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))

Irene Tinagli
on behalf of the Committee on Economic and Monetary Affairs
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 1997\(^1\) 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 Action\(^2\),

- 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 Taxation\(^3\),

- having regard to the Ecofin Council conclusions of 8 March 2016\(^4\),

- 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 avoidance\(^5\), which includes an explanation of the EU listing process of uncooperative tax jurisdictions,

- having regard to the Ecofin Council conclusions of 8 March 2016\(^6\),

- having regard to the Ecofin Council conclusion of 5 December 2017\(^7\),

- having regard to the Ecofin Council conclusions of 6 October 2020, which last updates the EU list of non-cooperative tax jurisdictions\(^8\),

- 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 strategy\(^9\),

- 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 beyond\(^10\),

---

\(^1\) 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


\(^5\) COM(2016) 451 final


\(^7\) 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 2015, its TAX2 committee resolution of 6 July 2016 on tax rulings and other measures similar in nature or effect, and its TAX3 committee resolution of 26 March 2019 on financial crimes, tax evasion and tax avoidance,

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 Union,

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 2017,

having regard to the Commission’s follow-up to each of the above-mentioned Parliament resolutions,

having regard to the Commission’s proposal on public country-by-country reporting (pCBCR), as well as Parliament’s resolution on this proposal as adopted on March 27 2019,

having regard to the Commission’s study on ‘The Impact of Tax Planning on Forward-Looking Effective Tax Rates’,

having regard to the Commission’s study on ‘Aggressive tax planning indicators’,

having regard to the study prepared by the European Parliamentary Research Service on “An overview of shell companies in the European Union”.

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.
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.
19 ‘The Impact of Tax Planning on Forward-Looking Effective Tax Rates’ (Taxation paper No 64, 25 October 2016)
20 ‘Aggressive tax planning indicators – Final Report’ (Taxation paper No 71, 7 March 2018)
21 Kiendl Kristo I. and Thirion E., An overview of shell companies in the European Union, EPRS, PE 627.129, European Parliament, October 2018
having regard to the Commission Country reports in its European Semester,

– having regard to the ongoing work of the Financial Accountability, Transparency and Integrity panel of the United Nations,

– having regard to the ongoing work of the OECD/Inclusive Framework on Base Erosion and Profit Shifting (BEPS) regarding the Tax Challenges Arising from Digitalisation,

– having regard to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community,²²

– having regard to the question to the Commission on reforming the list of EU tax havens (O-000082/2020 – B9-0000/2020),

– having regard to the question to the Council on reforming the list of EU tax havens (O-000081/2020 – 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 dramatic financial losses to EU Member States, which drains resources from national budgets and hampers governments’ capacity; whereas the cost of corporate tax avoidance is currently estimated as $500bn per year²³; whereas this reduction in tax income is especially problematic in the context of 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 havens²⁴;

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 Council conclusions of 8 November 2016, namely tax transparency, fair taxation and implementation of the OECD BEPS minimum standards;

E. whereas over 135 countries and jurisdictions are collaborating on the implementation of the BEPS action plan, partly motivated by the risk of being included in the EU list of non-cooperative jurisdictions; whereas in the listing process nearly 40 countries were

²² OJEU, 12.11.2019, CI 384/1
²⁴ https://op.europa.eu/en/publication-detail/-/publication/51abaf14-6b6e-11e7-b2f2-01aa75ed71a1/language-en/format-PDF
asked to reform more than 120 harmful tax practices;

F. whereas the State of Tax Justice Report found that a mere 2% of global tax losses were caused by jurisdictions on the EU list; whereas the Cayman Islands were found to be the jurisdiction responsible for most global tax losses, costing others over $70 billion a year, or 16.5 per cent of the total tax losses;

G. 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)25, which raises questions about the transparency and about a possible preferential approach to some countries;

H. 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;

I. whereas several other jurisdictions have taken commitments to implement good tax governance principles regarding either transparency or fair taxation criteria;

J. whereas public access to the documents and work of the Code of Conduct Group on Business Taxation remains limited notably in relation to the EU Listing process; whereas the European Ombudsman has the mandate to look into the EU institutions’ application of the EU’s rules on public access to documents, Regulation 1049/2001 and especially the power to inspect all EU documents, whether confidential or not, and can issue recommendations as to whether they should be published or not;

K. 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;

L. whereas the EU under most sensible apportionment rule has the highest losses globally due to profit shifting to tax havens and is estimated to lose about 20% of its corporate tax revenue annually;26

I. Recognizes the positive impact the list already made, but regrets that it does not live up to its full potential as jurisdictions currently on the list cover less than 2% of worldwide tax revenue losses, making the list confusing and ineffective27; seeks to strengthen the list through increased transparency, consistency, stricter and more impartial listing criteria, and stronger defensive measures against tax avoidance; deplores the removal of countries with a clear record of promoting BEPS, such as Cayman Islands, from the list; regrets the insufficient explanation made to the general public despite the European public opinion supporting tighter rules on tax havens;

27 https://www.taxjustice.net/reports/the-state-of-tax-justice-2020/
Governance and transparency of the EU list of non-cooperative tax jurisdictions

2. Observes that the initial listing process was proposed by the Commission in both its Communication on external strategy for effective taxation and its Communication on further measures to enhance transparency and the fight against tax evasion; notes that the Code of Conduct Group, mainly through its subgroup on third parties, has been tasked with carrying out the preparatory work for the establishment of the list despite the fact that this was not in the original mandate of the Code of Conduct Group; questions the ability and suitability of such an informal grouping to carry this mission;

3. Considers that the EU list needs to be reformed at EU level; recommends its process to be formalised, notably via a legally binding instrument; demands the Council to task the Commission, with the support of Member States and with the appropriate involvement of the European Parliament, to be in charge of the assessment of third jurisdictions based on clear and transparent criteria as well as making a listing proposal to the Council that should be released publicly before the Council formally adopts the list and its revisions; calls on the Council to grant the Parliament an observer role at the CoC Group discussions; believes such changes would ensure the impartiality, objectivity and accountability of the listing process;

4. Highlights the importance of transparency in the listing-process to allow public scrutiny and increase democratic accountability of decision-makers; seeks full transparency regarding the position of Member States; therefore calls on the CoC Group to disclose participating authorities, the topics of discussion, technical assessments, the minutes or summaries and the conclusions adopted; considers that to improve accountability and transparency, sources of data for the screening of jurisdictions should be made easily accessible when they are public; considers that the methodology for assessing third-country regimes should be refined and fully disclosed; invites the CoC Group to systematically release a comprehensive summary of its interactions with third countries, the subject matters discussed and the commitments made by third countries during each step of the assessment process;

5. Notes that the lack of transparency may lead to decisions being misinterpreted and risks undermining public trust in the listing process, particularly when the outcome of the EU list differs from the lists of tax havens created in a transparent manner by third parties; recalls the initial list compiling Member States lists as referred to by the Commission in its Communication on ‘A Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action’ and which contained 30 jurisdictions listed by 10 Member States or more;

6. Welcomes the steps already made regarding transparency such as the publication of biannual progress reports and release of some letters sent to third country jurisdictions; calls for the letters sent by the Council to third jurisdictions that are not yet compliant with EU listing criteria, to include a demand to publish all correspondence with the EU and to consider any negative reply as a lack of cooperation from the involved jurisdiction; regrets that those documents are only accessible upon finalisation of the assessment process; calls for all letters commitments made by third jurisdictions to be made publicly available as soon as they are received; calls for the public information to be made available on a user-friendly platform;
7. Calls for a regular exchange between the Chair of the Code of Conduct Group and the Parliament, including, at least, one formal appearance in a public hearing per year;

8. Underlines that the Parliament’s role in relation to the CoC should be formalised, including on governance and criteria of the listing process, such as through an opinion-giving process;

9. Notes that the EU listing process concerns only third countries; notes that the influence of the Union to fight tax evasion and harmful tax practices worldwide depends on the example it sets at home; highlights the need for consistency between the listing criteria and the criteria for harmful tax practices within the EU; recalls the statement made by the Chair of the CoC Group during the TAX3 committee hearing of 10 October 2018 about the possibility of screening Member States against the same criteria set for the EU list in the context of the revision of the mandate of the CoC; notes that one Member State has received a partially compliant rating on its compliance with the international standard on transparency and exchange of information on request (EOIR) by the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) and observes that third countries are listed by the Council in the case of such rating; underlines in this regard that some Member States have regularly received Country Specific Recommendations on the need to address aggressive tax planning; highlights that the Commission acknowledges some of the aforementioned Member States have taken measures to improve their tax systems to address the Commission’s criticism but notes that the Commission still indicates that tax rules are currently facilitating aggressive tax planning in those Member States; therefore reiterates its call from the TAX3 report on the Commission and the Council to follow up on the country-specific recommendations given to these EU Member States until substantial tax reforms are implemented and to propose actions where and when the need arises but to regard, in the meantime, at least those Member States as EU tax havens; looks forward for these governments to address the concerns and reduce tax avoidance through their jurisdictions; commits itself to regularly evaluate any initiatives by governments to follow such recommendations and to propose actions where and when the need arises;

10. Recalls that the procedure laid down in Article 116 TFEU, which states that the Parliament and the Council act in accordance with the ordinary legislative procedure, should be applied when harmful tax practices lead a market distortion within the Union;

11. Invites the CoC Group to increase the inclusiveness and external acceptance of the process by consulting developing countries and CSOs; suggests to set up a working group or a consultative body with non-EU countries, in particular developing countries, civil society and experts to facilitate dialogue on the decisions made;

---

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

---

29 OJEU, 7.10.2020, C 331/3
12. Reiterates the importance of the transparency criterion of the list; calls for clarity on the forthcoming transparency criterion relating to ultimate beneficial ownership (UBO) in line with the AMLD5; observes the unequal playing field between countries adhering to the OECD Common Reporting Standard and US FATCA; therefore considers that the lack of reciprocity of the US FATCA should be examined under the transparency criterion;

13. Considers that the fair taxation criterion should not be limited to the preferential nature of tax measures, but look at broad tax exemptions and transfer pricing mismatches; recalls that the current listing process for third countries does not include a standalone criteria on 0% or very low tax rates; calls on the Commission and the CoC Group to include in the assessment tax measures leading to low levels of taxation in line with the ongoing negotiations on Pillar II of the Inclusive Framework, particularly as regards a minimum taxation; calls on the Commission and the Council to propose a minimum effective level of taxation that would consist of a standalone criterion for the EU list;

14. Calls on the Commission to consider the benefits of adopting an initiative similar to the OECD Pillar II also of use for the EU listing criteria in case there would not be a political consensus at the OECD level on the implementation of those measures by the end of 2021;

15. Notes that some of the most harmful third jurisdictions, including the Cayman Islands and Bermuda were removed from the list upon them introducing very minimal substance criteria and weak enforcement measures; highlights that such decisions may raise questions regarding the authenticity of specific activities, the impartiality of the decision-making process and undermine public trust; calls for a strengthening of the screening criteria, including substance requirements on a formulaic approach as well as proportionality requirements and their monitoring, to increase the effectiveness of the list and its ability to meet new challenges posed by the digitalisation of the economy; calls on the Council to include the automatic listing of third jurisdictions with a 0% corporate tax rate or with no taxes on companies’ profits as a standalone criterion; notes with concern that third countries may repeal non-compliant tax regimes but substitute them with new ones that are potentially harmful to the EU; recalls the importance of public country-by-country reporting information in order to monitor the substance requirements;

16. 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;

17. Supports a broadening of the geographical scope of the EU list, while taking into account the position of least developed countries; underlines that the fact that some developing countries might lack the resources to swiftly implement newly agreed tax standards should be systematically considered in future assessments; urges the Council, therefore, not to consider development aid cuts that would impact directly the ultimate aid beneficiaries as countermeasures; notes, however, that countries with financial centres of a significant size should not enjoy similar tolerance;

18. Notes that there is a significant divergence between the EU list of non-cooperative
jurisdictions and its national equivalents; observes the Commission’s ambition to align better the national lists with the EU list; calls for an upwards convergence and harmonisation of criteria to ensure higher standards and coherence;

19. Welcomes the Commission suggestion to take into account, when screening tax jurisdictions, the methodology developed for the identification of high-risk third countries for the purpose of anti-money laundering and terrorist financing, to ensure that the two listing processes are mutually reinforcing;

20. Notes the efforts to establish a level playing field following the departure of the United Kingdom of Great Britain and Northern Ireland; calls for a thorough assessment of said jurisdictions, including continuing the assessment of its overseas territories and Crown dependencies, according to the standards set by the CoC Group; highlights that a future relationship between the European Union and the United Kingdom should be based on mutual values and geared towards common prosperity, which automatically excludes aggressive tax competition;

21. Emphasizes that the United Kingdom should be screened under the EU listing criteria upon completion of its withdrawal from the European Union; calls on an equal and impartial assessment of EU’s major trading partners; urges in particular a clear assessment of the United States regarding the transparency criteria;

Coordination of defensive measures

22. Acknowledges the reputational impact of inclusion on the list as an incentive for their engagement in the screening process; underlines that this is not enough to effectively counter the negative effects that those jurisdictions cause to the EU Member States and the internal market as said detrimental impact is undermined by the previously mentioned shortcomings, particularly the lack of transparency, soft criteria and limited geographical scope;

23. Welcomes the link between tax good governance standards and the use of EU funds established in the Financial Regulation, the European Fund for Sustainable Development (EFSD), the European Fund for Strategic Investment (EFSI) and the External Lending Mandate (ELM) and recognizes these standards to be a precondition for the support provided by the EU; warns, however, against any current or potential detrimental effect on the citizens of developing countries; highlights the importance of developing equivalent conditions to be applicable in public procurement procedures, as far as corporations and aggressive tax planning enablers and facilitators are concerned;

24. Calls for State Aid rules and Member States’ national support programmes to ensure businesses with economic links to non-cooperative jurisdictions, such as resident for tax purposes in such jurisdictions, are not eligible for support; emphasises the importance of this in the context of intra-European solidarity and trust-building between Member States; recalls that transparency through public country-by-country reporting for all sectors is needed to ensure this; calls on the Council to urgently conclude discussions and adopt its general approach on the legislative proposal;

25. 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;

26. Notes that strict counter measures would reduce tax avoidance incentives; highlights that the EU toolbox of defensive measures is undermined by discretionary application by each Member State; calls therefore on the Commission to consider putting 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 or on a minimum effective tax rate at EU level, 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) Consequences for public procurement and state aid;
   g) Special documentation requirements;
   h) Suspension of double tax treaty provisions;

notes that any tax measures applied to companies should be conditional on linking rules indicated when specific harmful criteria are met by the transaction or by the respective taxpayers; considers that those measures should be equally applicable in the relations between a Member State and a third country and in the relations between Member States;

27. 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 such as increased audits or enhance Know Customer Policies for transactions and due diligence for those countries;

28. 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 and outlined in the Council Conclusion of 25 May 2018 which adopted the Standard provision agreed for agreements with third countries; and invites the Commission and the Council to explain the lack of such a clause;

29. Instructs its President to forward this resolution to the Council, the Commission, the OECD Secretariat and the governments and parliaments of the Members States.

31 COM(2016) 24 final