COMMISSION EXPERT GROUP “PLATFORM FOR TAX GOOD GOVERNANCE”

THE EU LIST OF NON-COOPERATIVE TAX JURISDICTIONS:
STATE OF PLAY, STRENGTHS AND WEAKNESSES

Meeting to be held on 8 December 2021

WORKING DOCUMENT
1. Introduction

1.1. The EU list of non-cooperative jurisdictions for tax purposes (in short, the EU list) is an important element of the EU policy against tax evasion and aggressive tax planning. Part of the EU external strategy for taxation, the EU list is meant to encourage positive change in the tax legislation and practices of third countries, through a process based on dialogue and cooperation. Listing remains a “last resort option”.

1.2. The EU list is based on objective and transparent criteria to assess third countries’ tax systems. These criteria cover:
- Standards on transparency and exchange of tax information by the OECD/Global Forum on Transparency and Exchange of Information for Tax Purposes.
- Fair taxation (i.e. lack of harmful regimes and introduction of substance requirements for zero-tax jurisdictions).
- G20/OECD minimum standards against Base Erosion and Profit Shifting (BEPS).

1.3. Adopted for the first time in December 2017, the EU list has been updated 15 times since. As of 2020, the EU list has been updated twice a year. The EU list is currently composed of 9 jurisdictions. In addition, there are 15 jurisdictions which are cooperating with the EU with respect to commitments taken by these jurisdictions to implement tax good governance standards.

1.4. The EU list is agreed by the Council of the European Union (usually, the ECOFIN formation). The EU list is formally an annex (Annex 1) to the relevant Council conclusions. Annex 2 of those conclusions records the state of play of the cooperation with the EU with respect to commitments taken by cooperative jurisdictions to implement tax good governance standards. The Code of Conduct Group for Business Taxation (shortly, the Group) is responsible for the preparatory work. The Commission (DG TAXUD) plays a very active role in the process. It conducts technical dialogues with third countries, drafts technical papers for discussion within the Group and presents these papers at the Group’s meetings.

![Figure 1 Illustration of the EU listing process's objectives](image-url)
2. Looking back: Updates of the EU list in 2021

2.1. In 2021, the ECOFIN Council updated the EU list twice: on 22 February and on 5 October.

2.2. In February, Dominica was added to the EU list for issues concerning transparency and exchange of information. Barbados moved from the EU list to Annex 2, after having been granted a supplementary review by the Global Forum on its exchange of information framework. Moreover, the February update acknowledged the fulfilment of past commitments towards tax good governance by Morocco, Namibia and Saint Lucia. These three countries delivered on their reforms and since February no longer feature on Annex 2. Jamaica committed to reform a harmful tax regime and was added to Annex 2.

<table>
<thead>
<tr>
<th>Region</th>
<th>EU list</th>
<th>Annex 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>-1</td>
<td>0</td>
</tr>
<tr>
<td>Asia</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Central America/Carribean</td>
<td>-2</td>
<td>3</td>
</tr>
<tr>
<td>Europe</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Middle East/North Africa</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Oceania/Pacific</td>
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<td>-1</td>
</tr>
<tr>
<td>South America</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>

Figure 2 Changes in the geographical composition of the EU list and of Annex 2 in 2021. A positive value indicates that more countries from a certain geographical region are added to the EU list or Annex 2. A negative value represents a subtraction/removal from the EU list or Annex 2.

2.3. The October update involved more changes. No new countries were added to the EU list, while Anguilla, Dominica and Seychelles were moved to Annex 2. The reason for this change was that the Global Forum had accepted these countries’ requests for supplementary reviews of their exchange of information frameworks. In addition, Seychelles completed the reform of a harmful tax regime. Several changes concerned Annex 2. For the first time since 2019, the number of countries on Annex 2 increased. Having delivered on their commitments, Australia, Eswatini and Maldives left Annex 2, while Hong-Kong, Costa Rica, Jordan, Malaysia, North Macedonia, Qatar and Uruguay were added. These countries either took a commitment to reform harmful features of their foreign source income exemption regimes (Hong-Kong, Costa Rica, Malaysia, Qatar and Uruguay) and/or to reform tax regimes deemed harmful by the OECD Forum on Harmful Tax Practices (this was the case for Jordan, North Macedonia and Qatar.
2.4. Since October, there are 9 countries on the EU list: American Samoa, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu. All these countries have been listed for more than one year, 4 of them since the first EU list was issued in December 2017.

3. Looking forward: the next update of the EU list

3.1. The next update of the EU list is scheduled for the first quarter of 2022. With the disclaimer that it is for EU Ministers of Finance to decide on the update, it is possible to put forward some preliminary considerations about how the EU list is likely to evolve.
3.2. The EU list is overall expected to remain stable. However, technical contacts are ongoing with several of the jurisdictions on the list and any progress will be duly recorded.

3.3. Most changes will likely concern Annex 2. It is expected that the number of jurisdictions having committed to undertake tax good governance reforms will continue to grow. This will be due in particular to the roll-out of the EU listing criterion on the effective implementation of the OECD anti-BEPS minimum standard on Country-by-Country reporting (so called criterion 3.2). Also, it is possible that some zero or very low tax jurisdictions may be asked to commit to improve their implementation of economic substance requirements.

4. **The strength of the process: results achieved**

4.1. Since its launch at the end of 2017, however, the EU listing process has greatly contributed to strengthening tax good governance standards and principles worldwide.

4.2. Overall, as part of the process, 95 countries have been screened. Over 140 preferential tax regimes have been either reformed or abolished.

4.3. The EU list has put many countries on the path to improve their transparency standards: 27 jurisdictions within the scope of the EU list, which were not already parties to the OECD/Council of Europe Convention on Mutual Administrative Assistance on tax matters (MAC), have joined the MAC fulfilling commitments undertaken under the EU list to do so.¹

4.4. To comply with substance requirements, 13 countries or tax jurisdictions which have zero or very low corporate taxation have introduced economic substance requirements to put an end to offshore taxation.

4.5. The EU list has put many countries on the path to address the artificial shifting of profits and the erosion of other countries’ tax bases. To make a clear example of this positive trend: 28 jurisdictions within the scope of the EU list, which were not already members of the OECD/G20 Inclusive Framework (“IF”) on BEPS, have joined the IF fulfilling commitments after they undertook to do so under the EU list.

5. **Weaknesses: the need to update criteria and to ensure the EU listing process remains effective**

5.1. As pointed out in the Tax Good Governance Communication of 2020², reviewing the EU listing criteria is a priority for the Commission. To keep the EU list effective, it is necessary to ensure that its criteria are up-to-date and adequately ambitious to meet the tax challenges faced.

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¹ The MAC is the primary instrument for exchange of information on request and automatic exchange of financial account Information in tax matters (CRS). It is also a powerful tool for the implementation of the transparency standards of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project.

5.2. First, the EU listing process should evolve to ensure the implementation of those criteria that already in 2016, were put in the pipeline as “future” criteria: on effective automatic exchange of information of financial accounts, on beneficial ownership and on effective implementation of OECD minimum standards on Base Erosion and Profit Shifting.

5.3. Second, existing criteria have to be reviewed to ensure they remain valid. In light of the recent Pandora Papers’ leaks, this is the case especially for the criteria on economic substance for zero or very low tax jurisdictions.

5.4. Third, would should continue to make sure Member States implement strong, dissuasive and coordinated defensive measures against EU listed countries. Additionally, a common approach to defensive measures is needed to ensure that the EU list has real impact and to provide clarity and certainty to third countries and investors.

6. Questions for discussion

6.1. What in your view are the key strengths and the main weaknesses of the EU listing process?

6.2. What could the Commission do in your view to improve the process?

6.3. More generally, in your view, how could the Commission enhance cooperation on tax matters with third countries, especially developing countries?

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7. **References**

Commission communication of 15 July 2020 on tax good governance in the EU and beyond (COM(2020)0313)

Council conclusions of 8 November 2016 on the EU listing criteria

Council’s most recent updates to the EU list of non-cooperative tax jurisdictions of 5 October 2021

Council’s update to the EU list of non-cooperative tax jurisdictions of 22 February 2021

Both the Commission and the Council maintain webpages on the EU listing process.

EU Council:


Commission:

https://ec.europa.eu/taxation_customs/common-eu-list-third-country-jurisdictions-tax-purposes_en

Documents on the outcomes of Code of Conduct’s assessments of tax regimes are online on the register of documents of the Council: