



2020/2683(RSP)

20.11.2020

DRAFT MOTION FOR A RESOLUTION

further to Question for Oral Answer B9-0000/2020

pursuant to Rule 136(5) of the Rules of Procedure

on reforming the EU list of tax havens
(2020/2683(RSP))

Paul Tang

on behalf of the Subcommittee on Tax Matters

**European Parliament resolution on reforming the EU list of tax havens
(2020/2683(RSP))**

The European Parliament,

- having regard to the Resolution on a Code of Conduct for business taxation adopted in 1997¹ with the objective to curb harmful tax competition within the European Union,
- having regard to the Communication from the Commission to the European Parliament and the Council of 17 June 2015 on a Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action²,
- having regard to the Communication from the Commission to the European Parliament and the Council of 28 January 2016 on an External Strategy for Effective Taxation³,
- having regard to the Ecofin Council conclusions of 8 March 2016⁴,
- having regard to Communication from the Commission to the European Parliament and to the Council of 5 July 2016 on further measures to enhance transparency and the fight against tax evasion and avoidance⁵, which includes an explanation of the EU listing process of uncooperative tax jurisdictions,
- having regard to the Ecofin Council conclusions of 8 November 2016⁶,
- having regard to the Ecofin Council conclusion of 5 December 2017⁷,
- having regard to the Ecofin Council conclusions of 6 October 2020, which last updates the EU list of non-cooperative tax jurisdictions⁸,
- having regard to the Communication from the Commission to the European Parliament and the Council of 15 July 2020 on an Action Plan for Fair and Simple Taxation supporting the recovery strategy⁹,
- having regard to the Communication from the Commission to the European Parliament and the Council of 15 July 2020 on Tax good governance in the EU and beyond¹⁰,

¹ Annex I to the Council Conclusions of the Ecofin Council meeting on 1 December 1997 concerning taxation policy: Resolution of the Council and the Representatives of the Governments of the Member States, meeting with the Council of 1 December 1997 on a code of conduct for business taxation (*OJEC*, 6.1.1998, p.1)

² COM(2015) 302 final

³ COM(2016) 24 final

⁴ <https://www.consilium.europa.eu/en/press/press-releases/2016/03/08/ecofin-conclusions-code-conduct-business-taxation/>

⁵ COM(2016) 451 final

⁶ <https://data.consilium.europa.eu/doc/document/ST-14166-2016-INIT/en/pdf>

⁷ <https://www.consilium.europa.eu/media/32591/st15305-en17.pdf>

⁸ *OJEU*, 7.10.2020, C 33/3

⁹ COM(2020) 312 final

¹⁰ COM(2020) 313 final

- having regard to its TAXE committee resolution of 25 November 2015¹¹, its TAX2 committee resolution of 6 July 2016 on tax rulings and other measures similar in nature or effect¹², and its TAX3 committee resolution of 26 March 2019 on financial crimes, tax evasion and tax avoidance¹³,
 - having regard to its resolution of 16 December 2015 with recommendations to the Commission on bringing transparency, coordination and convergence to corporate tax policies in the Union¹⁴,
 - having regard to the results of the Committee of Inquiry into money laundering, tax avoidance and tax evasion, which were submitted to the Council and the Commission on 13 December 2017¹⁵,
 - having regard to the Commission’s follow-up to each of the above-mentioned Parliament resolutions¹⁶,
 - having regard to the question to the Commission on reforming the list of EU tax havens (O-000000/2020 – B9-0000/2020),
 - having regard to Rules 136(5) and 132(2) of its Rules of Procedure,
 - having regard to the motion for a resolution of the Committee on Economic and Monetary Affairs prepared with the assistance of the Subcommittee on Tax Matters,
- A. whereas the existence of non-cooperative jurisdictions for tax purposes results in financial losses to EU Member States, which is a problem especially for the recovery from the sanitary, social and economic crisis caused by the Covid-19 pandemic and for the financing of the green transition;
- B. whereas according to the Standard Eurobarometer of Autumn 2016, 86% of EU citizens are in favour of tougher rules on tax avoidance and tax havens¹⁷;
- C. whereas the Union adopted its first list of non-cooperative jurisdictions for tax purposes (“the list”) on 5 December 2017; whereas that list included 17 non-EU countries or territories; whereas the Union has revised the list 12 times;
- D. whereas 95 jurisdictions have been assessed against the three criteria set out in the

¹¹ Resolution of 25 November 2015 on tax rulings and other measures similar in nature or effect, OJ C 366, 27.10.2017, p. 51.

¹² Resolution of 6 July 2016 on tax rulings and other measures similar in nature or effect, OJ C 101, 16.3.2018, p. 79.

¹³ Text adopted: P8_TA(2019)0240

¹⁴ OJ C 399, 24.11.2017, p. 74

¹⁵ Recommendation of 13 December 2017 to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion, OJ C 369, 11.10.2018, p. 132.

¹⁶ The joint follow-up of 16 March 2016 on bringing transparency, coordination and convergence to corporate tax policies in the Union and TAXE 1 resolutions, the follow-up of 16 November 2016 to the TAXE 2 resolution, the follow-up to the PANA resolution of April 2018, and the follow-up of 27 August 2019 to the TAX3 resolution.

¹⁷ <https://op.europa.eu/en/publication-detail/-/publication/51abaf14-6b6e-11e7-b2f2-01aa75ed71a1/language-en/format-PDF>

Council conclusions of 8 November 2016, namely tax transparency, fair taxation and implementation of the OECD Base Erosion and Profit Shifting (BEPS) minimum standards;

- E. whereas in the listing process nearly 40 countries were asked to reform more than 120 harmful tax practices;
 - F. whereas the Council last revised the list on 6 October 2020 removing Cayman Islands and Oman and adding Barbados and Anguilla to the list; whereas Cayman Islands still has no corporate income tax and is one of the 10 top destinations for phantom investments according to the International Monetary Fund (IMF);
 - G. whereas the EU list of non-cooperative jurisdictions currently consists of American Samoa, Anguilla, Barbados, Fiji, Guam, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, US Virgin Islands and Vanuatu;
 - H. whereas several other jurisdictions have taken commitments to implement good tax governance principles regarding either transparency or fair taxation criteria;
 - I. whereas the Commission announced the need to reform the Code of Conduct for Business Taxation (CoC) and review the list in its Communication on Tax good governance in the EU and beyond;
1. Recognizes the positive impact the list already made, but seeks to strengthen it through increased transparency, stricter listing criteria and stronger defensive measures against tax avoidance and evasion; deplores the removal of countries with a clear record of promoting base erosion and profit shifting, such as Cayman Islands, from the list;

Governance and transparency of the EU list of non-cooperative tax jurisdictions

2. Notes that the CoC, mainly through its subgroup on third countries, prepares the work for the establishment of the list;
3. Highlights the importance of transparency in the listing process to allow public scrutiny and increase democratic accountability of decision-makers; regrets the lack of transparency on attendance of meetings and topics of discussion;
4. Notes that lack of transparency may lead to decisions being misunderstood and risks undermining public trust in the listing process, particularly when outcomes differ from transparent lists of third parties;
5. Welcomes the steps already made regarding transparency such as the release of letters sent to third country jurisdictions; regrets that these are only accessible upon finalisation of the assessment process;
6. Supports a greater role for the Commission to ensure the impartiality and objectivity of the listing process; considers that the Commission should make public its assessment of jurisdictional compliance with the listing criteria ahead of the discussion in the CoC;
7. Calls on the CoC to disclose attendees to, the topics of discussion and the conclusions

adopted in its meetings; calls for full transparency of the methodology used for assessing third-country regimes; invites the CoC to systematically release a comprehensive summary of its interactions with third countries, the subject matters discussed and the commitments made by third countries during the assessment process;

8. Underlines that the Parliament should have a consultative role on any changes to the CoC, including on governance and criteria of the listing process;
9. Notes that the EU listing process concerns only third countries, which puts its impartiality into question; notes that the influence of the Union to fight tax evasion and harmful tax practices worldwide depends on the example it sets at home; believes therefore that the revision of the mandate of the CoC should subject Member States to the same criteria set for third tax jurisdictions; underlines in this regard that 6 Member States have regularly received Country Specific Recommendations on the need to address aggressive tax planning¹⁸;

Update of the EU listing criteria to adapt them to current and future challenges

10. Reiterates the importance of the transparency criterion of the list; calls for clarity on the forthcoming criterion relating to ultimate beneficial ownership (UBO), which should belong to the transparency criteria;
11. Considers that the fair taxation criterion should also look at broad tax exemptions; calls on the Commission and CoC to include in the assessment tax measures leading to low effective tax rates in line with the ongoing negotiations on Pillar II of the Inclusive Framework;
12. Calls on the Commission to consider the benefits of adopting an initiative similar to the OECD Pillar II in case there would not be a political consensus at the OECD level on the implementation of those measures by the end of 2022;
13. Notes that many third countries, including the Cayman Islands, were delisted upon them introducing very minimal substance criteria; calls for a strengthening of screening criteria, including substance requirements, to increase the effectiveness of the list in a digitalised economy;
14. Stresses the importance of BEPS minimum standards in the screening of third countries, in particular Actions 5, 6, 13 and 14; stresses the importance of identifying other BEPS standards to be included as listing criteria;
15. Supports a broadening of the geographical scope of the EU list, while taking into account the position of least developed countries;
16. Emphasizes that the United Kingdom should be screened under the EU listing criteria upon completion of its withdrawal from the European Union;

Coordination of defensive measures

¹⁸ https://ec.europa.eu/info/publications/2020-european-semester-country-specific-recommendations-commission-recommendations_en

17. Acknowledges the reputational impact of inclusion on the list as an incentive for engagement in the screening process;
18. Welcomes the legal link between tax good governance standards and the use of EU funds;
19. Calls for State Aid rules and Member States' national support programmes to ensure businesses with ties to listed jurisdictions are not eligible for support;
20. Supports and calls for a strengthening of the additional audit and due diligence requirements on companies and investors established in non-cooperative jurisdictions; sees defensive measures as critical for the list having impact;
21. Notes that strict counter measures would reduce tax avoidance incentives; calls therefore on the Commission to put forward a legislative proposal for coordinated defensive measures against tax avoidance and evasion, taking into account the negotiations on Pillar II of the Inclusive Framework, that could include the following:
 - a) Non-deductibility of costs;
 - b) Reinforced Controlled Foreign Company (CFC) rules;
 - c) Withholding tax measures;
 - d) Limitation of participation exemption;
 - e) Switch-over rule;
 - f) Reversal of the burden of proof;
 - g) Special documentation requirements, especially regarding transfer pricing;
22. Notes the 'grey list' for jurisdictions that are not compliant but are committed to change; calls on the Council and Member States to introduce specific measures for those countries such as increased audits and due diligence;
23. Calls on the Commission to list which agreements between the EU and third countries or regions failed to include a "good governance clause" as required by § 3.1 of the Communication on an External Strategy for Effective Taxation; invites the Commission and the Council to explain the lack of such a clause;
24. Instructs its President to forward this resolution to the Council, the Commission, the OECD Secretariat and the governments and parliaments of the Members States.