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*Plenary sitting*

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**B9-0052/2021**

13.1.2021

## **MOTION FOR A RESOLUTION**

further to Questions for Oral Answer B9-0002/2021 and B9-0001/2021

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

on reforming the EU list of tax havens  
(2020/2863(RSP))

**Irene Tinagli**

on behalf of the Committee on Economic and Monetary Affairs

**Paul Tang**

on behalf of the Subcommittee on Tax Matters

**B9-0052/2021**

**European Parliament resolution on reforming the EU list of tax havens  
(2020/2863(RSP))**

*The European Parliament,*

- having regard to the resolution of the Council and the representatives of the governments of the Member States on a code of conduct for business taxation, adopted on 1 December 1997<sup>1</sup> with the objective of curbing harmful tax competition within the European Union,
- having regard to the Commission communication of 17 June 2015 entitled ‘A Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action’ (COM(2015)0302),
- having regard to the Commission communication of 28 January 2016 on an external strategy for effective taxation (COM(2016)0024),
- having regard to the Council conclusions of 8 March 2016 on the code of conduct on business taxation<sup>2</sup>,
- having regard to the Commission communication of 5 July 2016 on further measures to enhance transparency and the fight against tax evasion and avoidance (COM(2016)0451), which includes an explanation of the EU listing process for non-cooperative tax jurisdictions,
- having regard to the Council conclusions of 8 November 2016 on the criteria for and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes<sup>3</sup>,
- having regard to the outcome of the Ecofin Council meeting of 5 December 2017<sup>4</sup>,
- having regard to the Council’s most recent updates to the EU list of non-cooperative tax jurisdictions of 6 October 2020<sup>5</sup>,
- having regard to the Commission communication of 15 July 2020 entitled ‘An Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy’ (COM(2020)0312),

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<sup>1</sup> Annex I to the Conclusions of the Economic and Financial Affairs (Ecofin) Council meeting of 1 December 1997 concerning taxation policy – Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 1 December 1997 on a code of conduct for business taxation (OJ C 2, 6.1.1998, p. 1).

<sup>2</sup> <https://www.consilium.europa.eu/en/press/press-releases/2016/03/08/ecofin-conclusions-code-conduct-business-taxation/>

<sup>3</sup> <https://data.consilium.europa.eu/doc/document/ST-14166-2016-INIT/en/pdf>

<sup>4</sup> <https://www.consilium.europa.eu/media/32591/st15305-en17.pdf>

<sup>5</sup> OJ C 331, 7.10.2020, p. 3.

- having regard to the Commission communication of 15 July 2020 on tax good governance in the EU and beyond (COM(2020)0313),
- having regard to its TAXE Committee resolution of 25 November 2015 on tax rulings and other measures similar in nature or effect<sup>6</sup>, its TAX2 Committee resolution of 6 July 2016 on tax rulings and other measures similar in nature or effect<sup>7</sup>, and to its TAX3 Committee resolution of 26 March 2019 on financial crimes, tax evasion and tax avoidance<sup>8</sup>,
- 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<sup>9</sup>,
- having regard to the PANA Committee recommendation of 13 December 2017 to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion<sup>10</sup>,
- having regard to the Commission’s follow-up to the abovementioned European Parliament resolutions and recommendation<sup>11</sup>,
- having regard to the Commission’s proposal on public country-by-country reporting (pCBCR)<sup>12</sup>, as well as to Parliament’s resolution of 27 March 2019<sup>13</sup> on that proposal,
- having regard to the Commission study entitled ‘The Impact of Tax Planning on Forward-Looking Effective Tax Rates’<sup>14</sup>,
- having regard to the Commission study entitled ‘Aggressive tax planning indicators’<sup>15</sup>,

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<sup>6</sup> OJ C 366, 27.10.2017, p. 51.

<sup>7</sup> OJ C 101, 16.3.2018, p. 79.

<sup>8</sup> Text adopted, P8\_TA(2019)0240.

<sup>9</sup> OJ C 399, 24.11.2017, p. 74.

<sup>10</sup> OJ C 369, 11.10.2018, p. 132.

<sup>11</sup> The joint follow-up to the European Parliament (ECON) resolution with recommendations to the Commission on bringing transparency, coordination and convergence to corporate tax policies in the Union and the European Parliament (TAXE) resolution on tax rulings and other measures similar in nature or effect, adopted by the Commission on 16 March 2016; the follow-up to the European Parliament (TAX2) resolution on tax rulings and other measures similar in nature or effect, adopted by the Commission on 16 November 2016; the follow-up to the European Parliament (PANA) non-legislative resolution of 12 December 2017 on the European Parliament draft recommendation to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion, adopted by the Commission in April 2018; and the follow-up of 27 August 2019 to the European Parliament (TAX3) resolution on financial crimes, tax evasion and tax avoidance.

<sup>12</sup> Proposal for a directive of the European Parliament and of the Council of 12 April 2016 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches (COM(2016)0198).

<sup>13</sup> European Parliament legislative resolution of 27 March 2019 on the proposal for a directive of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches (Texts adopted, P8\_TA(2019)0309).

<sup>14</sup> European Commission, ‘The Impact of Tax Planning on Forward-Looking Effective Tax Rates’, Taxation paper No 64, 25 October 2016.

<sup>15</sup> European Commission, ‘Aggressive tax planning indicators – Final Report’, Taxation paper No 71, 7 March 2018.

- having regard to the study by the European Parliamentary Research Service entitled ‘An overview of shell companies in the European Union’<sup>16</sup>,
  - having regard to the Commission country reports drawn up as part of its European Semester,
  - having regard to the ongoing work of the UN High-Level Panel on International Financial Accountability, Transparency and Integrity,
  - having regard to the ongoing work of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) on 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<sup>17</sup>,
  - having regard to the questions to the Commission and to the Council on reforming the EU list of tax havens (O-000082/2020 – B9-0002/2021 and O-000081/2020 – B9-0001/2021),
  - 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 at USD 500 billion per year<sup>18</sup>; 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 Eurobarometer survey of Autumn 2016, 86 % of EU citizens are in favour of tougher rules on tax avoidance and tax havens<sup>19</sup>;
- 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

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<sup>16</sup> Kiendl Krišto I. and Thirion E., ‘An overview of shell companies in the European Union’, European Parliamentary Research Service, October 2018.

<sup>17</sup> OJ C 384 I, 12.11.2019, p. 1

<sup>18</sup> Cobham and Janský (2018); <https://onlinelibrary.wiley.com/doi/full/10.1002/jid.3348>

<sup>19</sup> <https://op.europa.eu/en/publication-detail/-/publication/51abaf14-6b6e-11e7-b2f2-01aa75ed71a1/language-en/format-PDF>

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 on the EU list of non-cooperative jurisdictions; whereas in the listing process nearly 40 countries were asked to reform more than 120 harmful tax practices;
- F. whereas the State of Tax Justice 2020 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 the most global tax losses, costing others over USD 70 billion a year, or 16.5 % of the total tax losses;
- G. whereas the Council last revised the list on 6 October 2020, removing the Cayman Islands and Oman and adding Barbados and Anguilla; whereas the Cayman Islands still have no corporate income tax and are one of the top 10 destinations for phantom investments according to the International Monetary Fund (IMF)<sup>20</sup>, which raises questions about 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, the Seychelles, Trinidad and Tobago, the US Virgin Islands and Vanuatu;
- I. whereas several other jurisdictions have made commitments to implementing good tax governance principles with regard to either transparency or fair taxation criteria;
- J. whereas public access to documents and the 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 a mandate to look into the EU institutions' application of the EU's rules on public access to documents (Regulation (EC) No 1049/2001) and notably the power to inspect all EU documents, whether confidential or not, and can issue recommendations as to whether or not they should be published;
- K. whereas in its communication on tax good governance in the EU and beyond, the Commission highlighted the need to reform the Code of Conduct for Business Taxation and to review the list;
- L. whereas using the most conservative apportionment formula, the EU has the highest losses globally as a result of profit shifting to tax havens and is estimated to lose about 20 % of its corporate tax revenue every year<sup>21</sup>;
- 1. Recognises the positive impact that the list has already had, 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 ineffective<sup>22</sup>; seeks to strengthen the list through increased transparency and consistency, stricter and more

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<sup>20</sup> <https://www.imf.org/external/pubs/ft/fandd/2019/09/the-rise-of-phantom-FDI-in-tax-havens-damgaard.htm>

<sup>21</sup> Tørslov, Wier and Zucman (2020); <http://gabriel-zucman.eu/files/TWZ2020.pdf>

<sup>22</sup> <https://www.taxjustice.net/reports/the-state-of-tax-justice-2020/>

impartial listing criteria, and stronger defensive measures against tax avoidance; deplores the removal of countries with a clear record of promoting BEPS, such as the Cayman Islands, from the list; regrets the insufficient explanation provided to the general public despite European public opinion supporting tighter rules on tax havens;

### ***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 an 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 group; questions the ability and suitability of such an informal grouping to carry out this mission;
3. Considers that the EU list needs to be reformed at EU level; recommends that its process be formalised, notably via a legally binding instrument; demands that the Council task the Commission, with the support of Member States and with the appropriate involvement of the European Parliament, with the assessment of third jurisdictions on the basis of clear and transparent criteria, as well as with 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 Parliament an observer role at the Code of Conduct Group discussions; believes that such changes would ensure the impartiality, objectivity and accountability of the listing process;
4. Highlights the importance of transparency in the listing process so as to allow for public scrutiny and increase the democratic accountability of decision-makers; seeks full transparency regarding the position of Member States; calls on the Code of Conduct Group, therefore, to disclose the participating authorities, topics of discussion, technical assessments, minutes or summaries and conclusions adopted; considers that to improve accountability and transparency, sources of data for the screening of jurisdictions should be made easily accessible when available to the public; considers that the methodology for assessing third-country regimes should be refined and fully disclosed; invites the Code of Conduct Group to systematically release a comprehensive summary of its interactions with third countries, the subject matter 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 State lists, as referred to by the Commission in its communication entitled ‘A Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action’ and which contained 30 jurisdictions listed by 10 or more Member States;
6. Welcomes the steps already taken with regard to transparency, such as the publication of biannual progress reports and the release of certain 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 response in the negative as a lack of cooperation from the jurisdiction concerned; regrets that these documents are only accessible upon finalisation of the assessment process; calls for all letters and 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 Parliament, including at least one formal appearance at a public hearing per year;
8. Underlines that Parliament's role in relation to the Code of Conduct Group should be formalised, including with regard to governance and the 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 in tackling 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 Code of Conduct 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 Code of Conduct Group; notes that one Member State has received a partially compliant rating on its compliance with the international standard on transparency and the exchange of information on request (EOIR) by the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum)<sup>23</sup> and observes that third countries are listed by the Council in the event of such a rating<sup>24</sup>; underlines in this regard that some Member States have regularly received country-specific recommendations on the need to address aggressive tax planning<sup>25</sup>; highlights that the Commission acknowledges that some of the aforementioned Member States have taken measures to improve their tax systems to address the Commission's criticisms, but notes that the Commission still indicates that tax rules are currently facilitating aggressive tax planning in those Member States; reiterates its call, issued in the TAX3 resolution, on the Commission and the Council to follow up on the country-specific recommendations issued to the Member States concerned 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 to these governments addressing the concerns and reducing tax avoidance throughout their jurisdictions; commits to regularly evaluating any initiatives taken 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 of the Treaty on the Functioning of the European Union (TFEU), under which Parliament and the Council act in accordance with the ordinary legislative procedure, should be applied when harmful tax practices

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<sup>23</sup> <https://www.oecd.org/tax/exchange-of-tax-information/global-forum-reveals-compliance-ratings-from-new-peer-review-assessments-for-anguilla-chile-china-gibraltar-greece-korea-malta-papua-new-guinea-and-uruguay.htm>

<sup>24</sup> OJ C 331, 7.10.2020, p. 3.

<sup>25</sup> [https://ec.europa.eu/info/publications/2020-european-semester-country-specific-recommendations-commission-recommendations\\_en](https://ec.europa.eu/info/publications/2020-european-semester-country-specific-recommendations-commission-recommendations_en)



lead to market distortion within the Union;

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

***Updating the EU listing criteria in order to adapt them to current and future challenges***

12. Reiterates the importance of the list's transparency criterion; calls for clarity on the forthcoming transparency criterion with regard to ultimate beneficial ownership (UBO), in line with the 5th Anti-Money Laundering Directive; notes the unequal playing field between countries adhering to the OECD Common Reporting Standard and the US Foreign Account Tax Compliance Act (FATCA); considers, therefore, 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 should look at broad tax exemptions and transfer pricing mismatches; recalls that the current listing process for third countries does not include a standalone criterion on 0 % or very low tax rates; calls on the Commission and the Code of Conduct 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 OECD/G20 Inclusive Framework, particularly as regards minimum taxation; calls on the Commission and the Council to propose a minimum effective level of taxation that would constitute a standalone criterion for the EU list;
14. Calls on the Commission to consider the benefits of adopting an initiative similar to Pillar II of the Inclusive Framework for the EU listing criteria, in the event that there is no political consensus at 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 their introduction of very minimal substance criteria and weak enforcement measures; highlights that such decisions may raise questions regarding the authenticity of specific activities and the impartiality of the decision-making process, and undermine public trust; calls for the strengthening of the screening criteria, including substance requirements based 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 the 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 have a direct impact on the ultimate aid beneficiaries as countermeasures; notes, however, that countries with financial centres of a significant size should not enjoy similar levels of tolerance;
18. Notes that there is significant divergence between the EU list of non-cooperative jurisdictions and its national equivalents; notes the Commission's ambition to better align the national lists with the EU list; calls for the upward convergence and harmonisation of criteria to ensure higher standards and coherence;
19. Welcomes the Commission's suggestion to take into account, when screening tax jurisdictions, the methodology developed for the identification of high-risk third countries for the purpose of combating 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 from the European Union; calls for a thorough assessment of said jurisdictions, including continued assessment of the UK's overseas territories and Crown dependencies, in accordance with the standards set by the Code of Conduct Group; highlights that a future relationship between the EU and the UK should be based on mutual values and geared towards common prosperity, which automatically excludes aggressive tax competition;
21. Emphasises that the UK should be screened under the EU listing criteria upon completion of its withdrawal from the EU; calls for an equal and impartial assessment of the EU's major trading partners; calls, in particular, for a clear assessment of the US as regards the transparency criteria;

### *Coordination of defensive measures*

22. Acknowledges the reputational impact of inclusion on the list as an incentive for jurisdictions' engagement in the screening process; underlines that this is not enough to effectively counter the negative effects that such jurisdictions have on the Member States and the internal market, as the reputational impact on certain jurisdictions of their inclusion on the list is undermined by the shortcomings of the listing process described above, particularly the lack of transparency, soft criteria and the 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) Regulation, the European Fund for Strategic Investment (EFSI) Regulation and the External Lending Mandate (ELM) Decision, and recognises these standards to be a precondition for support provided by the EU; warns, however, against any detrimental effect, whether current or potential, on the citizens of developing countries; highlights the importance of developing equivalent conditions to be applied to corporations and aggressive tax planning enablers and facilitators in public procurement procedures;

24. Calls for State aid rules and Member States' national support programmes to ensure that businesses with economic links to non-cooperative jurisdictions, such as those 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 that this is the case; calls on the Council to urgently conclude discussions and adopt its general approach on the legislative proposal;
25. Supports and calls for the strengthening of the additional audit and due diligence requirements for companies and investors established in non-cooperative jurisdictions; sees defensive measures as critical in order for the list to have impact;
26. Notes that strict countermeasures would reduce tax avoidance incentives; highlights that the EU toolbox of defensive measures is undermined by discretionary application by individual Member States; calls on the Commission, therefore, 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, which 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) A 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 taxpayer concerned; considers that these measures should be equally applicable in relations between a Member State and a third country and in 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 enhanced 'know your customer' policies for transactions and due diligence for those jurisdictions;
28. Calls on the Commission to list which agreements between the EU and third countries or regions have failed to include a 'good governance clause' as required by paragraph 3.1 of the Commission communication on an external strategy for effective taxation and outlined in the Council conclusions of 25 May 2018, which adopted the standard

provisions agreed for agreements with third countries<sup>26</sup>; invites the Commission and the Council to explain the lack of such a clause;

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29. Instructs its President to forward this resolution to the Council, the Commission, the Secretariat of the Organisation for Economic Co-operation and Development, and the governments and parliaments of the Member States.

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<sup>26</sup> <https://www.consilium.europa.eu/en/press/press-releases/2018/05/25/tax-fraud-standard-provision-agreed-for-agreements-with-third-countries/>