could result in inefficiencies rather than improvements.<sup>162</sup> Tax harmonisation cannot be achieved in isolation; sustained investments in digital infrastructure and administrative capacity across the EU must support it.<sup>163</sup> Without this, disparities in enforcement and compliance may persist, undermining BEFIT's objectives. One possible solution to avoid fragmentation and disparities is to introduce phased implementation, linking participation in BEFIT to achieving minimum readiness benchmarks.<sup>164</sup> Perhaps technical readiness could be established with a process where Member States must demonstrate sufficient digital capacity and data security standards before full integration into the system.<sup>165</sup>

Additionally, one of the major challenges in implementing BEFIT is ensuring that all Member States adhere to uniform guidelines regarding key concepts such as taxable income, deductions, and exemptions. Achieving extensive coordination among countries with differing tax policies and priorities will be difficult.<sup>166</sup> The practical application of BEFIT could involve complex tax computations, particularly for multinational corporations operating across multiple jurisdictions. Coordinating tax rules and determining tax liability in a cross-border context could create new compliance burdens if not carefully managed.<sup>167</sup> This challenge highlights the necessity of a robust dispute resolution mechanism within BEFIT to address interpretive conflicts and mitigate potential tax disputes.<sup>168</sup> A centralised arbitration body, or a specialised tax chamber within the Court, could serve this function. However, such a mechanism would require careful institutional design to balance efficiency, legal certainty, and respect for Member States' procedural autonomy.

These challenges reflect a broader tension in EU tax policy, balancing uniformity with national flexibility. While harmonisation is essential for reducing fragmentation, imposing

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<sup>162</sup> European Parliament, *Exploring the Opportunities and Challenges of New Technologies for EU Tax Administration and Policy*, 2021.

<sup>163</sup> European Commission, *Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) COM (2023) 532 final*.

<sup>164</sup> European Commission, *Business in Europe: Framework for Income Taxation (BEFIT) COM (2023) 532 final*, for further reading, see, e.g., Sager–Thomann, 2017.

<sup>165</sup> Devereux – Vella, 2017.

<sup>166</sup> European Commission, *Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) COM (2023) 532 final*.

<sup>167</sup> European Commission, *Impact Assessment Report Accompanying the Document Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) SWD (2023) 441 final*, 12

<sup>168</sup> See, e.g. Kovačević, 2024, pp. 271–291.

rigid definitions and rules could encounter resistance from Member States that wish to retain control over aspects of their tax systems. Negotiations on BEFIT's final framework will likely revolve around these trade-offs, with some countries advocating for greater standardisation while others push for flexibility to preserve elements of national sovereignty. The underlying tension between EU-wide coordination and national autonomy showcases a longstanding challenge in European integration. Tax policy remains a sensitive area for many Member States, and the success of BEFIT will depend on political will rather than merely technical feasibility. If political consensus proves unattainable, enhanced cooperation under Article 20 TEU could provide a pragmatic, albeit limited, fallback route for a coalition of willing Member States to move forward.

The possibility of a fragmented implementation raises the question of whether BEFIT can resolve the problems of harmful tax competition or if it will simply become another partial measure that falls short of genuine harmonisation. Reflecting on BEFIT's possible implementation, it is evident that the proposal represents an ambitious step toward greater tax coordination in the EU.<sup>169</sup> However, the challenges associated with administrative complexity, enforcement consistency, and Member State resistance cannot be ignored. While BEFIT is intended to simplify corporate taxation across the EU, its actual impact will depend on how effectively it is implemented. The experience of past tax initiatives, such as DAC, shows that harmonisation efforts require strong political commitment, technological readiness, and administrative cooperation. Without these elements, BEFIT could become another partial reform that fails to deliver its full potential. Nevertheless, BEFIT may also be viewed as a potential stepping stone toward deeper fiscal integration, offering a legal and political foundation for future developments in EU-level taxation.

Ultimately, while BEFIT could have the potential to streamline corporate taxation in the EU, its long-term success will depend on careful legal drafting, phased implementation, and continuous monitoring. The balance between uniformity and flexibility will be crucial in determining whether BEFIT can achieve its intended objectives without creating new administrative burdens. Addressing legal and technical barriers will ensure that BEFIT delivers on its promise of a more predictable, fair, and efficient corporate tax framework in Europe.

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<sup>169</sup> See, Hohenwarter – Mayr, 2024.

## 4.2 Redistribution of Tax Base Across Member States

BEFIT applies to companies that are EU tax-resident companies and EU-located permanent establishments of companies based outside the EU, provided they prepare consolidated financial accounting statements. The initiative seeks to streamline corporate taxation and reduce compliance complexity across the internal market by replacing divergent national rules with a common framework for calculating taxable income. To determine its scope, three possible approaches have been proposed: (1) a mandatory system for all eligible companies, (2) an optional system allowing companies to opt in, and (3) a hybrid model in which BEFIT would be mandatory for large groups exceeding a revenue threshold (e.g., EUR 750 million) while remaining optional for smaller entities.<sup>170</sup> The Commission's impact assessment concludes that the third approach is the preferred policy option. It is not only effective in meeting the initiative's specific objectives but also efficient, as it targets groups most likely to benefit from the reform and capable of managing the transition, without imposing undue burdens on smaller firms.<sup>171</sup>

A central element of BEFIT is defining and consolidating the corporate tax base. Two models have been suggested. The first model offers a simplified approach with minimal tax adjustments within a comprehensive tax system. It consists of applying a limited set of common tax adjustments to the financial accounting statements of each member of the BEFIT group. These adjustments stem from the reconciled financial statements of the group to ensure consistency, addressing crucial elements like depreciation, the deductibility of business expenses, provisions, and long-term contracts.<sup>172</sup> This strategy adheres to the OECD's Pillar 2 Directive and seeks to lessen complexity while ensuring fairness. Intra-group transactions would be neutralised to avoid double taxation or deductions, except in specific situations, such as income from shipping activities, which fall under special tax regimes. Although the aggregated BEFIT tax base would generally be applied uniformly, Member States could impose limited national-level adjustments for specific items, including research and development incentives and pension deductions.<sup>173</sup>

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<sup>170</sup> European Commission, Impact Assessment Report Accompanying the Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) SWD (2023) 524 final.

<sup>171</sup> European Commission, Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) COM (2023) 532 final.

<sup>172</sup> Ibid.

<sup>173</sup> Ibid.

The second approach involves creating a self-standing corporate tax system that clearly defines taxable income, exemptions, deductible expenses, and timing rules. While this option offers greater precision and autonomy in tax base calculation, it also introduces more complexity and increases administrative burdens. In both models, the tax-adjusted results of all BEFIT group members would be aggregated to form a single tax base, which would then be allocated among eligible group entities according to a predefined formula.<sup>174</sup>

The allocation of the consolidated tax base is a critical component of BEFIT, as it determines how tax revenues are distributed across jurisdictions. Two formula apportionment options have been proposed. The first model draws from the CCCTB experience, incorporating three key factors: labour (payroll and/or number of employees), tangible assets (excluding financial assets), and sales by destination. The formula would give equal weight to each of these factors.<sup>175</sup> This approach reflects production and market presence, balancing each Member state's supply- and demand-side contributions to value creation.

The second option includes intangible assets as a fourth factor, acknowledging their growing importance in modern economies. This approach has received support from businesses and tax professionals, as it better reflects value creation in sectors reliant on intellectual property. However, concerns have been raised about potential tax avoidance risks. To address these concerns, two sub-options have been proposed for determining the location of intangible assets: using legal ownership and book value recorded in financial statements, or using research and development, marketing, and staff training expenses as proxies for intangible asset location. The latter method draws from the OECD's modified nexus approach, ensuring tax base allocation aligns with real economic activity. To avoid double-counting, adjustments would be made to payroll calculations so that researchers' salaries are not included in both the labour and intangible asset factors.<sup>176</sup>

Another critical concern is the potential for disputes over the fairness of tax allocation. For example, Member States may challenge whether the formula accurately reflects the economic reality of value creation, particularly in the digital or intangible-intensive sectors.<sup>177</sup> The

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<sup>174</sup> European Commission, Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) COM (2023) 532 final.

<sup>175</sup> Ibid.

<sup>176</sup> European Commission, Impact Assessment Report Accompanying the Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) SWD (2023) 524 final.

<sup>177</sup> European Commission, Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) COM (2023) 532 final.

inclusion or exclusion of intangible assets, as well as the weighting of different formula factors, could become flashpoints for both political tension and legal contestation.<sup>178</sup> There is also a risk of strategic behaviour, where Member States might attempt to redefine how value is measured or classified to maximise their share of the tax base. For example, countries could increase research and development subsidies or employment incentives not to boost productivity, but to manipulate formula outcomes.<sup>179</sup>

From a political standpoint, countries likely to lose revenue may resist BEFIT's implementation or seek to dilute its impact. This resistance could take the form of negotiating opt-outs, requesting extended transition periods, or demanding fiscal compensation.<sup>180</sup> The stalled CCCTB negotiations illustrate the fragility of political consensus in tax harmonisation.<sup>181</sup> Without careful political stewardship and compromise, BEFIT risks meeting a similar fate. There is a danger that extended negotiations will produce a watered-down version of the proposal, undermining its core objectives of simplification and fairness.

A significant implication of this system is the redistribution of corporate tax revenues among Member States. Countries with large consumer markets and high destination-based sales, such as Germany and France, are expected to gain a greater share of the tax base under the formula apportionment system. In contrast, traditional low-tax jurisdictions, like Ireland, the Netherlands, Luxembourg and certain Eastern European countries, may face substantial revenue losses. BEFIT diminishes the significance of legal tax residence and corporate structuring in favour of real economic activity.<sup>182</sup> This redistribution reflects a broader shift in EU tax policy: moving away from enabling tax planning based on legal presence, toward prioritising where value is created and consumed.<sup>183</sup>

Under this new framework, profits will be allocated not where companies are headquartered or where they book profits, but where real economic activity, such as employment and sales, occurs.<sup>184</sup> This structural change raises important distributional questions about which

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<sup>178</sup> See, e.g. Christians - van Apeldoorn, 2018.

<sup>179</sup> European Commission, Impact Assessment Report Accompanying the Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) SWD (2023) 524 final.

<sup>180</sup> Cobham – Janský - Jonesc – Temouri, 2021, pp. 29–50., See also European Parliament, 'REPORT on the proposal for a Council directive on a Common Consolidated Corporate Tax Base (CCCTB)' (2012)

<sup>181</sup> Ibid.

<sup>182</sup> Schultz - Palanský, 2024.

<sup>183</sup> Ibid.

<sup>184</sup> European Commission, Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) COM (2023) 532 final.

Member States are likely to emerge as 'winners' or 'losers'. While it is premature to draw definitive conclusions before BEFIT is implemented, some inferences can be drawn from similar reforms, such as the OECD's Pillar Two. In general, countries with strong domestic demand and production activity tend to benefit, while those reliant on favourable tax regimes to attract mobile capital may see their competitive edge eroded.

Smaller economies, particularly those that have relied on tax competition as an economic development strategy, may be adversely affected.<sup>185</sup> Unless accompanied by corrective measures, this redistribution risks exacerbating existing economic disparities within the EU. The result could be a deepening of the structural imbalances already evident between core and peripheral Member States, reflecting, and potentially reinforcing, long-standing inequalities in the euro area.<sup>186</sup> Without broader EU-level support mechanisms, BEFIT may unintentionally amplify regional divergence.

Additionally, fiscal stability is another area of concern. If BEFIT leads to significant redistributions of corporate tax revenue, Member States facing losses may demand compensatory mechanisms to safeguard their public finances.<sup>187</sup> Although no formal equalisation mechanism is currently envisaged, some form of fiscal adjustment may be necessary to preserve cohesion. One viable option would perhaps be to link BEFIT implementation to the EU's cohesion policy, ensuring that revenue-losing countries receive transitional support.<sup>188</sup>

BEFIT's redistributive effects thus underscore the inherent tension between efficiency, fairness, and national interest in EU tax policy. While a harmonised tax base could improve the functioning of the internal market, it must also respect the political and economic realities of Member States, many of which have built their growth models around competitive tax regimes. Successfully navigating these tensions will be crucial for ensuring BEFIT's legitimacy and for sustaining trust in the broader EU integration project.

Overall, BEFIT represents a significant step forward in EU tax coordination. By harmonising the corporate tax base while allowing Member States to retain discretion over tax rates, the

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<sup>185</sup> See, e.g. Perry, 2022.

<sup>186</sup> For further reading on the current fiscal capacity of EU, see, e.g., Fabbrini, 2022.

<sup>187</sup> European Commission, Impact Assessment Accompanying the Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) SWD (2023) 542 final, 62–64.

<sup>188</sup> European Commission, Cohesion Policy, [https://ec.europa.eu/regional\\_policy/policy/what/investment-policy\\_en?ettrans=el](https://ec.europa.eu/regional_policy/policy/what/investment-policy_en?ettrans=el)

initiative reflects a careful balancing act between integration and sovereignty. The proposed frameworks for determining scope, calculating taxable income, and allocating the consolidated tax base seek to reconcile simplicity, administrative feasibility, and distributive equity. Although BEFIT is designed to reduce tax avoidance and compliance costs, its success depends on achieving political consensus and overcoming entrenched national divergences. By consolidating corporate tax bases and allocating profits according to real economic indicators, BEFIT aims to eliminate double taxation, reduce cross-border disputes, and foster greater stability within the single market. This technical and legal framework offers the potential for a more transparent, predictable, and competitive corporate tax system across the EU.

### **4.3 The Limits of BEFIT: The Need for Complementary Measures to Curb Tax Competition**

While the harmonisation of the tax base can be seen as a necessary reform, it does not prevent multinational corporations from, for example, relocating their headquarters or shifting profits in response to differences in tax rates, which means harmful tax competition may still persist. This suggests that BEFIT, while valuable, is only a partial solution and must be supplemented by further measures to promote fair taxation within the EU. To address these challenges that might emerge under the implementation of BEFIT, complementary reforms are necessary, including the introduction of a minimum corporate tax rate, stronger anti-tax avoidance rules, enhanced transparency, and deeper multilateral cooperation.<sup>189</sup> Such measures would help ensure that corporate taxation is more closely aligned with genuine economic activity rather than artificial incentives. The core challenge remains balancing national sovereignty over taxation with the EU's interest in creating a coherent and equitable fiscal framework.

Despite BEFIT's aim to curb profit shifting and tax base erosion, it does not harmonise corporate tax rates, leaving Member States free to set their own.<sup>190</sup> This allows countries with lower rates, such as Ireland and Hungary, to continue using tax policy to attract investment, often to the detriment of higher-tax jurisdictions like France and Germany. The resulting competition keeps on enabling a "race to the bottom" in corporate taxation, undermining

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<sup>189</sup> OECD, *Addressing the Tax Challenges of the Digital Economy, Action 1 – 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project (OECD Publishing 2015)

<sup>190</sup> European Commission, *Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT)*, COM (2023) 532 final, p. 2.

efforts to establish a fair and stable tax system across the EU. This creates an uneven playing field, benefiting some Member States disproportionately, while others struggle to preserve their tax bases and fund public services.<sup>191</sup>

A good example of competitive tax strategy within the EU is Ireland's corporate tax policy, which has remained low since the early 2000s. This policy has successfully attracted major multinational corporations in the technology and pharmaceutical sectors, such as Google, Apple, and Pfizer, establishing Ireland as a preferred location for corporate headquarters.<sup>192</sup> However, it has also drawn criticism for enabling tax avoidance structures that allow companies to shift profits away from higher-tax jurisdictions.<sup>193</sup> While BEFIT may limit some forms of tax base erosion, it does not, in its current form, prevent countries like Ireland from maintaining competitive tax advantages through low corporate tax rates. This highlights a core paradox in EU tax policy: while the Union seeks to reduce harmful tax practices, some Member States continue to design regimes that attract mobile capital, potentially at the expense of broader tax fairness.

This contradiction risks undermining the EU's broader goals of fair taxation and economic justice. In response to such challenges, the OECD's Pillar Two initiative, agreed upon in 2021, introduces a global minimum effective corporate tax rate of 15% for large multinational groups.<sup>194</sup> Under this framework, if a company's income in a jurisdiction is taxed below the minimum threshold, a top-up tax is applied to reach the required rate. This mechanism aims to reduce the appeal of tax havens and ensure a more equitable allocation of tax revenues globally. BEFIT should therefore examine both the successes and limitations of Pillar Two to inform its future design and implementation.

Building on this, the introduction of a minimum corporate tax rate thus represents a critical compromise, ensuring multinationals contribute their fair share, without fully harmonising tax rates. However, the initiative's success hinges on robust and consistent enforcement.

Corporations may exploit legal and financial loopholes to avoid minimum taxation.<sup>195</sup>

Moreover, Member States might shift toward offering non-tax incentives, such as regulatory flexibility, subsidies, or state aid, thereby continuing competitive practices that fall outside the

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<sup>191</sup> See, e.g. Cobham - Faccio - Garcia-Bernardo - Janský - Kadet – Picciotto, 2021, pp. 18–33.

<sup>192</sup> European Commission, Annual Report on Taxation 2022, pp. 30–32.

<sup>193</sup> Zucman, 2015.

<sup>194</sup> OECD, Global Anti-Base Erosion Model Rules (Pillar Two), 2021.

<sup>195</sup> See, e.g., Cobham - Faccio - Garcia-Bernardo - Janský - Kadet – Picciotto, 2021, pp. 18–33.

scope of current OECD and EU tax coordination efforts.<sup>196</sup> This could ultimately dilute the levelling effect of the global minimum tax and perpetuate new forms of harmful competition.

Despite the possible support from high-tax Member States, several low-tax countries have an interest in resisting the implementation of a minimum corporate tax rate at the EU level. Their opposition underscores the challenge of achieving fiscal coordination in a union where tax sovereignty remains a national competence. This resistance demonstrates the broader tensions between economic integration and national interests. While EU-wide tax policies could create a fairer and more stable corporate tax environment, individual Member States are reluctant to relinquish tax policy tools that have historically given them a competitive edge. If extended to the regulation of subsidies and other non-tax tools, this reluctance may complicate future efforts to establish a broader framework for investment competition oversight.

Another example highlighting the need for coordinated minimum taxation is the Luxembourg tax rulings controversy. The LuxLeaks investigation in 2014 revealed that Luxembourg had granted preferential tax agreements to over three hundred multinational corporations.<sup>197</sup> These secretive arrangements eroded tax revenues in other EU countries while benefiting select corporations. A minimum corporate tax rate would have significantly reduced the incentives for such tax rulings, ensuring that all corporations pay a fair and proportionate share of taxes. This case underscores the importance of both stronger tax regulation and enforcement. Corporations will continue exploiting disparities between jurisdictions to minimise their tax liabilities without a coordinated effort to close loopholes and monitor compliance.

The persistence of profit-shifting strategies is further illustrated by tax structure, known as the "Double Irish with a Dutch Sandwich." This mechanism allowed, for example, big technological companies to route profits through Ireland and the Netherlands to tax havens like Bermuda or Mauritius.<sup>198</sup> Although Ireland phased out this structure under EU and OECD pressure, similar tax avoidance schemes continue to emerge in non-EU jurisdictions. Strengthening international cooperation on tax enforcement is therefore essential to closing these loopholes.

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<sup>196</sup> See, e.g., Devereux, 2023, pp. 145–166.

<sup>197</sup> European Commission, Commission decides selective tax advantages for Fiat in Luxembourg and Starbucks in the Netherlands are illegal under EU state aid rules (Press Release IP/15/5880, 21 October 2015) [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_15\\_5880](https://ec.europa.eu/commission/presscorner/detail/en/IP_15_5880)

<sup>198</sup> See, e.g., Beebejaun, 2020 pp. 737–751.

Beyond establishing a minimum corporate tax rate, the EU must strengthen anti-tax avoidance mechanisms to prevent corporations from exploiting regulatory loopholes. The EU has already introduced the Anti-Tax Avoidance Directives (ATAD I & II), which impose stricter rules on hybrid mismatches, exit taxation, and controlled foreign companies.<sup>199</sup> However, enforcement gaps remain, and some multinational corporations continue using complex financial structures to shift profits to low-tax jurisdictions.<sup>200</sup> This demonstrates the need for continuous regulatory adaptation. As corporations develop increasingly sophisticated tax avoidance strategies, EU tax policy must evolve to close possible emerging loopholes and maintain a level playing field.

In addition to anti-avoidance measures, BEFIT must be evaluated within the broader context of OECD Pillar One, which reallocates taxing rights toward market jurisdictions, and Pillar Two, which implements a global minimum tax.<sup>201</sup> BEFIT's compatibility with these frameworks remains crucial to avoiding duplication or regulatory conflicts. If coordinated effectively, BEFIT and the OECD initiatives could reinforce one another by addressing profit shifting and tax base erosion. However, misalignment could create new forms of tax arbitrage, particularly if non-EU countries remain outside minimum tax arrangements. Consequently, BEFIT's global coherence will play a critical role in determining whether it succeeds as a stepping stone toward broader international tax harmonisation.

These global considerations reinforce the fact that harmful tax competition is not just an EU issue but a global challenge that requires international cooperation. Many multinational corporations continue shifting profits to non-EU jurisdictions, such as the Cayman Islands, Bermuda, and Switzerland, to benefit from near-zero corporate tax rates.<sup>202</sup> Addressing this issue requires more substantial alignment between EU policies and global tax initiatives, particularly those led by the OECD, G20, and UN Tax Committee. This further reinforces the need for multilateral cooperation. While the EU can take steps to limit tax competition within its borders, an efficient approach must involve global coordination to ensure corporations contribute fairly wherever they operate. However, full global coordination in corporate

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<sup>199</sup> Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market.

<sup>200</sup> Alexander – De Vito – Jacob, 2020, pp. 309–41.

<sup>201</sup> OECD, Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (OECD/G20 Inclusive Framework on BEPS, 8 October 2021)

<sup>202</sup> Devereux, 2023, pp. 145–166.

taxation is unlikely to happen; the EU can contribute to it by employing measures discussed in this thesis.

As long as Member States retain control over corporate tax rates, the race to the bottom dynamic will persist, with some jurisdictions continuing to compete through lower tax rates. To effectively address tax competition beyond BEFIT, the EU must adopt complementary policies that target its remaining weaknesses. Establishing a global minimum corporate tax rate is crucial to preventing tax-motivated relocations and ensuring that businesses contribute fairly, regardless of their jurisdiction. Additionally, stronger anti-tax avoidance measures are necessary to close existing loopholes. Yet even beyond the fiscal dimension, the future of fair competition within the EU may depend on the development of a comprehensive investment competition framework capable of monitoring both tax and non-tax incentives in a coordinated manner. This framework could help prevent a new “race to the bottom” in regulatory and subsidy regimes.

Moreover, as tax base harmonisation limits some traditional tools of fiscal competition, there is a growing risk that Member States will pivot toward non-tax incentives to attract investment. These may include regulatory advantages (such as streamlined business registration, looser labour laws, lighter environmental standards), direct subsidies, or preferential treatment for foreign investors.<sup>203</sup> This emerging shift marks a significant evolution in the dynamics of intra-EU competition. As Member States cannot offer differentiated tax bases, they may increasingly rely on regulatory flexibility, infrastructure projects, or favourable administrative treatment to attract mobile capital. While these tools do not necessarily fall under traditional tax policy, their economic effects may closely resemble tax incentives, raising concerns about their impact on the integrity of the single market.<sup>204</sup>

In effect, BEFIT may reduce fiscal competition only to be replaced by more opaque and fragmented forms of regulatory and fiscal competition. Thus, this evolving strategy risks substituting tax-based competition with the more fragmented regime of non-tax advantages, undermining BEFIT's spirit and creating competitive distortions through alternative channels.

Enhanced tax transparency plays a key role in increasing public and regulatory scrutiny, discouraging profit shifting through greater disclosure of tax arrangements. Moreover,

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<sup>203</sup> Patrick, 2014, pp. 351–386.

<sup>204</sup> Genschel – Kemmerling – Seils, 2011.

combating tax competition requires multilateral cooperation, as many corporations shift profits to non-EU tax havens beyond the scope of EU regulations.<sup>205</sup> By integrating these complementary measures, the EU can move toward a corporate tax system based on genuine economic activity rather than artificial tax incentives. However, achieving this goal depends on political will, effective enforcement, and sustained international collaboration. Given the global nature of tax competition, unilateral measures within the EU may be insufficient to prevent tax-driven investment distortions, reinforcing the necessity for a coordinated international approach to corporate tax governance.<sup>206</sup>

BEFIT has the potential to represent a significant step toward corporate tax base harmonisation within the EU, its limitations underscore the need for a more comprehensive and forward-looking fiscal strategy. As Member States navigate the tension between national sovereignty and collective economic goals, the persistence of harmful tax and non-tax competition highlights the structural vulnerabilities of the current framework. Future progress will depend not only on refining BEFIT and aligning it with global initiatives like the OECD's Pillars One and Two but also on developing a robust EU-wide regime for monitoring and regulating all forms of investment incentives. Only through sustained political commitment, legal coherence, and multilateral cooperation can the EU hope to establish a truly equitable and effective system of corporate taxation, one that promotes fair competition, protects public revenues, and reflects the real economic activity of multinational enterprises.

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<sup>205</sup> OECD, *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)* (OECD 2021)

<sup>206</sup> *Ibid.*

## 5 Conclusions

This thesis establishes that BEFIT is a legally ambitious yet politically constrained proposal to address the persistent problem of harmful tax competition within the EU. It marks a substantive shift from merely coordinating anti-abuse rules toward establishing a harmonised corporate tax base. From a legal standpoint, BEFIT seeks to correct structural asymmetries that have long undermined the internal market, moving from fragmented national systems to a more unified legal framework. However, while it narrows the scope for profit shifting and legal arbitrage, BEFIT stops short of addressing the deeper sources of tax competition, most notably the divergence in national corporate tax rates.<sup>207</sup> Some scholars have assessed it to be rushed and even called “an oversized Wishlist” of the Commission.<sup>208</sup> When evaluating whether this initiative will succeed, it is easy to assume that its fate will mirror its predecessors. Regardless, there is a possibility that it may prevail. Its scope, timing, and alignment with broader international reforms, such as the OECD’s initiatives, suggest it may find greater traction. Nonetheless, refinements will be necessary before the framework can be effectively implemented.

This research into the BEFIT proposal has highlighted the complex legal and political dynamics of EU tax harmonisation, particularly its ambition to combat harmful tax competition. BEFIT’s attempt to harmonise the corporate tax base offers clear advantages, including reduced compliance burdens and increased tax certainty for cross-border businesses, objectives closely aligned with the EU’s broader goal of fostering internal market cohesion. By replacing divergent national definitions of taxable profit with a single, standardised tax base and apportioning taxing rights through a formula, BEFIT aims to reduce the scope for profit shifting and legal arbitrage, both of which are central to harmful tax competition. It thereby marks a transition from reactive, anti-abuse coordination toward proactive structural reform. That said, it is still an ambitious initiative that could aim to do too much too fast.

From the perspective of tax coordination, BEFIT represents a noteworthy step forward. However, BEFIT’s potential to fully address harmful tax competition is limited by a significant flaw in the proposal: it does not propose harmonising corporate tax rates across Member States. While the proposal introduces a unified method for calculating the tax base

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<sup>207</sup> European Commission, ‘Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT)’ COM (2023) 532 final.

<sup>208</sup> Hohenwarter – Mayr, 2024, p.448

and allocating profits through a common apportionment formula, it deliberately leaves the setting of statutory tax rates to national discretion. This design choice allows countries to continue attracting mobile capital through lower rates, thereby enabling a central form of tax competition. As a result, one of the main incentives for corporate tax planning, choosing corporate locations based on favourable tax rates, remains unaffected. This structural limitation weakens BEFIT's capacity to deliver a fully coherent framework for tax coordination and creates a paradox: while the proposal narrows the scope for profit shifting and reduces compliance complexity through base harmonisation, it simultaneously preserves a major channel through which Member States compete for tax bases. In this way, BEFIT risks reproducing the same imbalances it aims to correct, unless accompanied by complementary reforms, such as minimum effective tax rates or greater coordination of rate-setting practices. The enduring disparity in tax rates not only compromises the fairness and effectiveness of the internal market but also highlights the broader legal and political constraints facing EU-level fiscal harmonisation.

Furthermore, even if BEFIT succeeded in limiting tax incentives by establishing a common corporate tax base, it would not eliminate the broader and evolving patterns of harmful competition among Member States. In response to constraints on tax-based tools, governments may simply pivot toward alternative means of attracting investment. Such strategies risk shifting the fiscal competition rather than eliminating it, enabling Member States to continue shaping economic behaviour through discretionary national measures. Without a corresponding regulatory architecture to oversee, coordinate, or limit the use of non-tax incentives, BEFIT's ability to reduce harmful competition might be in vain. If not addressed, the rise of non-tax incentives could create similar distortions and inequities that BEFIT aims to resolve, albeit in a different form. Therefore, any meaningful attempt to tackle harmful competition within the Union must go beyond harmonising tax bases and include measures to regulate the broader range of incentives that affect corporate behaviour in the single market.

The proposal also faces several institutional and procedural limitations. BEFIT currently lacks robust enforcement mechanisms, raising concerns about its practical viability. Without comprehensive systems for compliance monitoring, dispute resolution, and consistent implementation across Member States, legal fragmentation and uncertainty may persist, even within a harmonised framework. Although the Commission acknowledges the need for oversight, meaningful enforcement would likely require institutional reform, clearer legal

provisions, and greater administrative capacity, none of which are yet in place. Without such reforms, BEFIT risks following the path of earlier initiatives that appeared promising on paper but failed in practice.

The political nature of taxation cannot be overlooked or understated. Politically, BEFIT faces an uncertain and potentially difficult path to adoption. The unanimity requirement under Article 115 TFEU functions as a structural brake on progress, particularly given the entrenched fiscal interests of Member States that rely on competitive tax regimes as tools of economic policy. These governments may perceive harmonisation as a threat to national sovereignty or economic competitiveness, leading to resistance even at the preliminary stages of negotiation. Efforts to bypass unanimity, such as through qualified majority voting or enhanced cooperation, may offer procedural alternatives, but they come with trade-offs. Limited participation risks undermining the internal market's cohesion by creating a multi-speed Europe in tax matters, potentially distorting investment decisions and increasing regulatory complexity, thus undermining BEFIT's goals.

This dynamic illustrates that BEFIT's fate does not rest solely on adequate legal drafting or administrative infrastructure; rather, its success can end up depending on political consensus among diverse national governments with competing priorities. As such, BEFIT must be understood not only as a legal or technical initiative, but also as a political matter, one that challenges the balance between collective EU objectives and Member State autonomy. The history of the CCCTB initiatives underscores these difficulties: despite being on the legislative agenda for over a decade, the CCCTB failed to gain unanimous support, largely due to political opposition rooted in concerns over fiscal sovereignty and redistribution. BEFIT, though more streamlined in scope, may encounter similar resistance unless accompanied by a broader political agreement that redefines the terms of cooperation in EU tax policy.

While BEFIT lays an important legal foundation for greater tax coordination, it does not constitute a comprehensive solution to the underlying drivers of harmful tax competition. Its emphasis on simplifying compliance and harmonising tax bases marks a significant advance, but its challenges, such as limited reach and political obstacles, reduce its overall effectiveness. Without a more thought-out and integrated approach, BEFIT risks becoming another partial reform that addresses symptoms rather than causes, mitigating some distortions, but leaving the deeper dynamics of competition unresolved.

BEFIT's value may lie not only in its prospective implementation but in its role as a catalyst for future legal and institutional reform. It reflects the EU's growing awareness of the need to modernise its tax architecture in response to global economic integration. Whether it succeeds or not, BEFIT forces a necessary conversation about the balance between national fiscal autonomy and the need for supranational coherence. In this respect, its contribution to the long-term evolution of EU tax governance may extend well beyond its immediate legislative fate. More broadly, BEFIT represents a test case for how the Union adapts to challenges that transcend national borders but still fall within nationally guarded competencies. As tax competition continues to evolve, shaped by digitalisation, capital mobility, and the OECD's global tax reforms, there is increasing pressure on the EU to respond with greater unity and institutional maturity. BEFIT signals a potential shift in the governance of economic policy within the single market, moving from soft coordination toward a more binding legal framework. Even if this shift proves incomplete, it may help to normalise deeper cooperation in tax matters, paving the way for future reforms that are more politically feasible and legally robust. In this light, BEFIT may not resolve the challenges it confronts, but it could mark a tentative step toward a more coordinated and resilient approach to tax governance in the Union.