The Politics of Reputation and Reputational Damage: the EU regime on tax evasion and Asian financial centres

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Abstract
This paper deals with the significant shift in policy and regulatory behaviour of the EU vis-à-vis Hong Kong and Singapore on matters of tax evasion. It analyses the opportunities, limitations, and unintended consequences of a more coercive European posture to effect regulatory adaptation of its preferences and standards in external jurisdictions (such as Hong Kong and Singapore) and illustrates various forms of norm coercion adopted by the EU. The paper suggests that norm coercion and the intention to dispute the reputation of allegedly non-cooperative jurisdictions have proven to be effective levers of influence towards imposing norms and standards that mirror the EU's regulatory preferences. By doing so it casts doubt on the empirical validity of the characterisation of the EU as an advocacy-based normative actor and norm entrepreneur.

Keywords
EU, tax evasion, regulatory adaptation, reputation, Asian financial centres, Hong Kong, Singapore

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This paper is about the European Union's (EU) attempts to get jurisdictions elsewhere to follow its regulatory preferences and standards to combat tax evasion and harmful tax competition (HTC). In particular, it examines the influence of EU policies on tax evasion on Hong Kong and Singapore. The issue of the EU's stance on tax evasion is significant for a variety of reasons. First, it illustrates the growing political pressures by multiple actors that have come to be exerted on the EU

institutions in the wake of the global and Eurozone financial crises (see Radaelli and Kraemer 2008). The crackdown on tax evasion, HTC, and base erosion and profit shifting (BEPS) has become an almost unavoidable necessity in times of austerity and budget cuts. Yet it is also a consequence of revelations by investigate journalists, the advocacy of NGOs such as the Tax Justice Network, and the subsequent outcry among the electorates in EU member states against the extent and ease with which companies and wealthy individuals have been able to minimise their tax burdens by taking advantage either of the complex regulatory and taxation systems that exist inside the EU or by shifting their tax burdens overseas. The recent case brought by the European Commission (EC) against the tax agreement between Ireland and US technology giant Apple, the revelation of the 'Panama Papers', the so-called 'Luxleaks' affair, and the numerous prosecutions of high profile politicians and celebrities for tax evasion are cases in point (Panayi 2015). Second, the way the issue of tax evasion is handled inside the EU points to a changing pattern of interactions among EU member states and a change in the nature of the relationship between the EU institutions on the one side and the member states on the other. Third - and this is the paper's main area of interest - the issue of tax evasion elucidates an important deviation from past EU behaviour insofar as the advocacy of EU regulatory preferences and standards vis-à-vis jurisdictions outside of the EU are concerned. On the issue of tax evasion, the EU has adopted a more unilateralist and coercive posture that targets the reputation of what it sees to be 'non-compliant jurisdictions.' Whether this more assertive approach yields the expected results remains open to contestation, but it runs the risk of undermining the enhanced multilateral efforts currently under way to stymie tax evasion, HTC, and BEPS for the sake of living up to political pressures by voters and the largest EU member states. It is also unclear how this posture fits in with the widespread self-understanding of the EU as a normative power or norm entrepreneur that seeks to lead by example rather than impose its will. This is particularly the case for the EU's engagement with the major financial centres in Asia - Singapore and Hong Kong - that continue to be attractive in tax terms to EU-based companies and wealthy individuals alike.

Central to my line of inquiry is the hypothesis that the policy and regulatory activities of the EU institutions have been captured by German and French fiscal and regulatory preferences, and that these preferences are being marshalled both against smaller member states inside the EU and other globally competitive financial centres outside the EU. As the cases of Singapore and Hong Kong reveal, the EU has had mixed success in its attempt to spread its regulatory preferences on tax evasion to Asia's main financial centres. Rather than being an instance of careful design and conscious policy choice, I suggest that the EU has - with the support of Paris and Berlin - come to

learn through trial and error that coercion is more effective than advocacy and persuasion. The EU's gradual shift in tone and policy behaviour is important because it affects how the EU attempts to influence regulatory frameworks in those jurisdictions over which it has no control.

The EU's role in the regulatory architecture on tax evasion

The ambition of the EU to spread its preferences is not only a matter of political and economic self-interest but also a normative proposition in its engagement with other countries which portrays the EU as a progressive catalyst for social, political, and regulatory innovation (see Rosamond 2014). The issue of taxation is a major challenge for the EU as an economic unit. On the one hand, the EU is a single market and customs union with shared legal frameworks and norms but, on the other hand, it is a patchwork of 28 national taxation, regulatory, and social systems that frequently compete with and undercut each other. Previous attempts to harmonise taxation systems have had only limited success because the ability to raise taxes sits at the heart of the sovereign authority of nation-states. Yet despite the interest by member states' governments to safeguard their sovereign right to levy taxes, the necessity for more effective cross-border coordination and cooperation on matters of tax evasion, HTC, and BEPS has become ever more apparent. The toughening of the regulatory environment on tax evasion predates the global financial and Eurozone crises but it has been compounded by them. Tax evasion and avoidance has not only become socially inacceptable but budgetary austerity and growing debts have mobilised governments and tax authorities to redouble their efforts to raise revenues without raising taxes for fear of prolonging economic stagnation. In the current economic environment, cracking down on tax evasion is necessary in fiscal terms and popular in political ones. It is in this light that the EC's Anti Tax Avoidance Package (COM (2016) 26 final of 28 January 2016), the Communication on an External Strategy for Effective Taxation (COM (2016) 24 final), the Communication on concrete ways to reinforce the fight against tax fraud and tax evasion including in relation to third countries (COM (2012) 351 final of 27 June 2012) and the subsequent Action Plan to strengthen the fight against tax fraud and tax evasion (COM (2012) 722 final of 6 December 2012) need to be regarded. These initiatives urged member states to improve their tax collection mechanisms, enhance mutual cooperation on tax matters, and work towards 'a clear and coherent policy vis-à-vis third countries in order to promote [EU] standards at international level and ensure a level playing field' (Panayi 2015, 173). The 2009 Communication on promoting good governance in tax matters (COM (2009) 201 final of 17 December 2009) spells out the clauses on good governance that need to be incorporated into relevant agreements with third countries.

The efforts of the EC to work toward a more effective regulatory regime against tax evasion, tax avoidance, HTC, and BEPS play out on three levels. The first level touches upon the regulatory framework among EU member states. Significant pressure has been exerted on Austria, Belgium, Ireland, Luxembourg, and the Netherlands to weaken banking secrecy protections, enhance transparency and accountability of trusts, holdings, and company registers, review or repeal preferential tax agreements with corporate actors, and improve systems of exchanging beneficiary owner information between national tax agencies. At this level, the EU can draw on strong institutional, regulatory, and legal resources to effect changes in policy and regulatory behaviour of states due to the responsibilities the treaties convey to the EC and the European Court of Justice (ECJ) or regulating and adjudicating conflicts within the common market.

The second level touches upon those jurisdictions that are closely linked to - but not part of - the EU. Switzerland, the Crown Dependencies and numerous British Overseas Territories, the Isle of Man, Gibraltar, the Netherlands Antilles, Aruba, Monaco, Andorra, Liechtenstein, San Marino and others fall into this category. Due to the strong linkage of these jurisdictions to either one of the EU's member states or the EU's common market, the EU has had the ability to significantly shape regulatory and policy behaviour and even impose regulatory *faits accomplis* on them. The 2003 EU Savings Tax Directive (EUSTD, 2003/48/EC) for individuals, which rolled out a comprehensive exchange of information (EI) and saw the implementation of a withholding tax in places such as Austria, Luxembourg, and Switzerland was a poignant example. It has recently been replaced by a more far-reaching directive (2014/107/EU) that implements the July 2014 OECD Global Standard on automatic exchange of financial account information and broadens its scope to encompass not only interest income, but also dividends and other types of capital income, as well as the annual balance of the accounts producing such items of income (European Commission 2016a).

The third level touches upon those jurisdictions that are further afield in geographic terms and less economically dependent on the EU, but that attract significant capital from European companies as well as from wealthy individuals and families. Into this category fall Hong Kong, Singapore, Panama, the Bahamas, the US (in particular the state of Delaware) among many others that do not participate in the EUSTD. At the global level, the EU plays a significant part in the ongoing negotiations to codify basic regulatory standards on tax and financial regulation that take place through the OECD and the G20 (see Farny *et al* 2015). The EU takes places in the Global Forum on Transparency and exchange of information for tax purposes and the Platform for Tax Good Governance. Here, the EU's institutional, regulatory, and legal resources to ensure regulatory adaptation of its preferences in external jurisdictions are limited. As corporations and individuals

continue to shift funds out of the EU, Switzerland, and other traditional tax havens and move them to Asia's leading financial centres, the pressure is on the EU and its member states to find novel ways to push for enactment of their preferences in Singapore and Hong Kong.

Asian financial centres and EU regulatory preferences

But Hong Kong and Singapore pose a significant challenge to the EU and its efforts to advance its regulatory regime on tax evasion globally. This is due to the fact that they are among the world's most established, open, and successful financial centres that compete directly with European ones. Hong Kong and Singapore are not tax havens that solely specialise in offering tax incentives for investors and low tax rates and high levels of secrecy to non-resident taxpayers. Rather, Hong Kong and Singapore are important commercial entrepôts and financial service providers for distinct regions within the Asian-Pacific market. Both are crucial staging posts for European companies conducting business throughout Asia and many of Europe's companies have their regional headquarters there.

Yet despite their nodal function in the global financial architecture, Hong Kong and Singapore are problematic when it comes to tax evasion by EU residents and companies. Both have developed a sophisticated financial infrastructure and effective administration, provide significant political stability and high degrees of legal and regulatory predictability, impose significantly lower nominal tax rates for individuals and corporations than in commonplace inside the EU, and offer specialised off-shore services for non-residents. These qualities have made Hong Kong and Singapore attractive not only insofar as legitimate economic activities by European companies and individuals are concerned, but also for the purposes of aggressive tax planning (ATP) by companies, as well as tax avoidance and tax evasion. Ever since the introduction of the EUSTD and the EU's more assertive crackdown on Switzerland and the British overseas territories, assets owned by EU residents and companies have been shifting into Hong Kong and Singapore.

Hong Kong and Singapore are at the forefront of the wealth management and private banking industries' future business orientation. According to a recent study by the Boston Consulting Group (2016), more than half of global wealth creation by 2020 will be in Asia. This puts the EU in a difficult position. On the one hand, it wants to crack down on the opportunities for tax evasion, HTC, ATP, and BEPS by regulating the outflow of assets by EU taxpayers (both corporate or individual) into Hong Kong and Singapore's growing financial, wealth management, and private banking industries. But on the other hand, European banks and financial services providers need to be active and competitive in Asia. They require access to the Asian market and are

likely to lobby against an overtly confrontational posture of the EU and its member states vis-à-vis Hong Kong and Singapore authorities and regulators.

There are also notable differences between Hong Kong and Singapore that affect how the EU engages with them and how it seeks to advance its regulatory preferences there. Singapore is a small independent nation-state, while Hong Kong is part of - and backed by - China. Singapore has attracted significantly more assets from Europe than Hong Kong which mainly services the needs of Chinese clients. Following the 2008 global financial crisis, Hong Kong regulators have insisted on 'treating private banking clients as though they were retail customers' (Bloomberg 2016b), while Singapore has allowed for a more tailor-made approach to private banking. In light of these differences it is unlikely that the EU can deploy one-size-fits-all instruments and policies vis-à-vis these two Asian financial centres.

Sovereignty and differences in models of capitalism

Sovereignty presents a particular challenge for the EU and its member states in their quest to advance and impose their regulatory preferences and standards on tax evasion in other jurisdictions. This dispute lies at the core of the internal tensions among EU member states on taxation matters, but is also a major hurdle to overcome in efforts for regulatory adaptation in jurisdictions outside of the EU. Both the US and the EU have been able to tackle the issue of sovereignty in relation to those jurisdictions that are in a disadvantaged position in terms of power asymmetries. In this way, Britain has been able to exercise considerable influence over its dependent territories not only due to constitutional prerogatives but also by making fiscal transfers and development assistance to these jurisdictions contingent on progress to crack down on tax evasion, enhance transparency, and implement more effective EI mechanisms. In a similar fashion France has been able to influence the behaviour of Andorra and Monaco, which are physically dependent on France. The EU has also taken advantage of Swiss economic interests and the country's membership of the European Economic Area (EEA) to push for a relaxation of banking secrecy provisions and the full implementation of the EUSTD. Furthermore, pressure has been exercised on distant but poor jurisdictions - from Liberia to Nauru and Vanuatu - to enact regulatory changes due to their high degree of budgetary reliance on overseas development assistance. In many developing countries around the world, state capacity-building projects have served as entry points for the introduction of institutional mechanisms, legal provisions, and regulatory standards that comply with European needs and preferences.

Yet this opportunity to take advantage of power asymmetries is not a realistic option in relation to Singapore and Hong Kong (or indeed Panama). Both are wealthy, mature, and developed markets with high degrees of institutional and administrative capacity that are not dependent - in economic, financial, political, or security terms - on Europe. In fact, it could be argued that European economies and businesses need Singapore and Hong Kong more than vice versa, given that many of Europe's largest companies generate significant parts of their revenue and profits in Asia.

The EU's lack of a geopolitical and economic lever on these two financial centres is compounded by profound differences in philosophies of organising and regulating capitalism. To put it in a nutshell: Hong Kong and Singapore follow a very different model of capitalism than is common among most EU member states. From their inception as trading hubs in the nineteenth century, Hong Kong and Singapore have followed a classical liberal template for economic management: the rule of law and the respect of property rights, free trade, light-touch regulation and efficient civil administration, little governmental intervention in economic affairs, and low levels of taxation. In both cities, this is supported by a broad public consensus. In comparison with most EU member states, Hong Kong's and Singapore's levels of public expenditure on social welfare and entitlements is low, as are the levels of public debt. Hong Kong and Singapore have flat rates for income/salary tax, allow relatively few tax deductions, do not tax capital gains, and provide citizens with a less comprehensive (and frequently means-tested) system of social welfare provision. Both cities have prospered enormously by following this model of capitalism. The expectations of what citizens want from their government differ significantly from what European citizens demand of their governments.

Due to these differences there is a substantial degree of apprehension about the EU's efforts to push for its regulatory standards and norms to take effect in Singapore and Hong Kong. Both cities have a structural interest in preserving the legal, institutional, and regulatory mechanisms that enabled their path to prosperity and to resist external pressure to change these. If Singapore and Hong Kong have done well as low-tax jurisdictions, why should they adopt the regulatory regime of a high-tax jurisdiction? That is, in essence, the core difficulty for the EU and its member states in their quest to push both Asian financial centres to sign double-taxation treaties, improve EI agreements, adopt OECD and G20 standards (Hong Kong is neither a member of the OECD nor the G20, while Singapore is in the OECD), and improve the transparency regarding corporate structures and beneficiary owners.

On EI, Ligthart and Vogel (2008) found that EI works best the higher the ratio of foreign assets and the higher the tax rates of the host country. As Rixen and Schwarz (2012: 154) put it 'the more heavily interest income is taxed, the more co-operative countries will be.' This may explain the success of European pressure on Switzerland, which saw a sharp fall of EU residents' assets after the implementation of the EUSTD. However, in the EU's relations with Singapore and Hong Kong, the situation is inverted. The overall amount of EU residents' assets in these two Asian financial centres is comparatively small, and their tax rates are low, thereby undermining the rationale for effective EI to take place. The onus is thus on the EU and its member states to find alternative instruments to further their regulatory preferences on tax evasion in Asia's prime financial centres.

Coercive instruments as tools for regulatory adaptation in non-EU jurisdictions

This quest for new mechanisms has led the EU to adopt - in its handling of matters relating to cross-border taxation - a more overtly assertive and less compromising posture than in other policy fields. This not only derives from the fact that the treaties confer to the EC exclusive competence over matters of trade and competition, but also because there is such strong public sentiment on the issue of tax evasion. This pressure is now being deployed in relation to Hong Kong and Singapore as well. In its handling of matters of tax evasion with Switzerland, for instance, the EC came under pressure both from powerful member states that lose significant fiscal revenue due to tax evasion (in particular France and Germany) as well as from the public at large. As a consequence, at a time of economic stagnation, social strife, and public discontent with the EU and state of European integration, the EU now wants to be seen to be active, effective, and successful in repairing the regulatory regime that allows some Europe's wealthiest individuals and some of its largest corporations to exploit tax systems in their favour.

In this context, the EC is reacting to political pressures exerted on it rather than proactively driving the process of regulatory innovation itself. By having to simultaneously engage in crisis management on numerous fronts (Eurozone crisis and banking union, conflicts in the Middle East and Ukraine, refugees, Brexit), the EU institutions have effectively lost some of their regulatory initiative to the benefit of important member states (notably Germany). Britain's decision to withdraw from the EU has further exacerbated an unhealthy dependence on German influence that is also making itself felt within the EU's evolving regulatory architecture. Part of the reason and rationale for the more frequent resort to coercive instruments - so as to get Hong Kong and Singapore to adopt European regulatory preferences - needs to be found in this reactive decision-

making mode. To put it simply, the EU is under intense pressure to deliver results fast and pay less attention to the slow-paced negotiations at the global level centred on the OECD and the G20. A pervasive sense of urgency serves as a catalyst to test out new measures and learn from the experience of others (particularly the US in its handling of tax evasion matters). Paradoxically, this reactive decision-making mode the EU finds itself in is actually giving rise to a more experimental attitude to regulatory adaptation in non-EU jurisdictions such as Hong Kong and Singapore. Ferran (2012) calls this 'crisis-driven regulatory reform.' It facilitates the gradual shift from norm entrepreneurship to norm coercion.

The advocacy of best practices and past experiences is a hallmark of norm entrepreneurship. In Asia, the EU has for a long time attempted to persuade others to follow its model of regional economic integration, institutionalised cooperation, welfare provision, preventive diplomacy and burden-sharing. The EU spends considerable energy on public diplomacy efforts to posit itself as a partner to learn and gain from, and provides incentives to entice cooperative endeavours with third country partners. Norm coercion, by contrast, follows a different route. It entails railroading Asian countries to adopt norms, standards, and practices that they would not otherwise adopt. Norm coercion aims at giving external jurisdictions no choice but to take on the desired norms, standards, and practices. This is achieved not by the threat of force but by imposing legal and regulatory requirements and by driving up the costs of doing business. We can thus distinguish among a typology of instruments of norm coercion.

(1) *Deterrence and compliance costs*

The EU and its member states have borrowed a leaf from the experience of the US Foreign Account Tax Compliance Act (FATCA) that came into force in 2010. A crucial element of FATCA's success has been the imposition of high compliance costs to banks and financial institutions operating outside of the US. Since the implementation of FATCA, banks in Hong Kong and Singapore have made it harder for US taxpayers to open and maintain accounts, mainly due to time consuming and costly compliance requirements. This effectively renders it more difficult for US taxpayers to shift assets to Singapore and Hong Kong, thereby reducing the opportunities for tax evasion and ATP. A number of EU directives, such as the 2011 Council Directive on enhanced administrative cooperation in the field of (direct) taxation (2011/16/EU) and its recent amendment (2016/881/EU) set a precedent insofar as they invite the signing of agreements with third countries to monitor their compliance with the provisions of these directives, particularly on matters of administrative cooperation on financial account information. Switzerland, Liechtenstein, Andorra, San Marino, and

Monaco have already signed such agreements and further agreements with additional jurisdictions are set to follow. The EU has also begun to insist on the signing of double taxation agreements (DTAs) with external jurisdictions that are subject to ECJ review, as a precondition of further cooperation in financial matters. Hong Kong and Singapore have signed numerous DTAs with EU member states over the past two years, although not all of them have been ratified.

(2) *Protection of whistleblowers, prosecutions, and fines*

Another form of norm coercion has been the protection of whistleblowers from within the financial industry to provide data on past and ongoing tax evasion and tax avoidance practices. Tax authorities in numerous German *Länder*, as well as in France, have periodically purchased stolen data sets with financial account information of their residents that were provided by people within financial institutions and used them to prosecute and fine non-compliant banks and employees. In the wake of the 2016 'Luxleaks' trial of Antoine Deltour and Raphael Halet in Luxembourg, MEP's have proposed to push for the introduction of a 'whistleblowers charter' that would bestow legal safeguards for future whistleblowers (The Guardian 2016). The European Parliament (EP) awarded its annual *Citizens Prize* to Deltour and EU Competition Commissioner Margaret Vestager praised and defended Deltour's actions (EurActiv 2016). This support for whistleblowers is also designed to have a deterrent effect, as banks and clients can no longer be certain that their confidential data will not one day be passed to the authorities and lead to prosecutions and the impositions of fines.

(3) *The 'securitisation' of tax evasion*

Just as there has been a tendency towards a 'securitisation' of migration (see Huysmans 2000) - i.e. turning migration into a pressing security priority rather than handling it as an economic or humanitarian issue - a similar pattern can be observed on matters pertaining to tax evasion. Rather than confronting it as a fiscal or criminal matter, tax evasion is increasingly being conceptualised through the prism of money laundering and terrorist financing (see Handoll 2006). By cross-linking tax evasion with matters of national security, it becomes not only possible to create a greater sense of urgency around the issue but to mobilise political and parliamentary support for new measures and initiatives to address it. In 2015, a new anti-money laundering directive came into force (2015/849/EU) which sets out new regulation on the traceability of fund transfers as well as a pathway towards the establishment of a central European register of beneficiary ownership that cannot only be used to penetrate secretive shell companies and trusts, but also to prevent tax evasion.

(4) *Black-listing and reputational damage*

Another overtly coercive measure in relation to third countries such as Singapore and Hong Kong has been the introduction of an EU grey and blacklist for non-compliant jurisdictions. The EU list consolidates national blacklists run by individual EU member states and in June 2015 it included Hong Kong. The Hong Kong authorities strongly condemned its inclusion in the list. The purpose of these blacklists is to shame external jurisdictions into compliance with EU regulatory preferences. This form of shaming is achieved by afflicting reputational damage on the target jurisdiction and it has proven to be effective (at least in Singapore's case). The reputation of any financial centre is crucial to its appeal and success. Hong Kong and Singapore benefit from their reputation for competence, stability and trustworthiness. The EU's blacklisting is a deliberate attempt to reformulate these reputations by fostering a perception that the opposition to the adoption of EU regulatory standards and preferences is due to illegal practices and not legitimate differences in terms of models of capitalism and levels of taxation.

The EU blacklist has highlighted a significant difference in response among the two Asian financial centres. Singapore has successfully preempted an inclusion on the blacklist by agreeing to adopt relevant conventions with EU member states. The recent behaviour of the Monetary Authority of Singapore (MAS) in the context of the closure of the local BSI branch has revealed the extent to which Singapore authorities and regulators react sensitively to reputational criticism from overseas. After all, one of Singapore's most important selling points in South East Asia is that it is viewed as an orderly and reliable jurisdiction (Frankfurter Allgemeine Zeitung 2016).

By contrast, the authorities in Hong Kong have proven to be less concerned about reputational damage. One can only speculate if this is due to Chinese backing or not. They have adopted a more defensive posture vis-à-vis EU pressure and have highlighted the need for making progress on the regulatory framework on tax evasion through the OECD and G20 channels.

Outlook

Ever since the global financial and Eurozone crises, the EU regulatory regime on tax evasion has undergone a significant transformation. It has become more comprehensive but also more unilateral and coercive. One particular area of concern are the unintended consequences the EU's more assertive approach to regulatory adaptation of its standards and preferences on tax evasion are likely to lead to, particularly on the global level. The EU's more coercive posture on tax evasion is already

generating tensions with the US (on central beneficiary owner registers). Unilateral moves, such as blacklisting, carry the risk of undermining trust and goodwill in multilateral negotiations on tax evasion that involve the EU and other countries. For Singapore and Hong Kong, the following question poses itself: what is the point of adopting EU regulations when the EU resorts to increasingly unilateral and coercive measures when it finds it expedient? While coercive measures may be effective in the short term, they may make it more difficult to find common ground with external jurisdictions in the long run.

This paper has sought to conceptualise the EU's efforts to impose its regulatory preferences on external jurisdictions such as Hong Kong and Singapore in terms of a shift from norm entrepreneurship to norm coercion. This shift is significant because it highlights a number of important tensions that are being exerted on the EU as a system of governance: the increasing power asymmetries between big and small member states, the gradual loss of de facto power and authority of the EC to the benefit of member states, as well as the entrenchment of reactive crisis management as the 'new normal' mode of decision- and policy-making in the EU. The more hard-nosed regulatory approach on tax evasion results from these tensions, as the EC finds it harder to safeguard its autonomy and role as an impartial authority in light of French and German pressure, all the while trying to convince a more sceptic public of its ability to effectively tackle pressing social and economic concerns. Tax evasion has become a policy area on which it is possible to experiment with new approaches to regulatory adaptation and oversight. The outcome is a trial-and-error based approach to innovate regulatory standards and practices that sits in contrast to the deliberative and consensual nature of norm entrepreneurship.

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