Council of Europe: Cooperation between Member States against International Tax Avoidance and Evasion I

A. Recommendation of the Parliamentary Assembly 833 (1978) on Cooperation between Council of Europe Member States against International Tax Avoidance and Evasion[1]

The Assembly,

1. Noting the expansion of international business relations and of multinational companies, and the increasing problem of taxation caused by the consequent growth of international transactions;

2. Concerned at the increase in tax offences and tax evasion reaching beyond the national borders of member states, and the lack of efficient co-operation and mutual assistance between European tax administrations in this field;

3. Endorsing the principle that income should be taxed in the country where it is made;

4. Noting that unreasonably restrictive rules of bank secrecy encourage the commitment of international tax offences;

5. Recognising that tax evasion involves a breach of law, but that to curtail tax avoidance, changes in fiscal law are required;

6. Considering that international tax avoidance and evasion practices cause serious budgetary losses to governments, breach the principle of fair taxation, and distort international capital movements and the conditions of competition;

7. Considering also that international co-operation in the tax field on the basis of bilateral double taxation conventions has not proved sufficiently effective as an instrument to fight international tax evasion;

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1. Assembly debate on 23, 25 and 26 January 1978 and 24 April 1978 (19th, 22nd, 23rd and 24th sittings of the 29th session, and 1st sitting of the 30th session). See Doc. 4098, Report of the Committee on Economic Affairs and Development. Text adopted by the Assembly on 24 April 1978 (1st sitting).
The draft recommendation was adopted by the Committee on Economic Affairs and Development on 13 January 1978 by 17 votes to 0 and 3 abstentions.
Members of the committee: *Alemyr* (Chairman), Heger and *Portheine* (Vice-Chairmen), Avellone, Beith (Alternate: *Urwin*), Sir Frederic Bennett (Alternate: *Sir John Rodgers*), *Björck, Boulloche,* Carvalhas, *Dejardin, Desmond,* Dellinger, Frangos (Alternate: *Bournias*), Ghiatracos, *Giust, Holtz,* Mrs. Jacobsen, König, Thorvaldur Kristjansson, *Külahli,* Luptowits, *Mart, McNamara,* Menard (Alternate: *La Combe),* Koopman, Schmidhuber, Schürch (Alternate: *Wilhelm*), Sciberras, Sgherri, Stray, *Ustünel,* Valleix (Alternate: *Pignion), Vohrer, Van Waterschoot.*
NB. The names of those who took part in the vote are put in italics; also present: Peeters and Pettersson.
Secretaries of the committee: De Jonge and Laurens.

8. Welcoming the various efforts made in recent years on an international level in order to combat tax evasion and curtail international tax avoidance, such as:
— the 1972 Nordic Convention, on administrative assistance in tax matters,
— the Directive concerning mutual assistance by the competent authorities of member states in the field of direct taxation, adopted by the Council of the European Communities in December 1977,
— the adoption in September 1977 by the OECD Council of a Recommendation on tax avoidance and evasion;

9. Regretting, however, that these measures are not interrelated, and stressing the need for a more coherent and co-ordinated effort at European level;

10. Invites the member states of the Council of Europe to conclude a European multilateral agreement concerning co-operation between national tax administrations in order to combat tax offences and evasion and initiate measures to curtail international tax avoidance, and to ensure that such an agreement:

a. includes in its scope direct as well as indirect taxes, social charges, etc;
b. covers:
   i. the mutual exchange of information on tax matters between Council of Europe member states;
   ii. enquiries to be carried out in one member state at the request of another;
   iii. assistance in the recovery of tax debts;
   iv. a development clause designed to facilitate further and closer co-operation in the future;

11. Recommends that the Committee of Ministers:

i. urge governments of the Council of Europe member states to abolish unduly strict rules on bank secrecy, wherever necessary, with a view to facilitating investigations in cases of tax evasion or concealing income arising from other criminal activities, while paying due regard to the protection of individual privacy;
ii. urge member states to refrain from creating special tax laws which tend in practice to give undue tax favours to certain categories of companies in respect of foreign earned income;
iii. take any other appropriate action with a view to making it more difficult for international firms to use tax haven countries inside or outside Europe for tax evasion purposes;
iv. promote an effective system for taxing multinational companies, with special regard to the problem of 'transfer-pricing';
v. make a study of the various forms of economic crime in order to facilitate the enforcement of national legislation and international co-operation in combatting such crime;
vi. invite the governments of those member states which have not yet done so to sign the Additional Protocols to the European Conventions on Extradition and on Mutual Assistance in Criminal Matters, and to ratify them as soon as possible;
vii. pay special attention to the increasing problem of fraudulent practices in con-

nection with the levying of indirect taxes, in particular those arising from the existence of internationally diverging value added tax rates;

12. Further recommends that the Committee of Ministers initiate negotiations on the conclusion of a European multilateral agreement on mutual assistance between European tax administrations as outlined in paragraph 10 above.

B. Order No. 369 (1978)[2] on Co-Operation between Council of Europe Member States against International Tax Avoidance and Evasion

The Assembly,

1. Having regard to Recommendation 833 (1978) on co-operation between Council of Europe member states against international tax evasion and avoidance,

2. Instructs its Committee on Economic Affairs and Development:

(i) to keep this recommendation under review, and to report to the Assembly on its follow-up if necessary;

(ii) to study in depth the question of the link between taxation levels and disparities and tax avoidance and evasion; and

(iii) to organise as early as possible and not later than 1979, and in accordance with Resolution 227 (1962), a colloquy on international tax avoidance and evasion practices and international co-operation against such practices, to be attended in particular by parliamentarians, experts and representatives of the international organisations concerned;

3. Further instructs its Legal Affairs Committee to study the legal aspects of economic criminality with a view to presenting a report if it thinks fit to do so.

C. Explanatory Memorandum[3]

By Lennart Pettersson

I. Introduction

1. The post-war period has been marked by a continuous evolution towards free trade and capital movements between countries. The expansion of trade and economic transactions has during the past thirty years been tremendous, especially between the industrialised countries. An illustrative example of this development

2. Assembly Debate on 23, 25 and 26 January 1978, and 24 April 1978 (19th, 22nd, 23rd and 24th sittings of the 29th Session, and 1st sitting of the 30th Session). See Doc. 4098, Report of the Committee on Economic Affairs and Development. Text adopted by the Assembly on 24 April 1978 (1st sitting).

3. Doc. 4098.

is Sweden, where almost fifty per cent of industrial production is exported abroad. Furthermore the value of the imported parts of exports products is growing from year to year. Efforts have been made to facilitate the possibilities of investing abroad. The endeavour to make a more effective use of the world's resources has also facilitated the expansion of large multinational companies. Governments have made a contribution to this development by creating favourable conditions in the tax field partly by internal measures and partly by so-called double taxation conventions. These are bilateral conventions concluded for the purpose of eliminating the obstacles to the development of economic relations between countries, which result from double taxation.

2. On the whole the development towards free trade and capital movements has to be considered positively. It is also in line with the internationally agreed endeavours, as reflected in, inter alia, the OECD 'Code of liberalisation of current invisible operations',[4] to eliminate the national frontiers as barriers for the economic relations between countries. However, the question arises whether efforts have not been directed in too great a degree towards facilitating this development without at the same time satisfying countries' demands to see to it that a fair proportion of taxes are paid in the countries where the activities generating taxable profit are performed. The social development and the growth of the public sector in many countries have also had the effect that the tax burden has increased and that countries have become more and more dependent on the tax revenues.

3. The negative effects of international tax avoidance and evasion are thus being more and more observed. For example, the European Parliament in a recent opinion[5] to the European Commission noted: 'that tax evasion and avoidance practices which exploit the disparities between the tax laws of the member states have seriously damaging repercussions internationally as well as within the Community not only because of the budgetary losses that they entail, but also because they breach the principles of fair taxation and cause distortions in capital movements and conditions of competition'.
It is also a question of fairness. If the general public gets the feeling that certain groups or sectors in the economy do not — because of an inefficient tax system — pay their share of the tax burden, this will certainly have a bad effect on peoples' tax moral in general. Thus it is important that the problems of tax avoidance and evasion be adequately dealt with. Politicians, even if they have differing views on questions of tax policy, should accept this fact.

4. It is a matter of fact that international tax avoidance and evasion is a growing problem. Obvious evidence of this fact is the domestic measures taken in different countries in order to combat this phenomenon. The Federal Republic of Germany's 'Aussensteuergesetz' (International Transactions Tax Law), which

4. Adopted by the OECD Council on 12 December 1961.
5. European Parliament, *Report on the proposal from the Commission of the European Communities to the Council (Doc. 67/76) for a directive concerning mutual assistance by the competent authorities of the member states in the field of direct taxation (Doc. 372/76).*

entered into force in 1972, is an example of such a measure. By that legislation the Germans have created a tool of a general nature against international tax evasion.

5. The following examples could illustrate the contents of that legislation. An individual moving abroad will under certain circumstances remain liable to German tax on income from German sources and capital situated there for a period of ten years. A second example is that persons owning shares in a German joint stock company who have been residing in Germany for ten years will at the time of removal from the country be taxed on an 'assumed' gain from the sale of shares of German 'Kapitalgesellschaften', even if no actual sale has taken place. Further, a German resident holding more than half of a so-called 'foreign base company', i.e. a company which is subject to 'low taxation', is in certain cases liable to tax in Germany on the profits of the base company. The term 'low taxation' is defined as tax which corresponds to less than 30 per cent of the German tax on a similar profit.[6]

6. Also Belgium, Italy, France and the United States have passed legislation directed against international tax evasion, in particular the use of tax havens as vehicles in that respect. These domestic efforts are of course necessary under the present circumstances. And it is estimated that such national laws will increase in number in the future, if more efficient and complete agreements on multilateral co-operation against international tax evasion cannot be reached. Unilateral reaction of this kind to an international problem is, of course, an indication of the fact that co-operation to control international tax evasion has so far not been very successful.

7. Furthermore it must be pointed out that unilateral efforts to control this problem certainly have their drawbacks as compared with international co-operation. They are not as effective and there are risks that expanded unilateral actions in this field may do a lot of harm to legitimate and useful economic transactions between countries.

8. In particular those who advocate further international economic integration, should be aware of the fact that there is a growing public criticism in many Council of Europe countries that multinational companies escape taxes through their international transactions. This report will therefore deal with the international aspects of tax avoidance and evasion, with a view to proposing concrete measures for co-operation between Council of Europe member states in this field.

9. The next chapter will briefly describe different types of tax avoidance and evasion met within the application of domestic tax laws and of bilateral double

6. For a more detailed description of the anti-tax avoidance measures in the Federal Republic of Germany see: Anti-avoidance measures in Germany, by Arnold Heining, in 'Tax havens and measures against tax evasion and avoidance in the EEC', ed. by J. F. Avery Jones, Association Business Programmes, London, 1974.
Note of the editor: The sentence should read: 'The term 'low taxation' is defined as tax which corresponds to less than 30% of income as ascertained under German rules.'

taxation conventions. The third chapter will contain a short account of efforts made in the framework of certain international organisations to counteract tax avoidance and evasion and also review bilateral and multilateral arrangements concluded for that purpose. At the end of the report conclusions from the present situation will be drawn and proposals for actions to be taken will be made.

10. Some terms are frequently used in the report. For the sake of clarity they will be defined below. For practical reasons it seems to be desirable to use in the present report the same terminology as adopted by the OECD Council, i.e. *tax avoidance and evasion*.[7] This terminology had been agreed upon by the OECD Committee on Fiscal Affairs.

11. The following definitions, which do not pretend to be scientifically correct, serve as a guidance for reading the rest of this report:

'Tax evasion' Action by which a taxpayer tries to escape his legal obligations by fraudulent means.[8]

'Tax avoidance' Action taken by the taxpayer in order to escape or minimise taxes, which while being formally legal, is against the spirit and the purpose of the law. The question then arises whether new legislation should be introduced to prevent such action.[9]

'Tax havens' Countries which offer special tax privileges in respect of at least one important category of income, often especially to foreigners, mainly in order to attract capital. These countries are also characterised by the fact that they are not willing to give information on tax matters.

'Transfer pricing' Pricing of goods delivered or services rendered to each other by associated companies in order to minimise the overall tax burden for the concern.

II. Different Methods Used in Connection with Tax Avoidance and Evasion at the International Level

12. The most simple way of international tax evasion is to avoid reporting foreign income or to claim deductions for fictitious costs abroad. This can often be very

7. See the *Recommendation on tax avoidance and evasion* adopted by the OECD Council on 21 September 1977. (In French: Recommendation sur l'évasion et la fraude fiscales.)

8. J. van Hoorn Jr, The use and abuse of tax havens, in 'Tax havens and measures against tax evasion and avoidance in the EEC', Ed. by J. F. Avery Jones, Associated Business Programmes, London, 1974.

9. In J. van Hoorn Jr, Op. Cit. tax avoidance is described as follows:
'The term tax avoidance itself has unfortunate connotations; it is considered as referring to an attitude of unethical and, indeed, unlawful behaviour, although it is actually a neutral term. In the pejorative sense the term tax evasion should be used, which indicates an action by which a taxpayer tries to escape his legal obligations by fraudulent means. The confusion arises from the fact that sometimes taxes are avoided – by the use of perfectly legal measures – against the purpose and spirit of the law. Where this is the case, the taxpayer involved is abusing the law and he is blamed for it, although no penal measures can be taken against him.'

difficult for the tax authorities to discover, since they may have no or inadequate access to information from the foreign country involved. On the whole, and as will be shown later in the report, the lack of an international system for exchange of information in the tax field is a considerable drawback in the struggle against international tax evasion. Undoubtedly that fact has been essential for the development of such phenomena as 'transfer-pricing' and 'tax havens'.

13. Tax evasion through incorrect 'transfer-pricing' refers to the situation where companies, associated in one way or another and situated in different countries, agree on prices on goods delivered or services rendered to each other with the intention that most or all of the taxable profit is allocated to the company in the group for which the tax situation is most favourable. Transfer-pricing encompasses a wide range of activities. Not only sales of goods or the rendering of services are involved, but also the lending of money (commonly at zero interest charge), permission to use patented products or techniques or know-how at charges more or less arbitrarily set, leasing of equipment or other property at internally determined lease charges etc.

14. In order to illustrate the 'transfer-pricing' mechanism, mention could be made of a few simple examples from practice. A company resident of state A imported machinery from state B. The formal seller was a sister company in state C, a low tax country, which invoiced the buying company in state A. The original purchase price was increased by 10 per cent (as a commission fee) and this additional amount remained in the hands of the sister company in C. The commission fee was, however, at the same time borrowed by the state A company and interest (deductible for tax purposes in state A) was paid to the state C company. It was shown at a tax audit that no services had actually been rendered by the company in state C.

15. A company in state A, subsidiary of a company in state B, performed on its own behalf consulting activities within its own country, state A. The customers were invoiced by the mother company in state B which company also received the payments. Sums which covered its costs and a very small profit (about 1,000 units) per year, were transferred from the mother company to the subsidiary. By scrutinising the books of the subsidiary, it could be shown that the mother company had retained profits amounting to approximately 200,000 units per year which should have been the profits of the subsidiary. In the course of the tax audit the subsidiary company was wound up, showing practically no net assets.

16. It is obvious from the above examples that manipulations through incorrect transfer-pricing is profitable because tax laws (tax rates, especially) and administrative procedures are different from country to country. Only harmonisation of tax legislation, better international co-operation between national tax administrations or international rules on what constitutes a fair transfer price in different situations can make a significant contribution to the elimination or reduction of this kind of tax avoidance and evasion.

17. The establishment of companies in 'tax haven' or low tax countries has

become more and more frequent. By establishing companies and accumulating their profits, royalties etc. from activities all over the world in such countries, it is fairly easy to avoid the tax which could rightfully be claimed in the countries where the actual activity takes place.

18. The 'tax haven' concept is difficult to define in detail. However, it is not the aim of this report to make a detailed study of this concept. It should merely be pointed out that the label 'tax haven' could be put on a country for several reasons. Some deserve that denomination more than others because they levy no income tax at all, or in any case not on income derived from sources outside that country. Bahamas, Bermuda, New Hebrides are examples of such countries. It is obvious that an important reason for the tax legislation, or rather lack of tax legislation in such countries, is the purpose of attracting more or less 'black' money from abroad. Other countries, which could be called 'tax havens', offer special tax advantages in more limited areas, e.g. in respect of shipping, holding companies, especially foreign owned, and companies carrying on business abroad. Among these countries, mention could be made of some Channel Islands, the Isle of Man, Liechtenstein, Luxembourg, Malta and Switzerland.

19. Switzerland for instance offers a very favourable tax treatment to certain kinds of companies, the holding companies and the so-called 'Domizilgesellschaften'. A holding company is a company, the main purpose of which is to hold shares in other domestic or foreign companies. Foreign and domestic holding companies situated in Switzerland have substantial tax privileges as regards federal, cantonal and municipal tax. Besides these privileges the confederation and most cantons grant tax reliefs for dividends paid on substantial participations in other Swiss companies. The 'Domizilgesellschaften' are of special interest for foreigners. A 'Domizilgesellschaft' is a company which has its seat in a canton but does not own immovable property or carry on business activity there. Such companies are, for instance, companies holding patents the yield of which consists of royalties from abroad, companies drawing commission fees from business transactions concluded abroad or companies owning foreign real property etc.
Thus the common feature of these companies is that their income stems from foreign sources. This fact and the favourable tax treatment which they enjoy make them of course very attractive to a presumptive tax evader residing outside Switzerland.

20. It is a well known fact that there exist also in Liechtenstein companies similar to the Swiss 'Domizilgesellschaften'. In this context the so-called 'Anstalten' could be mentioned. These companies are characterised by the fact that they do not pursue genuine business activity. They merely act as intermediaries for payments between foreign companies and for collecting patent royalties etc. from abroad.

21. The tax that such a company pays on its capital and income is extremely small.
The vast popularity these companies enjoy among foreigners is illustrated very clearly by the fact that the number of such companies in Liechtenstein exceeds the population of the principality. It is estimated to be about 30 000.

22. Tax havens could be used in several ways in order to evade taxes. A few elucidating examples may be given. An author residing in Sweden receives copyright royalties from the Netherlands where, under Dutch domestic law, no withholding tax or other tax is imposed. The royalties would be taxed in Sweden however. In order to avoid this, the author creates a company, of which he is the only shareholder and director, in a tax haven country. The royalties are received and accumulated by that company. If Sweden has no exchange of information system established with the tax haven country (such countries are in general not in favour of having such exchange), it is most likely that the royalties escape taxation totally. Another example, which has frequently been met in practice, is the transfer of patents etc. to companies in tax haven countries created for the only purpose of receiving patent royalties from all over the world.

23. Differences in national tax control is also a factor that works in the direction of stimulating international companies to move their income to countries where the tax control is lenient or even nonexistent. In this connection the tightness of the bank secrecy is of interest.

24. Bank secrecy ('numbered accounts' etc) is undoubtedly used as a tax evasion 'vehicle'. Admittedly there exist between certain countries agreements on the exchange of information between fiscal authorities to which countries applying bank secrecy rules have adhered. However, usually these agreements contain extensive reservations with regard to the supply of information covered by bank secrecy. This is for example the case in double taxation conventions concluded by the Netherlands. Furthermore, it is a well-known fact that Switzerland has the most water-tight bank secrecy in Western Europe.

25. As an example of this kind of tax evasion, with also some further implications, the following very simple case which has really occurred could be mentioned. A mother company in the United Kingdom had a Swedish daughter company. The managing director of the Swedish company received additional salary from the UK company. The salary was sent directly by the UK company to a Swiss bank account and thus evaded Swedish tax. The amount paid could never be established, partly because of the Swiss bank secrecy rules. It is also a part of the story that the daughter company paid to the mother company at the same time 'administration contributions' which there was sufficient cause to believe were intended to cover the additional salary.

26. As can be deduced from the preceding paragraphs the basis for the existence of international tax evasion is in the main twofold. Firstly, the fact that different items of income are taxed differently from country to country could be taken advantage of by taxpayers who are in a position to shift their profits etc, to the country where they are most favourably treated for tax purposes. The different systems applied for taxing capital gains and holding companies' profits could serve as illustrations of this fact. Another evident reason for international tax evasion is the wide ranging differences in tax rates. This is of course particularly obvious in respect of tax haven countries vis-à-vis other countries. However, the rates differ also between countries which could not be considered as tax havens. The well

known but difficult tax problem of 'transfer-pricing' has, as has been shown, its origin in the fact that some countries have lower rates of tax than others.

27. A third complicating factor is that tax frauds in connection with economic transactions across national borders are often much more difficult to discover than in cases where only one country is involved.

28. Most examples of international tax evasion involve situations where individuals or companies residing in one country evade taxes by transferring money to other countries with lower tax rates or more lenient tax laws, or even no tax at all for certain kinds of income, financial transactions or assets. Certain countries — the so-called tax havens — even specialise in attracting foreign capital by offering such facilities.

29. One point about the multinational companies could perhaps be made here. That is that although big multinational companies have been much focused upon in the discussions on tax evasion, it should be pointed out that other taxpayers with international relations are also involved.

30. It is of course not decisive in this context whether the tax subject is a big company, a small company or an individual. The only essential thing is that the person or company involved operates internationally and carries on transactions between different countries. This is why the big multinational companies have not specifically been singled out in this report. Some may even say that it is very seldom that one finds big multinational companies involved in clear-cut cases of international tax fraud. The problems with big multinational companies — at least in Europe — seem more to lie in the complex field of transfer-pricing.

31. Finally since the difference in tax rates between countries must be held as one of the most important inducements for international tax evasion, your Rapporteur has elaborated the attached table at the end of the report (see Appendix I). The table is intended to give a broad picture of the tax rates etc. applied in some Council of Europe member countries as well as in some other countries. Some of the countries in the table could be labelled low-tax countries, and even tax havens at least in respect of certain categories of income. The table should not be seen as giving a one hundred per cent correct judgement of the tax burden in the countries involved. It is quite clear that the tax rate as such is a rather uncertain factor in measuring the tax burden. It is of course for such a purpose equally important to take into account how one arrives at the taxable base in different countries. It may very well be that a country, showing a high tax rate, grants extensive deductions and allowances in arriving at the taxable income, that the overall tax situation in that country is to be considered more advantageous from the taxpayer's point of view than in a country where the nominal tax rate is lower. Taking such considerations into account, the table could in your Rapporteur's view throw some light on the inducement of taxpayers to use certain countries' tax systems for evasion purposes.

(To be continued in the next issue of INTERTAX.)

Council of Europe: Cooperation between Member States against International Tax Avoidance and Evasion II

(The first part of this article has been published in INTERTAX 1978/6-7)

C. Explanatory Memorandum[1] (continued)

By Lennart Petterson

III. The International Co-operation at the Present Stage

OECD

32. OECD is the international forum in which international tax questions have been discussed for a long time. This organisation suffers, however, from the weakness that it is an organ exclusively for governments: the absence of parliamentarians makes OECD less suitable to fulfil the essential role of instructing public opinion on the need for common efforts.

33. OECD has worked in the field of fiscal co-operation among member countries since 1956 and certain measures to counteract international tax evasion have been undertaken by OECD. The 1963 OECD draft bilateral double taxation convention is well known. Within the framework of the model convention the co-operation between national authorities has been discussed, and in the convention a provision is incorporated on exchange of information in tax matters (Article 26). That provision has, in more or less modified versions been included in most double taxation conventions concluded during the last fifteen years. This applies not only to conventions between OECD countries, but also to conventions between the latter and countries outside OECD.

34. The 1963 version of Article 26 has been subject to revision during recent years by the OECD Working Party on Double Taxation. The revised text of Article 26 and the commentaries thereon were approved by the Committee on Fiscal Affairs of OECD in January 1975 and have been incorporated in the new Model Double Taxation Convention approved by the OECD Council in April 1977. However the new version of 1975 does not in principle contain anything new in substance. But some questions of interpretation of the earlier version have been removed by additions to the commentaries. As an example it is now clearly stated that the provision implies also an obligation to supply information available

1. Doc. 4098.

concerning relevant facts from third countries. Further it has been made clear that Article 26 forms the basis for agreements between Contracting States not only on the exchange of information on the request of the other Contracting State but also on the automatic exchange of salary statements and other such information and on so-called spontaneous exchange of information. The revised text of Article 26 of the OECD model for bilateral double taxation conventions is given in the second appendix to this report.

35. In April 1977 the OECD Council approved a new 'Model Double Taxation Convention on Income and Capital' prepared by the OECD Committee on Fiscal Affairs. This convention has been the subject of a new recommendation to governments of member countries to base their bilateral negotiations on the new text and to pursue generally their efforts to avoid international double taxation.

36. The 1977 Model Convention replaces the OECD draft convention of 1963 and, like its predecessor, is expected by OECD to exert a considerable influence on the numbers and the content of bilateral conventions concluded by OECD member countries both with other member countries and with non-member countries. The new bilateral convention follows, in the main, the pattern and reproduces the essential provisions of the 1963 draft. But the 1977 model also takes account of the experience gained by member countries in negotiating and applying bilateral conventions based on the 1963 convention, as well as of changes in systems of taxation, the increased complexity of international fiscal relations and the development of new sectors of business activity that have been a feature of the international economy since the earlier text was drafted.

37. A main task of the Committee on Fiscal Affairs has been to clarify, update and expand the commentaries which are designed to illustrate and interpret the provisions of the articles in the new Model Convention. New provisions in it are designed, inter alia, both to give additional protection to taxpayers against the possibility of double taxation and to facilitate the task of national administrations in combatting tax avoidance and evasion. In this connection emphasis has been laid in the commentary on Article 26 that exchanges of information between tax administrations can be far more extensive and take many more varied forms than was found in the interpretation of the 1963 texts.

38. At best, however, this revision of Article 26 will be of use only in a rather distant future, since all present bilateral double taxation agreements have to be renegotiated. Furthermore, there is no special reason to believe that OECD will be more successful with the new version of the convention than its comparative failure to bring about multilateral co-operation under the old draft double taxation convention.

39. The co-operation regarding exchange of information between tax administrations is thus regulated in Article 26. Out of some 179 double taxation conventions among OECD countries, only a limited number include a supplementary article on mutual assistance for the recovery of taxes. The OECD Working Party

on Double Taxation is also carrying out a study aimed at establishing a model bilateral agreement on reciprocal administrative assistance for the collection of taxes.

40. In OECD work for counteracting tax evasion is also going on within Working Party 6 on the taxation of multinational enterprises. Within that working party certain efforts are made to come to grips with tax problems in connection with transfer-pricing policies. Thus, for instance, reports have recently been adopted covering agreed principles to be used for tax purposes, and the modalities of their application, concerning interest and royalties paid between associated enterprises. It should be observed, however, that this is the only international standard that so far has been agreed upon with respect to tax problems arising from transfer-pricing.

41. There is also a special Working Party No. 8 on Tax Avoidance and Evasion which investigates tax evasion techniques and the measures taken against such techniques in OECD member countries. Although the mandate of this working party was formally adopted in 1977 only, work had already started by the group in 1974.

42. On the basis of a draft worked out by the working party, and subsequently approved by the Fiscal Affairs Committee, the OECD Council adopted on 21 September a recommendation on tax avoidance and evasion. In this recommendation, governments of member countries are recommended:

a. to strengthen, where necessary, their legal, regulatory or administrative provisions and their powers of investigation for the detection and prevention of tax avoidance and evasion, with regard to both their domestic and international aspects, and to exchange experiences with respect to such action;
b. to facilitate, improve and extend exchanges of information between their national tax administrations, with a view to combatting tax avoidance and evasion, notably by making more intensive use of international conventions or instruments in force and by seeking new arrangements of a bilateral or multilateral character, with due regard to the provision of adequate safeguards for taxpayers;
c. to exchange experiences on a continuing basis on tax avoidance and evasion practices, on techniques for detecting and preventing them and on ways and means of improving tax compliance in general.

43. Furthermore, the recommendation instructs the OECD Committee on Fiscal Affairs to pursue its work with a view to facilitating the achievement of the above aims and to submit to the Council, as appropriate, specific proposals for increased co-operation between member countries in this field.

44. In this connection, it is also interesting to note that recently a two-day meeting of 75 tax inspectors was organised by the working party to exchange views and experiences on detection of tax evasion during tax audit. The working party has also examined in some detail the working of Article 26 in the Model Double

Taxation Convention, the possibilities for a better use of it and the opportunity to elaborate a multilateral convention on administrative assistance in tax matters.

45. To sum up: The work presently undertaken in various OECD committees could constitute an important input for a multilateral agreement on international co-operation to combat tax evasion and tax fraud.

46. An evaluation, however, of the work done so far by the OECD in this area leads to the conclusion that the method of 'model bilateral agreements', which the organisation uses to bring about co-ordinated efforts, does not seem to be effective enough as an instrument to control international tax evasion. Furthermore in the method used there is often a very long lapse of time between an agreement being reached between two countries on some specific point and it being ultimately included in the various bilateral double taxation agreements.

Multilateral Agreements

47. For these reasons the interest for multilateral agreements in this field has in recent years been very much on the increase. The oldest is the agreement between Belgium, the Netherlands and Luxembourg. The most complete multilateral agreement so far is the convention between the Nordic countries, which was concluded in 1972 and amended in 1976.

48. However, the most important development as a basis for further European co-operation is what is now taking place in this field within the European Communities of which an account will be given below (paragraphs 58 to 68).

49. Between the Benelux countries there has long existed close co-operation in the tax field. A convention concluded in 1953 between the three countries provides for mutual assistance for the enforcement of tax claims. In 1969, a convention on general administrative and judicial co-operation for realising the objects of the Benelux economic union was established. That convention contains, inter alia, a protocol on assistance in taxation matters which, however, is limited to assistance in the field of customs, excise duties, VAT and other indirect taxes. It provides for exchange of information and also opens possibilities for officers etc. of one country to take part in investigations in a contracting country.

50. The Nordic Convention concluded between Denmark, Finland, Iceland, Norway and Sweden deals not only with indirect taxes but also with direct taxes, social fees etc. Since the Nordic Convention is more complete than other agreements in this field, your Rapporteur would like to go into some detail regarding its content.

51. The Nordic Convention is divided into five parts, 'General provisions', 'Service of documents', 'Procurement of information', 'Enforcement of tax' and 'Special provisions'. Article 1 gives the general scope of the agreement. Assistance is lent in the form of service of documents, exchange of information, provision of

ıx forms and collection and enforcement of taxes. Unlike most agreements of this ind, the Nordic Convention covers not only income and capital taxes but also ıxes on inheritances, estates or gifts and indirect taxes, social security fees and ɔme other public fees.

2. The scope of the exchange of information system, which is of particular ıterest in this context, has recently been widened by means of an additional greement to the convention. It is now a complete system which allows information ɔ be exchanged on request, as well as automatically and spontaneously. Pro- isions have also been introduced to the effect of allowing tax officials of a Nordic ountry to be present at tax investigations of interest to that country which are aking place in another Nordic country.

3. The system of information on request is based upon reciprocity (Art. 11). ccording to the convention, a request for information may not be forwarded, nless the requesting country can satisfy a request for corresponding information rom the other country. If that condition is met, the requested country shall rocure the information in accordance with its law. This means that in principle ll the legislative instruments are put at the disposal of the requesting country. It ncludes, inter alia, the obligation to carry out special investigations, tax audits, tc if such measures are necessary, in order to obtain the information.

4. The provisions on automatic exchange of information (Art. 12) incorporates n extensive list of particulars on different items of income received which are to e exchanged yearly. It includes dividends, interest, royalties, salaries etc received rom sources in a Nordic country by residents of another Nordic country. The nformation is based on salary statements and other available particulars which re provided under domestic law by the employer, the paying agent etc. There re of course items of income which are not 'available' in all Nordic countries, ut in the main, information on the items listed is forwarded each year. In the rticle on automatic exchange of information, a paragraph on spontaneous supply f information has been added in 1976. Thus, if a tax inspector considers a piece f information which he has run into in the course of a tax audit to be of interest o another Nordic country, he should inform the authorities of that country in the way foreseen by the convention.

5. The Contracting States attach great importance to the recently opened pos- ibility within the framework of the Nordic Convention for tax officials to take art in tax investigations in another Nordic country. Obviously in the discussions n these provisions there were put forward some hesitations with regard to the uestion of allowing foreign officials to carry out duties in the different contracting ountries. It has therefore been made fully clear that the official is not allowed to xercise any form of decisive powers and may not himself determine procedures o be used. He may on the other hand ask the responsible authority to have the investigation carried out in a manner which will suit his purposes. It can surely be expected that his wishes will be realised, if no legal or administrative obstacle exists.

. The provisions on enforcement of tax are a vital part of the Nordic Con-
ıtion. That kind of mutual assistance among the Nordic countries is traditional.
ıe main new elements which were introduced in this field by the multilateral
nvention were that the scope of taxes and fees for which enforcement could be
quested was widened in the way explained above and that some limitations as
nationality and residence were abolished. It could therefore be stated that the
ıtional frontiers between the Nordic countries are nowadays almost completely
:moved as obstacles for enforcement of taxes and public fees.

7. In conclusion, it might be said that the Nordic Convention has proved to be
. necessary and efficient instrument of tax control in a situation where economic
ransactions between the Nordic countries have expanded at a very rapid rate.
No responsible business organisation had any criticism against the convention and
.t was accepted unanimously in the Nordic parliaments, when the governments
asked for its ratification.

European Communities

58. Also the European Communities have recognised the need for more active measures against international tax evasion than can be expected if one should rely solely on the work done within the OECD.

59. The Commission proposed in 1975 a new 'action programme on taxation'. The communication of the European Commission to the Council of Ministers on this action programme contains the following paragraphs on international tax evasion and avoidance: 'International tax evasion and avoidance lead to losses of revenue and breach of the principle of tax fairness; it can also cause distortions in capital movements and the conditions of competition. Accordingly, on 10 February 1975, the Council adopted a resolution proposed by the Commission laying down the principles of the measures to be taken by the Community to ensure that taxes on income and profits are correctly determined.'

60. In accordance with this resolution, the Commission has submitted in April 1976 a draft directive to the Council of Ministers concerning mutual assistance by the competent authorities of member states in the field on direct taxation[2] to which I shall return in paragraph 64.

61. The Commission's action programme on taxation of 1975 furthermore said that 'following up its communication to the Council of November 1973 on multinational undertakings, the Commission will continue its work with a view to presenting proposals on:

— the elimination of double taxation which can result from adjustments made to profits by a member state;
— the fixing of common rules for avoiding artificial transfers of profits between undertakings in the same group by means of transfer-pricing.

2. Commission of the European Communities, Doc. COM (76) 119 final, 31 March 1976. Note of the editor: Adopted on 19 December 1978.

It further calls attention to the suggestions which it made in the report on the tax arrangements applying to holding companies drawn up in June 1973 at the request of the Council, and in particular those concerning the shifting of the burden of proof where there is a presumption of tax avoidance and the charging of a withholding tax on interest and royalties paid to companies bearing little or no tax on such income.

In the matter of indirect taxes, the Commission will shortly transmit to the Council a proposal on mutual assistance between member states to enforce collection of amounts due in connection with VAT, excise duty and other indirect taxes on consumption along the same lines as proposals already put forward concerning agricultural levies and customs duties.* The adoption of this proposal would enable member states to recover amounts owed by a person liable to VAT or other indirect tax, even if this person resided or had his only seizable property in a member state other than that in which the tax debt arose.

As in the field of direct taxes, the Commission intends to promote mutual assistance between tax authorities in connection with indirect taxes in order to prevent fraud at international level. It will, in addition, study ways and means of quantifying the thoroughness of controls in each state and also seek to discover the most widespread methods of fraud with a view to proposing measures for preventing infringements of national laws and prosecuting offenders'.

63. As can be seen from the above, the Community efforts with regard to the control of international tax evasion are moving in the same direction as the measures laid down in the Nordic Convention.

64. In April 1976 the European Commission submitted to the Council the abovementioned proposal for a directive 'concerning mutual assistance by the competent authorities of member states in the field of direct taxation'** with a view to combatting international tax avoidance and evasion. The directive is confined to the field of direct taxation (income and wealth), but in the report the Commission reiterated that the proposal is to be considered as an initial step, which will be followed by further proposals concerning indirect taxation, especially value added tax. Since tax evasion constantly takes on new forms, the draft directive is very flexible; it basically represents a framework for collaboration of which it sets out the major guidelines and functioning methods.

65. The basic provisions of the draft directive can be summarised as follows:

a. *possibility of providing information at the request of another member state,* with possibility of refusal.
b. *automatic and obligatory exchange of information* in certain categories of data such as dividends, royalties, payment of workers, etc.
c. principle of the communication of *information,* without a request being necessary in cases of reduction or abnormal exoneration from tax; presumed

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* Note of the editor: See INTERTAX 1978, p. 208.

** Note of the editor: The directive was adopted on 19 December 1977. For the full text see INTERTAX 1978, p. 7.

fictive transfers of profits within one group of enterprises; necessary information for the establishment of tax in another member state etc.

d. possibility of *authorising an agent of a member state to carry out investigations in another member state.*
e. provisions relating to *secrecy* and the exclusively fiscal use of the information and data obtained (while generally respecting the national provisions of the *member state*).
f. *possibility of refusing certain information,* where to divulge it is contrary to national legislation or if it runs counter to public order.
g. introduction of *a bilateral procedure,* between the various member states, in order that collaboration, the examination of information etc. can be carried out simply and effectively.
h. parallel introduction of a *Community procedure,* based on the 'à posteriori' communication of bilateral decisions (except where these exclusively concern special cases).
i. introduction of another procedure for the *mutual communication of experience gained:* the 'Nine' and the Commission will constantly monitor the progress of co-operation and inform each other of the results of experiments carried out especially in the field of transfer-pricing within groups of companies with a view to securing improvements in collaboration and, where appropriate, formulating further measures in the specified fields.

66. In the explanatory memorandum to this draft directive, the European Commission makes the following observations[3] on the need for a multilateral agreement to fight international tax evasion: 'Tax evasion and tax avoidance reaching beyond the national borders of member states represent a serious problem, not only nationally but also at Community level. For each member state they lead to budgetary losses and to breaches in the principle of fair taxation, but in addition they are likely to distort capital movements and the conditions of competition. Because of the increasing interpenetration of economies and the development of multinational companies, it is no longer possible effectively to combat international tax evasion and avoidance merely nationally or bilaterally; the attack needs to be organised on as wide and international a basis as possible and, in the first place, at the Community level (. . .).
Although the provisions of the proposal do not regulate relations between member states and third countries, it is obvious that mutual assistance, as a means of combatting international taxation abuses, should not be restricted to collaboration within the Community boundaries. The Commission is aware that it would be desirable to extend the scope of the co-operation procedures beyond these limits and it intends to submit to the Council, in due course, other proposals whose purpose will be to strengthen collaboration, especially with those third countries which are important in an industrial and financial sense.'

67. The attack on international tax evasion and avoidance *requires above all permanent collaboration* between the tax administrations of the various member

3. Commission of the European Communities, Op. cit. pages 1 and 3.

states, so that each of them may have access to all the facts and material of use in correctly determining the amount chargeable to tax.

68. In November 1976, the European Parliament unanimously approved the European Commission draft directive on mutual assistance between the authorities in the member states in the field of direct taxation, subject to some reservations. The reservations were first of all concerned with the possibilities for the authorities of a member state to withhold information in certain cases. Thus, the Parliament regretted the absence of details regarding the sanctions to be applied to delays or the non-motivated refusal to supply details; it criticised the fact that it was limited to the exchange of information, based on public policy and the condition of reciprocity, and called on the Commission to 'set up some form of recourse on the Community level to challenge the assessment by a member state's authorities of the confidential nature of tax information'.

Council of Europe (Criminological Aspects)

69. The problem of tax avoidance and evasion is an important aspect of the wider phenomenon of 'white collar crime' which had the particular attention of the Conference of European Ministers of Justice held in 1973 in Stockholm. Following this conference the Committee of Ministers instructed the European Committee on Crime Problems to analyse the phenomenon of economic crime paying particular attention to tax offences and the role of multinational companies.

70. The work of this committee has resulted, among other things, in the elaboration by an expert committee of two additional protocols to the European Conventions on Extradition and on Mutual Assistance in Criminal Matters. The purpose of these protocols is to extend these two conventions to tax offences. (The Convention on Mutual Assistance extends already to such offences, but only on an optional basis.)

71. At the end of 1977 these two protocols have been unanimously adopted by the Committee of Ministers and will be opened for signature and ratification in March 1978. The rapid implementation of these two protocols would obviously make a very useful contribution to co-operation among the Council of Europe member states against tax avoidance and evasion.

72. With regard to the various other legal and criminological aspects of economic crime, the European Committee on Crime Problems could in future play a useful role in studying the different approaches to this type of crime and make recommendations for further action to the Committee of Ministers. Certain activities are already included in the Intergovernmental Work Programme of the Council of Europe and others which are now still at a preliminary stage may follow.

IV. Conclusions and Tentative Action Proposals

73. The post-war period has witnessed more liberal trade relations and increased capital movements between countries. This is an evolution which has been advantageous in many respects. One of the drawbacks, however, has been the greater possibilities for international tax evasion.

74. The negative effects of international tax evasion are being more and more observed. For example, the European Parliament noted:[4] 'that the tax evasion and avoidance practices which exploit the disparities between the tax laws of the member states have seriously damaging repercussions internationally as well as within the Community, not only because of the budgetary losses that they entail, but also because they breach the principles of fair taxation and cause distortions in capital movements and conditions of competition'.

75. In my view it is important that governments work together in order to come to grips with the problem of increased tax evasion. The member states of the Council of Europe have a particular responsibility because of their extensive external trade relations both within and outside the area of the Council of Europe member states.

76. International tax avoidance and evasion may take many forms. One of the bases for tax evasion manipulations is differing national tax legislation both with regard to the tax level and taxable income. This means for instance that private persons and multinational companies can profit from these differences through artificial transactions (for example by means of incorrect transfer-pricing) and pay taxes where it is most beneficial to them and not where the income on which the tax should be paid has been really made.

77. It is also disturbing that some countries seem to have created special tax laws that mainly tend to give undue tax favours in respect of at least one category of income to certain categories of foreign companies, usually holding companies, or individuals. In this connection, the report singles out Liechtenstein which has more non-producing foreign companies registered than it has inhabitants.[5]

78. Financial transactions involving more than one country can also be used to evade taxes altogether if the tax authorities in the different countries concerned are not aware of these transactions. In this connection it should be noted that transactions via tax haven countries and countries with stringent rules on bank secrecy have been particularly utilised by international tax evaders.

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4. Resolution on the proposal from the Commission of the European Communities to the Council relating to a directive concerning mutual assistance by the competent authorities of the member states in the field of direct taxation, adopted by the European Parliament on 17 November 1976.
5. According to an article in the Neue Zürcher Zeitung 20 to 30 000 letter box companies exist in Liechtenstein (see: Legende und Wirklichkeit liechtensteinischer Holding- und Domizilgesellschaften, NZZ, 29 April 1977).

'9. The obvious way to mitigate international tax avoidance and evasion that can ›e effective now and in the foreseeable future is, therefore, extended co-operation ›etween countries and their tax administrations. Such co-operation should, in ›rder to be effective, cover first of all the supplying of relevant information on pecific cases asked for by another country. It should also include the possibility ›f carrying out the necessary investigations in tax matters by the authorities of ›ne country at the request of another.

0. The possibility of allowing foreign officials to ask for specific tax investiations and a simple procedure to make it possible to collect taxes on behalf of nother country should also be considered as important areas of co-operation.

1. It is further necessary that member states consider the possibility of exerting n increasing pressure on tax haven countries and companies using these countries s a base for their operations. It is, for example, certainly not self-evident that multiational companies, using tax haven countries inside or outside Europe as a base ›r their economic operations, should be granted the tax deductions that are given › companies that try to fulfil their obligations in the different countries where ›ey are engaged in business.

2. Furthermore, the member states of the Council of Europe should be urged › abolish as far as possible such obstacles to tax control as an extensive bank :crecy. It may be difficult to take general measures in that respect, but a minimum :quirement would be to grant exemption from the bank secrecy rules in cases here tax evasion is strongly suspected. There is no reason why fiscal crimes ›ould not be considered as serious as other types of crime.

3. As mentioned above the tax problems connected with multinational companies 'e to be regarded as an integral part of the general problem of international tax 'asion. That implies that results achieved in counteracting tax evasion generally ill also help to solve this problem in respect of multinational companies. It has :en shown that certain tax aspects of the operations of multinational companies 'e under study in OECD. These studies aim at reaching methods for a fair .aring of the profits made by multinational companies between the countries in hich they operate. Member states should take as active a part as possible in these udies since these may constitute an important input for an agreement on prinples governing the sharing of profits between associated enterprises.

4. From Chapter 3 it can be seen that a rather extensive network of bilateral reements, covering, inter alia, mutual assistance in tax matters, exists. These are ainly the result of the work in OECD in the field of double taxation with a view facilitating international trade and economic transactions. However, it should observed that the functioning of these agreements has shown very substantial :aknesses.

. First of all, they do not cover all countries in Western Europe. Secondly, the ntents of the different agreements vary very widely. The scale reaches from the

very extensive and efficient collaboration that exists between the Nordic states to very weak bilateral agreements for example those concluded between Switzerland and other countries, or no agreements at all. Thirdly the necessary degree of co-ordination that is absolutely essential in order to fight effectively international tax evasion is missing in the present network of agreements.

86. Most member countries of the Council of Europe now seem to have realised the seriousness of the growing problem of international tax evasion and there appears to be a clear wish to try to improve the present situation. An indication of this is the fact that negotiations in this field have increased recently.

87. However, because of the fact there exist a lot of more or less unco-ordinated bilateral agreements, there is an urgent need for co-ordinated action among Western European countries in order to combat international tax evasion.

88. The Convention on Mutual Assistance in Tax Matters concluded between the Nordic countries in 1972 and the proposal for a draft directive in the same field that is now under discussion within the EEC are good illustrations of the fact that the present set up of bilateral agreements is widely considered as inadequate.

89. This proposal for a directive concerning mutual assistance by the competent authorities of member states in the field of direct taxation is accompanied by an explanatory memorandum which says among other things 'it is obvious that mutual assistance, as a means of combatting international taxation abuses, should not be restricted to collaboration within the Community boundaries. The Commission is aware that it would be desirable to extend the scope of the co-operation procedure beyond these limits and it intends to submit to the Council in due course, other proposals whose purpose will be to strengthen collaboration, especially with those third countries which are important in an industrial and financial sense'.

90. A difficulty, however, is that there does not exist a legal possibility for the EC to extend the implementation of an EC directive to non-EC countries. It would therefore be necessary to elaborate and open for signature a multilateral convention on the subject in order to make it possible for all Council of Europe countries to become part of a truly European system designed to combat international tax avoidance and evasion. The Council of Europe is well placed to promote such an initiative.

91. In the opinion of your Rapporteur, the time is now ripe to make a serious effort to co-ordinate and to further improve the different agreements that are in operation in Western Europe or are envisaged. If this is not done, we may have to witness a development that deepens the differences between the various bilateral and multilateral agreements and make them more and more inefficient.

92. There is also a risk of unilateral action against international tax evasion to be taken by individual countries, which, understandable as it may be, may also

Appendix 1

Country	Individuals income tax rate single		Corporations income tax rate	International Holding Companies income tax privileges	VAT rate
	FF 20 000	FF 100 000			
	per cent	per cent	per cent		per cent
Bahamas	—	—	—	Exemption	
Bermuda	—	—	—	Exemption	
France	21.2	45.9	50	Limited exemption in respect of dividends and in some cases interest and capital gains	20 (7, 17.6 and 33⅓)
Fed. Rep. of Germany (0.5)[1]	15.4	34.5	56 (undistributed profits) 36 (distributed profits)	—	12 (6) ('Umsatzsteuer')
Luxembourg (14.25)[1]	13-14	41.3	40 (basic rate)	Substantial tax privileges in respect of dividends, interest and royalties	10 (2 and 5)
Netherlands (0.5)[1]	15.5	43.7	48	Exemption, if redistribution	18 (4)
Sweden (1.00)[1]	29.2	51.8	56		20.63
Switzerland (0.5)[1]	8.7	21.5	FDT 3.63 - 9.8	Substantial privileges	8.4 (5.6)
Zürich			(9.8 applies when profits are equal to or greater than 23 per cent of net worth) Cantonal and municipal tax 5-28 per cent (based on ratio profit-capital)	a. 'Pure' holding companies: Cantonal and municipal exemptions b. 'Domizilgesell-schaften' (holding i.a. patents etc.): Cantonal tax exemptions	turnover tax
United Kingdom (11.50)[1]	35 (standard rate)	47.3	52	—	8 (12 and 0)
United States (0.2)	18	26.1	20 on US$ 25 000 22 on US$ 25-50 000 48 on exceeding	—	—
Liechtenstein			7.5 - 70	'Holding company', domiciliary company, 'Anstalt': Exemption	8.4 (5.6) turnover tax

1. Assumed exchange rate in relation to French francs.

create difficulties for the legitimate trade and economic transactions between countries.

93. The Council of Europe is to my mind very well suited to take on a co-ordinating role in this field since this international organisation is the only one that represents virtually all countries in Western Europe. Since the views on the problems involved are probably rather similar in the member states, the prospects of reaching agreement on provisions on mutual assistance, including exchange of information in tax matters, must be regarded as good.

94. The Assembly should therefore ask the Committee of Ministers to take an initiative in this field. The aim should be the conclusion of a European multilateral convention on mutual assistance to fight international tax avoidance and evasion. Only a multilateral agreement concluded between the countries of Western Europe can become an effective tool against international tax evasion.

Appendix II. The OECD Model for Bilateral Double Taxation Conventions

Article 26. Exchange of Information

'1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this convention or of the domestic laws of the Contracting States concerning taxes covered by this convention insofar as the taxation thereunder is not contrary to this convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that state and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the convention. Such persons or authorities shall use the information only for such purposes. These persons or authorities may disclose the information in public court proceeding or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligation:

a. to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State,
b. to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State,
c. to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).'