

EIB stakeholders' engagement seminar

“Non-Compliant Jurisdictions”

29 November, 2017, Brussels

Office of the Group Chief Compliance Officer

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EIB and its mission

The EIB: the EU bank



- ▶ Natural financing partner for the EU institutions since 1958
- ▶ Mission: Improve the lives of people by promoting sustainable and inclusive growth
- ▶ Largest multilateral lender and borrower in the world
- ▶ More than 50 years of experience in financing projects
- ▶ Headquartered in Luxembourg and has 36 local offices
- ▶ Around 3000 of staff:
 - ❖ Not only finance professionals, but also engineers, sector economists and socio-environmental experts

EIB priorities

Environment



EUR
 16.9bn

Infrastructure



EUR
 19.7bn

Innovation



EUR
 13.5bn

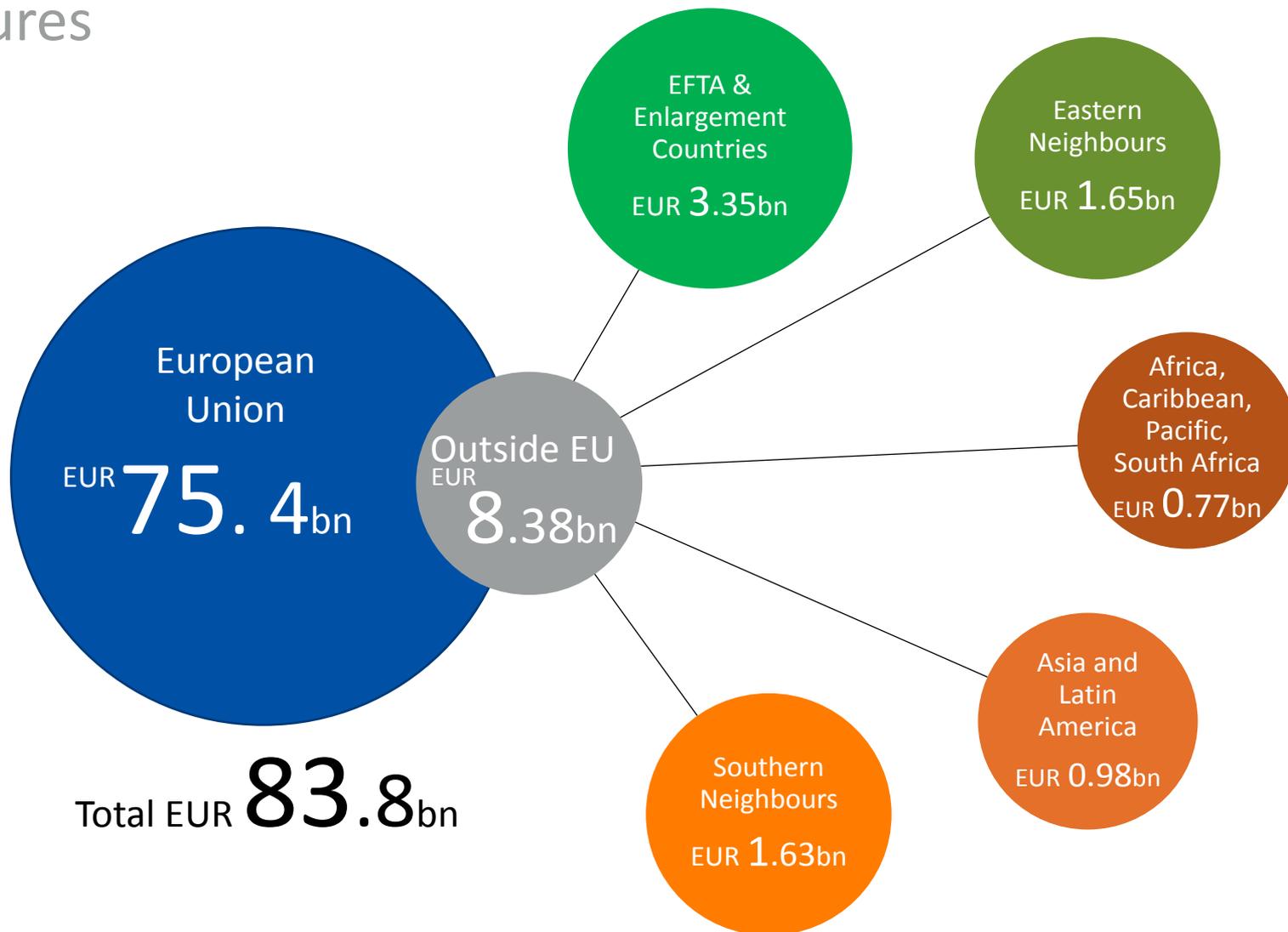
SMEs



EUR
 33.6bn

EIB Group financing in 2016: EUR 83.8bn

Signatures



EIB business model

- Not to crowd out the private sector, but to support it by correcting market inefficiencies -never the only “owner” of the project.
- Financial contribution is limited.
- Lending to individual projects for which total investment cost exceeds EUR 25m (for Midcap companies loan volume between EUR 7.5m and EUR 25m may be provided).
- Stimulating and catalysing private capital through investment in equity and funds by working with new and established fund managers in traditional and innovative segments that are not yet mainstream.

Compliance at the EIB



Office of the Chief Compliance Officer

- ▶ In line with the Basel Committee for Banking Supervision principles and EBA Guidelines on Internal Governance
- ▶ Independent function – reporting directly to the EIB President
- ▶ Under the guidance and responsibility of the EIB's Group Chief Compliance Officer (GCCO)
- ▶ Compliance/ reputational risk managed at the EIB Group level (EIB and EIF) by the GCCO

OCCO Areas of Activity

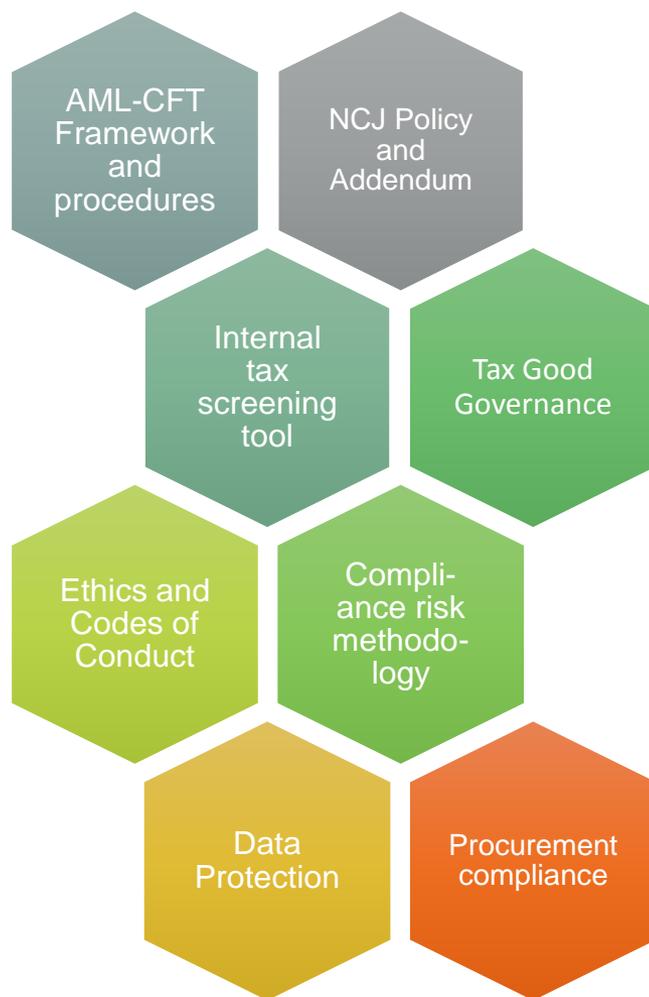
Integrity checks on projects and counterparties

Integrity of staff and governing bodies

Regulatory compliance

EIB Compliance framework

Key policies, procedures and approaches



OCCO's roles in EIB project cycle



Before taking a decision to invest...

Integrity checks on operations and counterparties

INDEPENDENT COMPLIANCE OPINIONS



- Strict due diligence criteria and process
- Anti-Money Laundering/ Countering Financing of Terrorism Framework and procedures
- Screening for sanctions
- Enhanced due diligence on NCJ operations
- Tax due diligence
- Compliance risk methodology
- Compliance opinions on all operations outside EU
- Approval process
- Compliance monitoring

Engagement with IFIs, NGOs and Lead Organisations

Ongoing dialogue with IFIs and CSOs

- Third Seminar with NGOs on EIB's NCJ Policy (November 2017)
- Benchmarking exercise with IFIs

Ongoing dialogue with Lead Organisations

- OECD
- Global Forum
- EU
- FATF

Engagement with EU Institutions

- Follow- up on negotiations of relevant EU legislative packages
- Bilateral contacts with EU Commission
- Liaison with EP and the Council

Interim approach

Background 1: leaks



Background 2: changing regulatory environment



International level:

Financial Action Task Force (FATF) high risk AML/CFT non-cooperative jurisdictions

Outcomes of G20 Summit in Hamburg

Global Forum: completion of fast track procedure for jurisdictions reviewed in the 1st Round (2010-2016) and release of first reports of 2nd Round of peer reviews (2016-2020)

Special cycle of reviews concerning implementation of automatic exchange of information will be launched in 2020

Reviews of jurisdictions under Inclusive Framework on Base Erosion and Profit Shifting (BEPS)



EU level:

EU own list of high risk AML/CFT jurisdictions, currently aligned with the FATF list – new EU methodology by 2018

EU-wide list of tax non cooperative jurisdictions – more comprehensive assessment than that of the OECD/Global Forum

Interim approach: background and objective

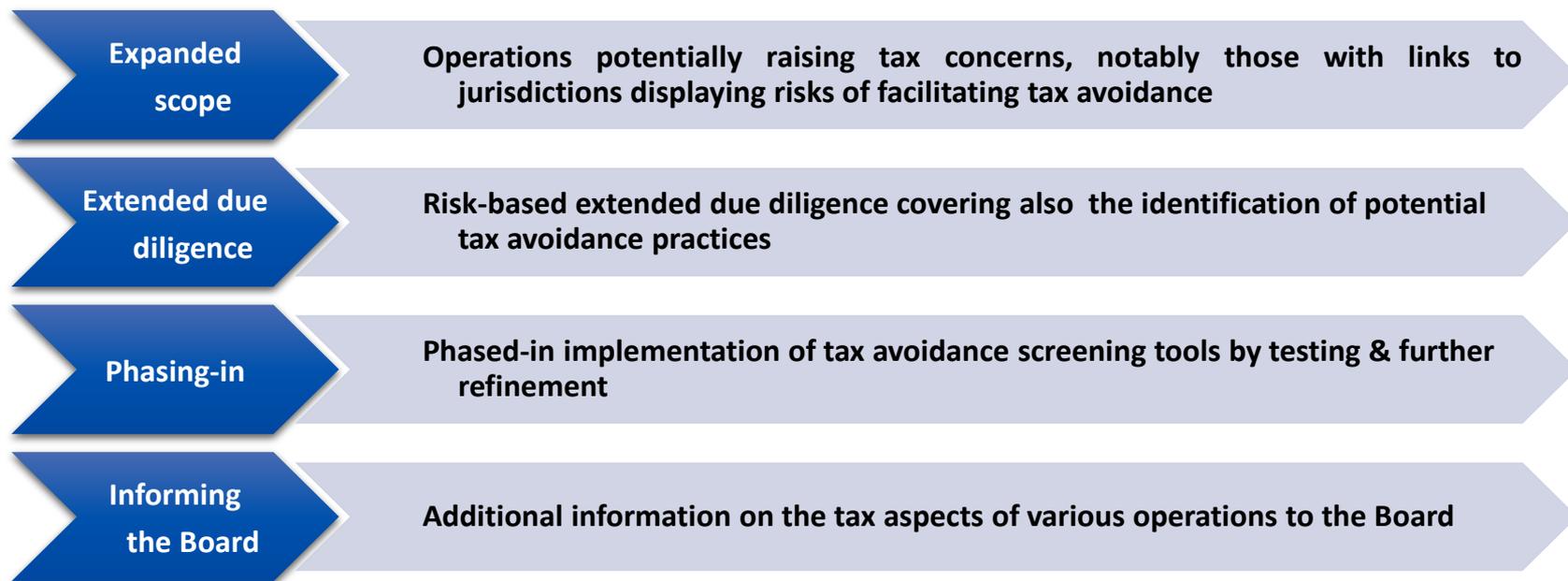


*“In view of recent developments in the area of taxation (...) EIB Group has taken additional measures **to enhance its procedures and practices** aimed at avoiding EIB Group operations being misused for tax fraud, tax evasion, tax avoidance, aggressive tax planning, money laundering and financing of terrorism purposes.”**

* Extract from the EIB web statement on tax good governance available on the EIB website

Interim approach until EU list is adopted: overview

Adopted by the EIB BoD in January 2017



EIB Response – Interim Approach

Standard due diligence process

- includes, *inter alia*, identification of beneficial owners, integrity assessments to identify any sanctioned individuals or entities, screening for adverse media, presence of Politically Exposed Persons and potential conflict of interests

Tax-related due diligence

- on a risk-sensitive basis, on every operation with higher risk factors identified, such as a potential link to a Non-Compliant Jurisdiction (NCJ) or other tax risk indicators.

Reviewed approach

- enhanced the Bank's due diligence processes with the aim that the risk-based tax assessment identifies potential tax avoidance concerns targeted by the OECD BEPS action plan and EU Anti-Tax Avoidance Directive, as amended. Revision of NCJ Policy under way.

Interim Approach – Toolkit

Internal Tool

Questionnaire

Disclosures

Risk Matrix

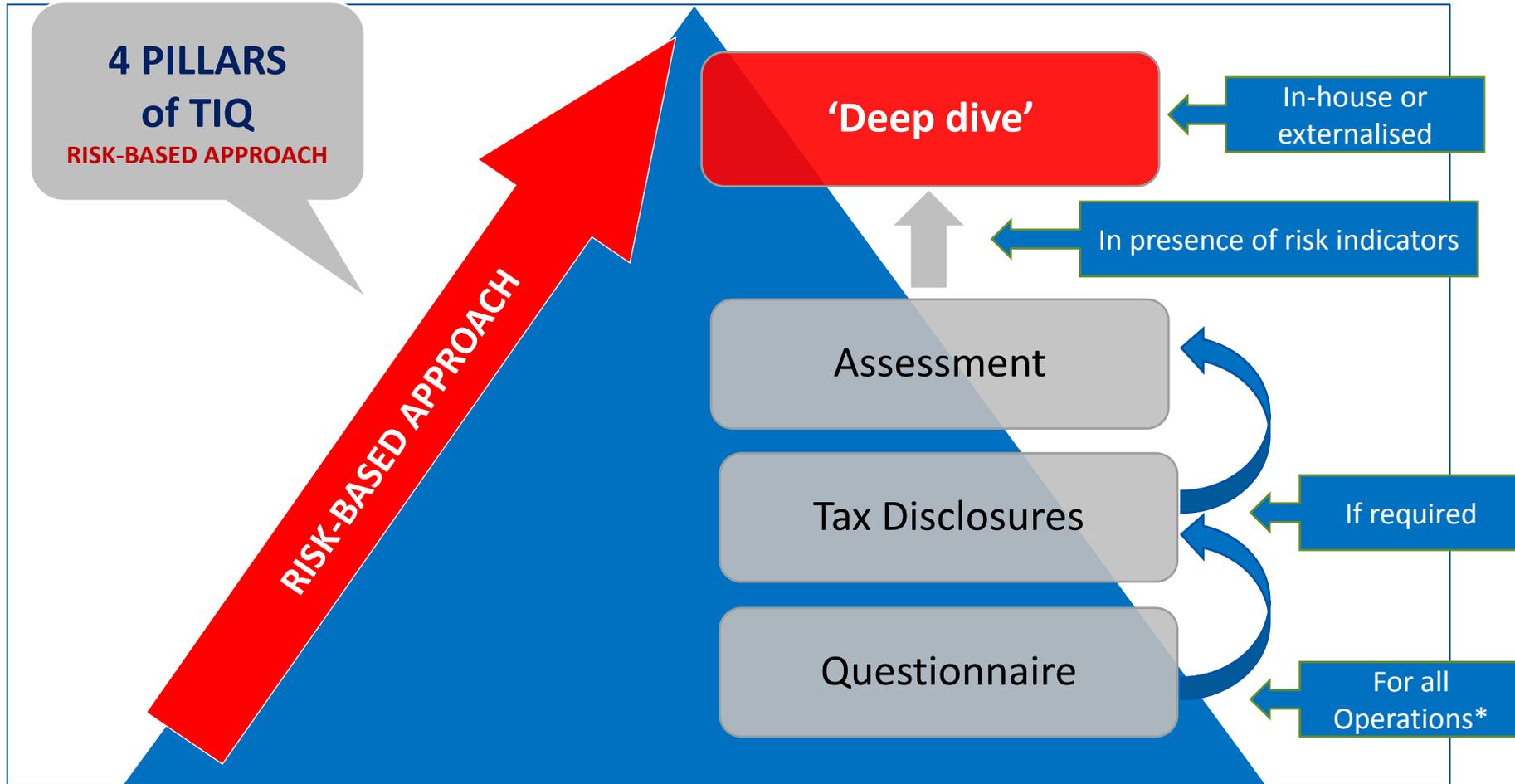
STRUCTURE – questions, covering the following:

- Presence of no CIT/zero rate jurisdictions
- Listing of a jurisdiction
- Hybrid financial arrangements, leverage ratio, multi-jurisdictional structure, recent re-organisation

- Adverse media attention in relation to tax concerns
- Effective tax rate & tax regime
- Tax treatment of cash-flows
- Presence of funds

- Presence of provisions for disputed tax positions
- Public disclosure of statements on tax compliance / tax integrity, director/executive responsible for tax affairs

Toolkit Approach:



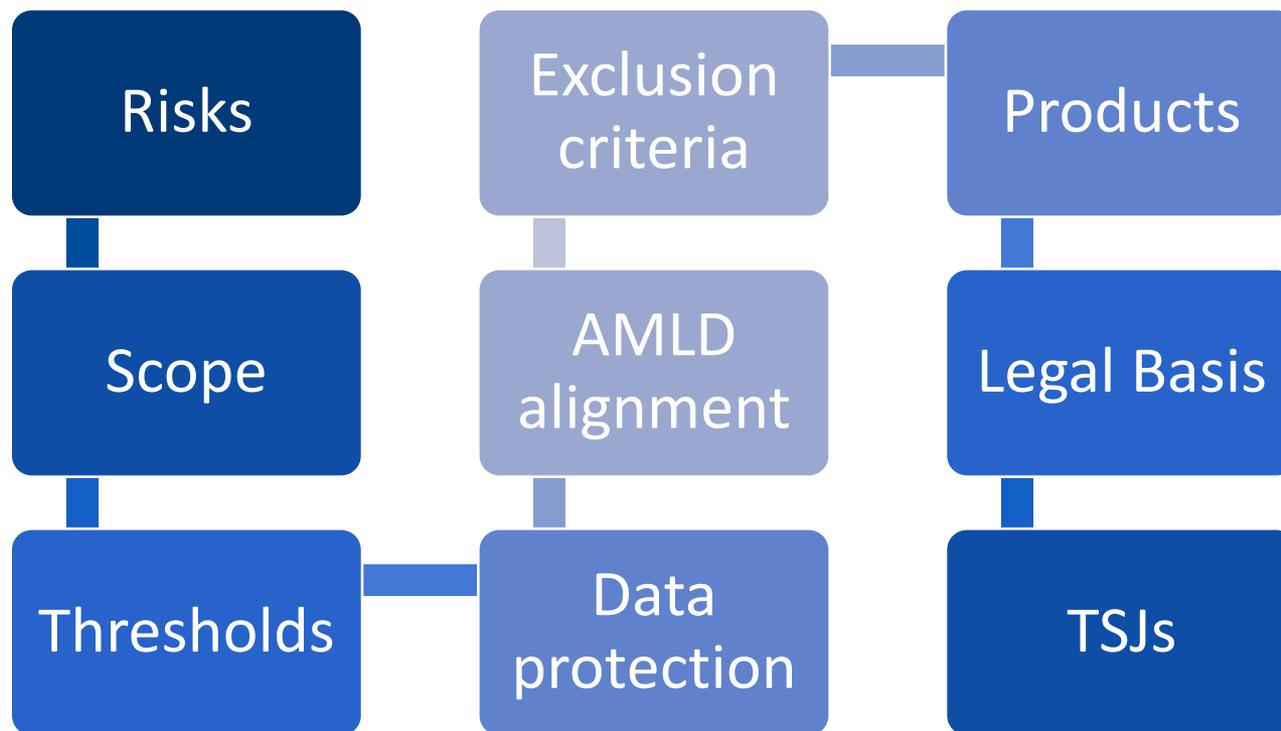
*Not applicable in case a Best Practice Area Credit or Financial Institution is the Relevant Counterparty of EIB. Phase-in implementation of the TIQ during the Interim Approach

Interim Approach - developments

- ▶ Testing and refinement of TIQ Package to date

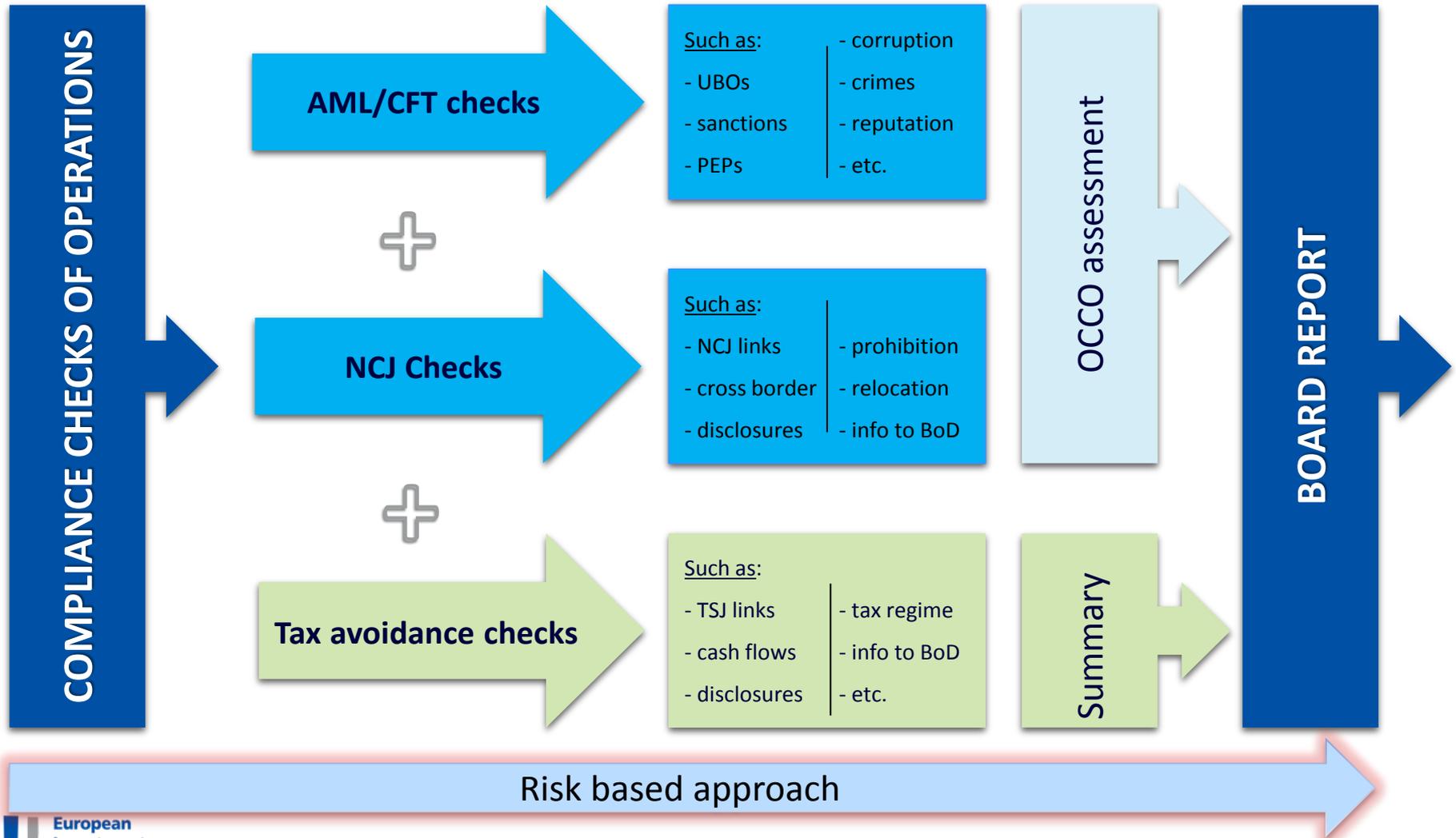


Challenges on the go...

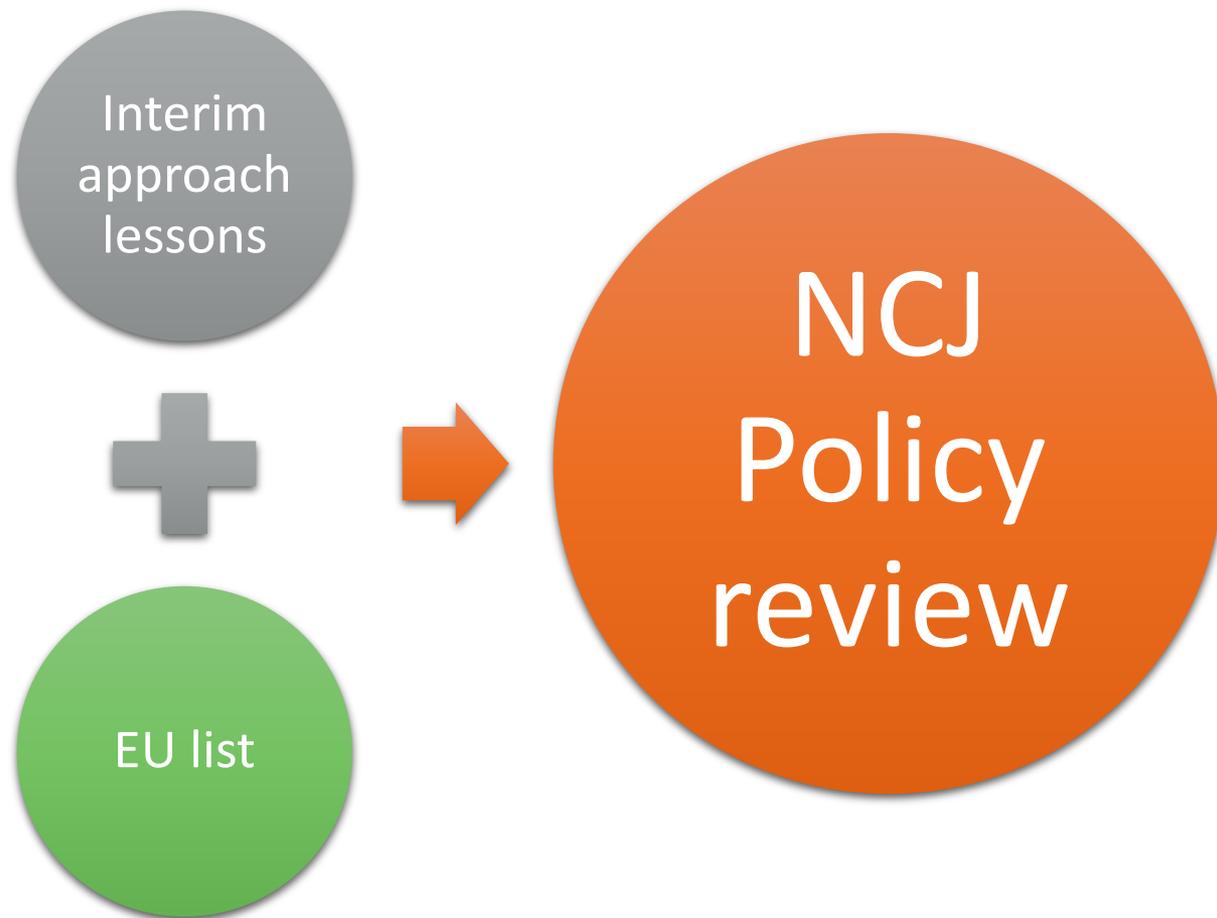


- Every operation/project is different;
- EIB cannot substitute for national tax authorities;
- Support for initiatives at EU level aimed at codifying tax good governance criteria, establishing legal certainty and defining an EU common list of non-cooperative jurisdictions (EU list).

Framework of EIB's Current Integrity Checks

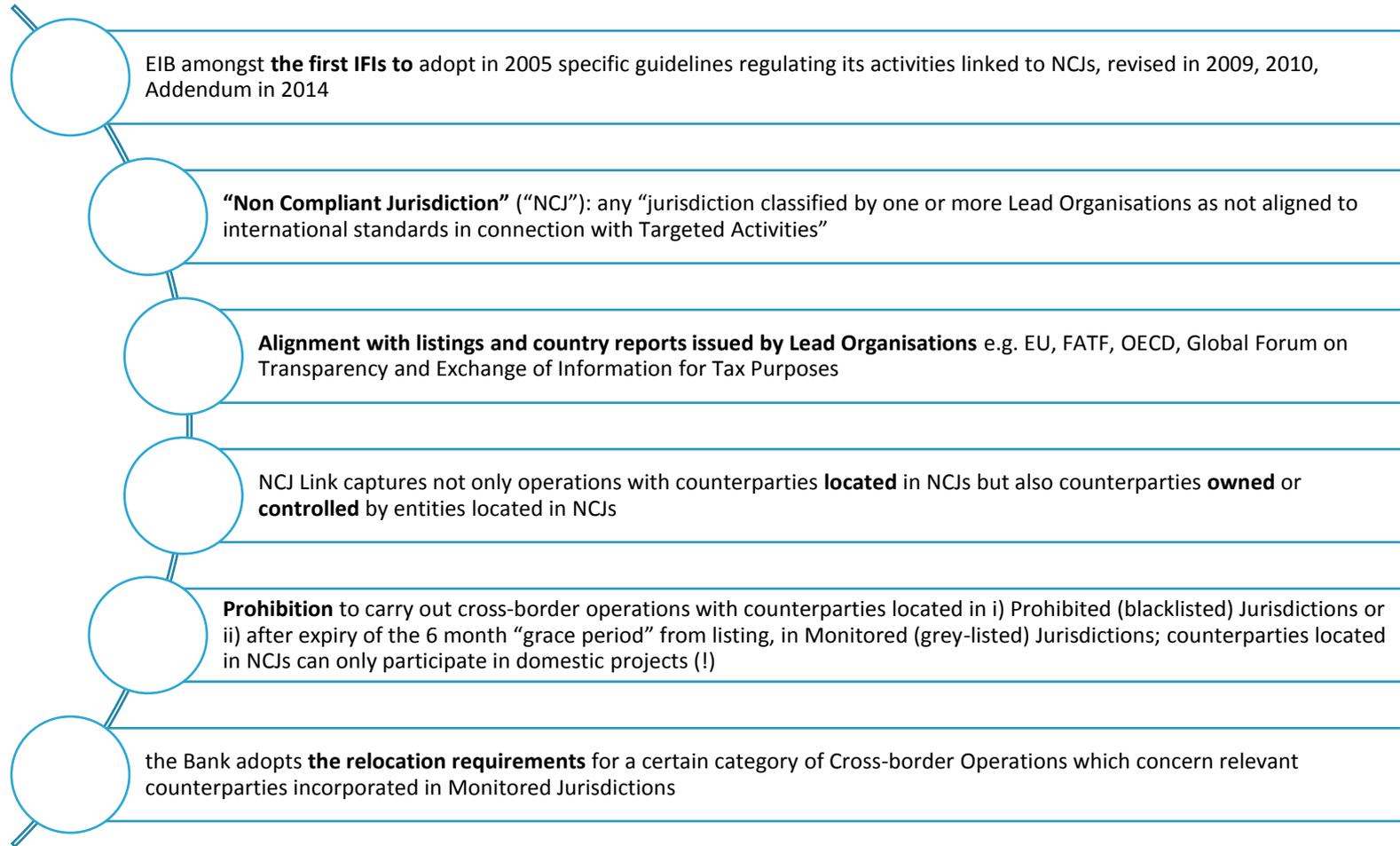


Next steps: NCJ Policy review



NCJ Policy review

Current EIB NCJ Policy: main features



NCJ Policy review: timeline

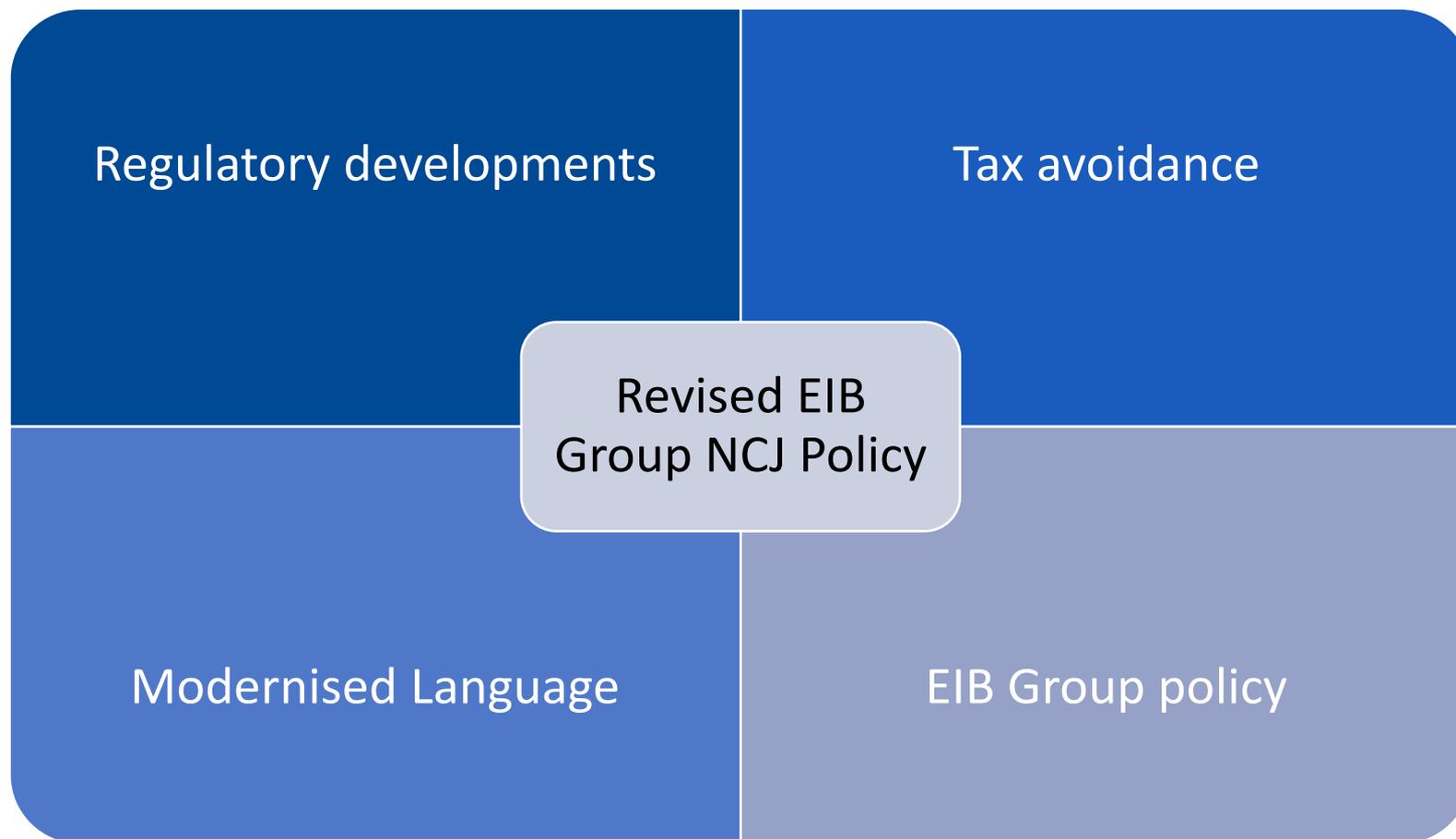


*“(...) The EIB and EIF shall review its policy on non-cooperative jurisdictions at the latest **following the adoption of the Union list of non-cooperative jurisdictions for tax purposes** (...).”*

Draft “EFSI Regulation 2.0”

NCJ Policy review: objectives

Build on current NCJ Policy principles reflecting:



Walking on thin ice?

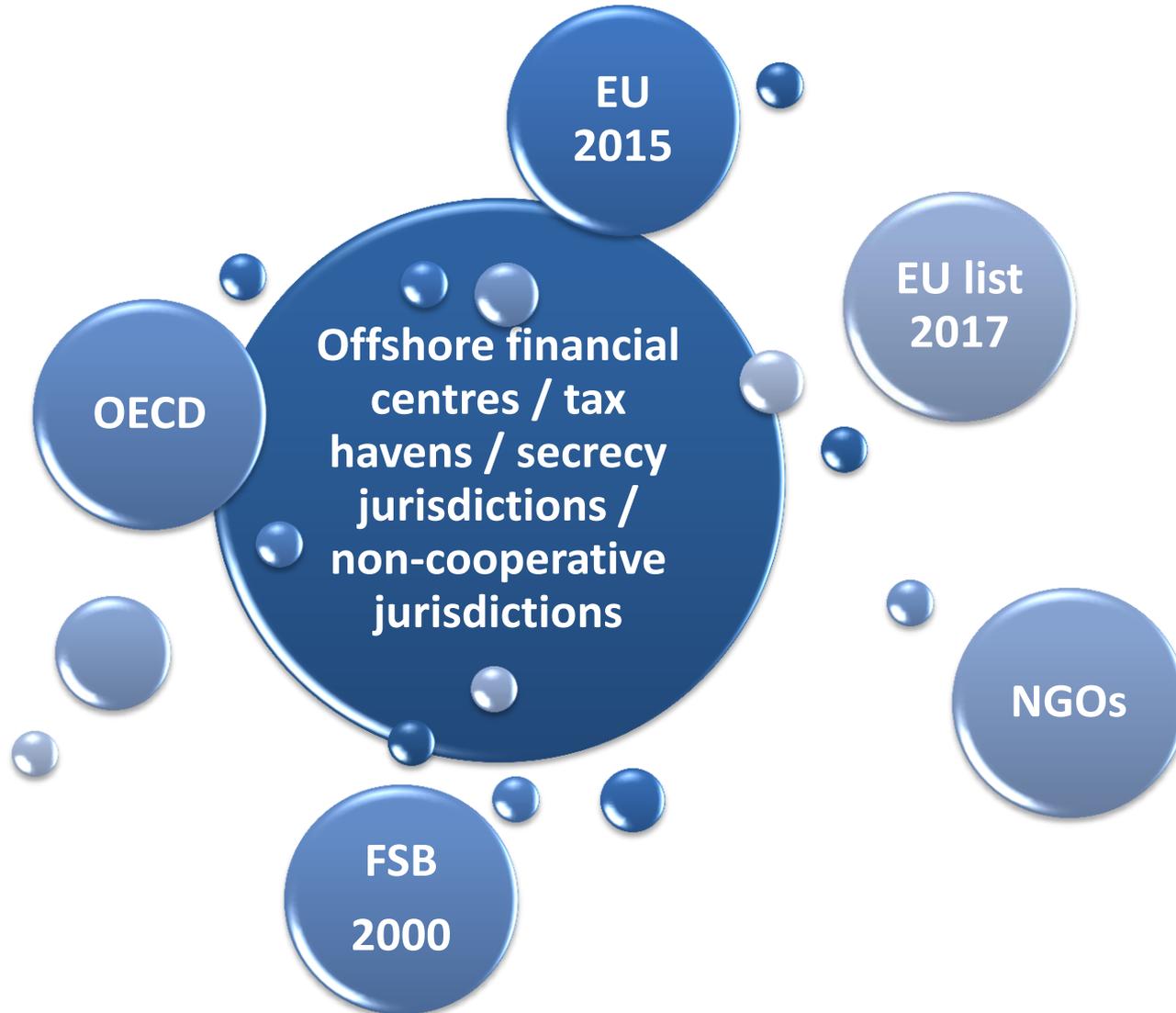
Why accept investments through intermediary jurisdictions?

Offshore financial centres vs. Onshore OECD financial centres?

Direct investments vs. attracting (pooling) private co-investors

Tax treaties, sovereign decisions of governments?

Walking on thin ice – definition of OFCs



Walking on thin ice – tax avoidance definition?

- No definitive definition
- Tax avoidance vs. tax evasion
- PANA COMMITTEE, European Parliament, Draft Report on the inquiry on money laundering, tax avoidance and tax evasion of 28.06.2017 2017/2013(INI)
 - Tax fraud and tax evasion constitute illegal activities involving evading tax liabilities, while, on the other hand, tax avoidance is the legal but **improper** utilisation of the **tax regime** to **reduce or avoid** tax liabilities.
- European Parliament, Study of Member States' capacity to fight tax crimes, July 2017, Authors Elodie Thirion and Amandine Scherrer
 - Tax avoidance is understood as the legal act – unless deemed illegal by the tax authorities or, ultimately, by the courts – of using **tax regimes** to **one's own advantage** to **reduce one's tax burden**.
- CJEU on tax avoidance

Challenges at EU & International Level

Risks

...

Scope

TSJs

Thresholds

Legal basis

Exclusion criteria

Expectations

AML alignment



Products

Data protection

Challenges: public scrutiny and media



- ▶ *'The European Investment Bank and tax havens', December 2009,*
- ▶ *'Towards a responsible taxation policy', 2015,*
- ▶ *'The dark side of the EIB funds', September 2016,*
- ▶ *'Investing in Integrity? Transparency & Accountability of the European Investment Bank', October 2016,*
- ▶ *'Going abroad: a critic of the EIB's External Lending Mandate', November 2016,*
- ▶ *'Development finance institutions and responsible corporate tax behaviour', November 2016,*
- ▶ *'Quand l'Europe investissait dans les paradis fiscaux ', May 2017,*
- ▶ ...

NCJ Policy: your feedback matters



Please send us any comments / points for consideration on the NCJ Policy and way forward by 31/12/2017 to:

ncj_tax@eib.org

Thank you!