



PACIFIC ISLANDS FORUM SECRETARIAT

PIFS(20)FEMM.Info.11

FORUM ECONOMIC OFFICIALS MEETING

4-5 August 2020

FORUM ECONOMIC MINISTERS MEETING

11-12 August 2020

Virtual

INFORMATION PAPER NO. 11: EU LISTING ON NON-COOPERATIVE JURISDICTION ON TAX MATTERS

Purpose and Summary of Issues

Purpose

This paper provides an update on the European Union (EU) listing on Non-Cooperative Jurisdiction on Tax Matters and considers a regional position and options for further advocacy with the EU, noting the arbitrary method and manner of the EU's approach in developing the listing criteria.

Summary

The paper provides an update on the EU listing since the last deliberations on this issue at the FEMM in 2019.

Two further rounds of listings have since been undertaken in June 2019 and February 2020, and Forum Members have featured again in both lists. That is, the 'black' and the 'grey' lists. Progress is evident, with the removal of the Republic of Marshall Islands from both the black and grey lists, and the removal of the Cook Islands, Niue and Nauru from the grey list. Broadly, these results are the outcome of commitments and actions by the listed countries. The specific reasons vary across countries, depending on the EU criterion the listed countries have allegedly been found to be in breach of.

In view of capacity constraints, and the benefit of collective and consistent engagement with the EU on this matter, this paper recommends further regional advocacy and political dialogue, including through the Organisation of ACP States (OACPS) systems.

Note for Information:

- The progress of the EU listing of Non-Cooperative Jurisdiction on Tax Matters and the status of FEMM, to date;
- Forum Secretariat to continue facilitating the collective action of Members on the EU listing through:

- i. an advocacy approach at the regional level, including seeking a PACP Leaders' statement and through OACPS systems, in support of Pacific ACP States' (PACPS) de-listing efforts;
- ii. utilising the Forum's representation in Brussels as a liaison point between the EU Code of Conduct Group and PACPS, to ensure timely follow-up on EU tax jurisdiction schedule and activities.

A. Overview

A number of PACPS, in addition to Forum Members and Observers, have been 'blacklisted' and 'greylisted' by the EU as Non-Cooperative Tax Jurisdictions. Pacific Island Countries and Territories (including the USA territories of Guam and American Samoa) are over-represented on the blacklist, noting that in nominal terms, they would account for relatively a very small percentage of tax revenues and related investment flows, compared to other countries on the lists. At the regional level, the EU listing can give the unwarranted perception to investors of the risk of investment in the Pacific region. Moreover, being listed could have a bearing on the post-Cotonou agreement wherein listed countries could be placed in a disadvantaged position when it comes to EU development assistance and investment flows.

2. Tax policy and administration in and of itself is a highly technical area, which is all the more complicated with the EU tax jurisdiction screening requirements and its legal, policy and technical implications. PACPS are mainly dealing with the EU on the matter of Non-Cooperative Tax Jurisdictions on a bilateral basis. At the 2019 meeting of Forum Economic Ministers (FEMM), Ministers expressed strong support for consistent dialogue and advocacy at the regional level on this matter, such that listed countries can amplify their concerns through the collective voice of the Forum. Furthermore, PACPS have also been engaged through the OACPS mechanisms to raise the Pacific region's concerns on this matter with the EU.

B. Discussion

Background

3. As part of its anti-tax avoidance package, the EU had adopted an External Taxation Strategy (ETS) to promote good governance tax principles of tax transparency, fair taxation, and implementation of anti-Base Erosion and Profit-shifting Standards (BEPS). The EU Code of Conduct Group was mandated by the Council of EU in 2016 to come up with a common EU list of non-cooperative jurisdictions. The first list was established at the end of 2017. The entire three-phase process broadly involves a: scoreboard phase; screening phase; and listing phase, as well as monitoring and updating of the lists.

4. There are two lists: the *blacklist* (referred to as Annex I countries in European Commission (EC) source documents) are countries that the EU alleges - fail to make a high-level commitment to comply with the agreed good governance standards and criteria; and the *grey list* (Annex 2 under EC references) are countries that the EU assesses have made a high-level commitment to comply with the prescribed standards and criteria, and remain under monitoring as a result. **Attachment 1** contains the criterion applied by the EU in this listing process¹.

¹ Source: Council of the EU. Outcome of Proceedings – Criteria and Process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes. Nov, 2016

FEMM 2019 Outcomes

5. In May 2019, PIFS updated the FEMM that the recent EU blacklist (done in March 2019) of non-cooperative tax jurisdictions comprised a total of 15 countries, out of which 4 countries were Forum Island Countries (FICs): Fiji, Samoa, RMI and Vanuatu. The grey list had a total of 37 countries, out of which 5 countries were Forum member countries: Australia, Cook Islands, Nauru, Niue, Palau.

6. As an outcome of 2019 FEMM in May last year², the Forum Chair, on behalf of all Forum Members, wrote to the President of the European Council (PEC) in Brussels on 10 October 2019 to express concerns with the process, manner and implications of the EU listing of tax jurisdictions on the region. A copy of the Forum Chair's letter is provided as **Attachment 2**.

Subsequent Developments

7. On 28 November 2019, the President of the PEC wrote to the Forum Chair in response. The President assured the Chair that the EU is taking all necessary steps to follow transparent, cooperative and consultative processes in undertaking its tax listings. Further the letter noted that the EU is committed to adhere to established international standards of dialogue and good governance and will seek to take into account the unique circumstances of small island economies. A copy of the letter is annexed as **Attachment 3**.

8. The PACPS engagement through the OACPS systems also contributed to a strong Resolution of the ACP Council of Ministers at their 110th session on 7 December 2019, calling for a moratorium on the list and requesting consultation on the matter. The Resolution was forwarded to the EC, the Council of the EU, and the European Parliament. A copy of the Resolutions are provided as **Attachment 4**.

9. In June 2019, the EU updated its tax jurisdiction listings. Its revisions only pertained to countries outside the region who had made progress with commitments to the EU on its good governance tax principles. Table 1 below summarises the listing outcomes of Forum Members from 2019 to February 2020.

Listing Profiles

10. The lists were further revised and updated in February 2020, which resulted in the Republic of Marshall Islands being removed from both the black and grey lists, along with the removal of the Cook Islands, Nauru and Niue from the grey list. Palau has been now added to the blacklist.³

² PIFS. FEMM 19 Outcomes Document. 2019

³ The relevant EU source document is: Council of the European Union. Outcome of Proceedings: Report of the Code of Conduct Group on EU List of non-cooperative list of tax jurisdictions. Brussels, Feb 2020.

Table 1: Comparison of 2019 and 2020 EU list of Pacific Jurisdictions

March 2019		June 2019		Feb 2020	
Grey-list	Blacklist	Grey-list	Blacklist	Grey-list	Blacklist
Australia	American Samoa	Australia	American Samoa	Australia	American Samoa
Cook Islands	Fiji	Cook Islands	Fiji		Fiji
Nauru	Guam	Nauru	Guam		Guam
Niue	Samoa	Niue	Samoa		Palau
Palau	RMI	Palau	RMI		Samoa
	Vanuatu		Vanuatu		Vanuatu

11. Table 2 below shows the February 2020 Listing Profile of each Annex I Forum Member and Observer country, the principal issue(s) of breach and their status as far compliance is concerned.

Table 2: Issues of breach and status of compliance

Annex I- EU Blacklist of non-cooperative jurisdictions for tax purposes		
Country	Issue ⁴	Status ⁵
Fiji	Fiji's did not comply with criterion 1.2, 1.3 and 3.1 by the end of 2019 as committed.	Not a member of the Global Forum on transparency and exchange of information for tax purposes, has not signed and ratified the OECD Multilateral Convention on Mutual Administrative Assistance as amended, has harmful tax preferential regimes, has not become a member of the Inclusive Framework on BEPS or implemented OECD anti-BEPS minimum standards
Palau	Palau did not comply with criterion 1.1 and 1.3	Palau does not apply any automatic exchange of financial information, has not signed and ratified the OECD Multilateral Convention on Mutual Administrative Assistance as amended, and has not resolved these issues yet.
Samoa	Samoa does not comply with criterion 2.1, 2.2 and 3.1	Samoa committed to comply with criterion 3.1 by the end of 2018 but has not resolved this issue. Samoa has a harmful preferential tax regime and did not commit to addressing this issue.
Vanuatu	Vanuatu does not comply with criterion 2.1 and 2.2	Facilitates offshore structures and arrangements aimed at attracting profits without real economic substance, and has not yet resolved this issue.
American Samoa <i>Forum Observer</i>	American Samoa does not comply with criterion 1.1, 1.3 and 3.1	Does not apply any automatic exchange of financial information, has not signed and ratified, including through the jurisdiction they are dependent on, the OECD Multilateral Convention on Mutual Administrative Assistance as amended, did not commit to apply the BEPS minimum standards and did not commit to addressing

⁴ Refer to Attachment 1 – Criterion applied by EU

⁵ Attachment 3 – Council of the EU. Outcome of Proceedings Feb, 2020.

		these issues.
Guam <i>Forum Observer</i>	Does not comply with critierion 1.1, 1.2 and 3.2	Guam does not apply any automatic exchange of financial information, has not signed and ratified, including through the jurisdiction they are dependent on, the OECD Multilateral Convention on Mutual Administrative Assistance as amended, did not commit to apply the BEPS minimum standards and did not commit to addressing these issues.
Annex II- EU Grey list of cooperative jurisdictions for tax purposes		
Country	Issue	Status
Australia	Committed to comply with critierion 2.1	Australia was supposed to amend or abolish their harmful tax regimes by end of 2019 but were prevented from doing so due to a delayed process in the OECD Forum for Harmful Tax Practices and were granted until end of 2020 to adapt their legislation

Issues to Note

12. It is encouraging to note that three PACPS have been removed from the grey list, while one has been removed altogether from both the black and grey lists. The Republic of Marshall Islands could be invited to share its experiences and lessons of its removal from both the black and grey lists. A UNDP-sponsored Tax Advisor has been involved in a few of the listed countries providing support over the last 12 months, along with a consultant engaged by ADB to provide assistance to Palau. There have been two workshops conducted for officials and a ACP Council of Ministers Meeting on the matter since FEMM 2019.

13. However, experience shows that RMI, and other PACPS, could be at risk of falling back into either list, with Palau being the most recent example of being moved into the black from the grey list. It is vital that the tax jurisdiction issues that Forum Members and Observers continue to find challenging are consistently and persistently voiced as a collective, at the regional level.

14. It is also important to note that the EU's framework to fight money laundering and terrorism financing (ML/TF) also includes the listing of high-risk third countries, which was updated in May 2020. The consequences of being on this list means that financial institutions and banks will have to apply extra checks for any transactions involving the said countries, and it will also have an impact on the business profile of the country. The date of application of this listing is expected to be from 1 October 2020. While none of the PACPS are in the current list, there is always a possibility of being declared a high-risk country. It is essential that PACPS are fully informed of the principles, scope and processes of this initiative.⁶ The OACPS Secretary General has written to the EU (**Attachment 5**), on behalf of the ACP States lamenting the EU's unilateral approach and has called for consultation on the matter. The ACP Leaders at their Special Summit held on 3 June 2020 also made an appeal to the EU to place a moratorium on its implementation.

Policy Options

⁶ European Commission. *Questions and Answers – Commission steps up fight against money laundering and terrorist financing*. https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_821. May, 2020

15. It is critical for continued dialogue to take place at the regional level, as tax jurisdictions are as much a part of sovereign political boundaries as they are matters of policy and technical decisions that are common across Forum Members and Observers in the region. Certain issues remain with the EU's listing regime, and these have been well articulated, as per the letter from the Forum Chair to the President of the PEC. It is, however, important that the Pacific Islands Forum continues to express through the FEMM process and Leaders, the collective concerns of affected members, including capacity limitations, and the prerogative of Forum Members and Observers as sovereign members to set their policy priorities and the consequential legislative processes.

16. Listed Forum Members are urged to seek timely and regular advice and information from the EU Code of Conduct Group, the body designated by the EU to manage and adjudicate on the EU listing exercise, on their status in regard to compliance with the prescribed standards and criteria. The PEC has assured the EU's support in this process, therefore listed Forum Members may wish to take full advantage of this offer of support and therefore should consider two important documents:

- (i) Attachment 6 – Guidelines for Further Processing: the guidelines for processes in regard to notifications, commitments, monitoring and dialogue; and
- (ii) Attachment 7 –Defensive Measures: the list of effective measures and proportionate defensive measures, that could be applied by EU and its member states, in both tax and non-tax areas, vis-vis the non-cooperative tax jurisdictions.

17. It is important to note that the Defensive Measures makes the following reference: *"...encourages EU institutions and member states to take Annex I list into account in foreign policy, economic relations and development cooperation with the relevant third countries, in taking a comprehensive approach in relation to compliance with the Criteria..."* This will have a bearing on post-Cotonou agreement relations and has the potential to put listed countries in a disadvantaged position when it comes to EU development assistance and investment flows.

18. Therefore, an important point to consider is the need for affected Forum Members to be aware of the timing and milestones of the EU's tax jurisdiction listing schedule. This will allow listed countries to promptly follow-up on commitments or action areas, where compliance actions and commitments are due. This can help address issues of communication and timing, if-and-when the intent to follow up on these commitments are ready to be implemented by Forum Member listed countries. Perhaps more country-dedicated technical assistance (TA) to supplement existing regional TA could help boost on-the-ground capacity and hence expedite the implementation of the required measures.

19. Taking a passive approach in dealing with the EU on these matters, and solely at the bilateral level, may limit the ability of listed Forum Members to expound on issues of common concern in the region. Political dialogue and advocacy at the regional and at the OACPS level is thus critical. It will require robust coordination and timely information flow between listed countries, the Forum Secretariat and the OACPS.

Consultation

20. In providing policy advice and coordination on the EU listing of Non-Cooperative Jurisdiction on Tax Matters, the Forum Secretariat has consulted with concerned Forum Members, the Pacific Islands Tax Administrators Association, Office of the Delegation of the EU to the Pacific, UNDP and regional tax advisors.

Note for information:

- The progress of the EU listing of Non-Cooperative Jurisdiction on Tax Matters and the status of affected Forum Members, to date; and
- That the Forum Secretariat will continue to coordinate collective advocacy, through existing regional mechanisms including ensuring the timely follow-up on EU tax jurisdiction schedule and activities.

Pacific Islands Forum Secretariat
29 July 2020

EU TAX JURISDICTION LISTING CRITERION¹

1. Tax transparency

Criteria that a jurisdiction should fulfil in order to be considered compliant on tax transparency:

1.1. Initial criterion with respect to the OECD Automatic Exchange of Information (AEOI) standard (the Common Reporting Standard – CRS): the jurisdiction, should have committed to and started the legislative process to implement effectively the CRS, either by signing the Multilateral Competent Authority Agreement (MCAA) or through bilateral agreements;

Future criterion with respect to the CRS as from 2018: the jurisdiction, should possess at least a “Largely Compliant” rating by the Global Forum with respect to the AEOI CRS, and

1.2. the jurisdiction should possess at least a “Largely Compliant” rating by the Global Forum with respect to the OECD Exchange of Information on Request (EOIR) standard, with due regard to the fast track procedure, and

1.3. (for sovereign states) the jurisdiction should have either:

(i) ratified, agreed to ratify, be in the process of ratifying, or committed to the entry into force, within a reasonable time frame, of the OECD Multilateral Convention on Mutual Administrative Assistance (MCMAA) in Tax Matters, as amended, or

(ii) a network of exchange arrangements in force by 31 December 2018 which is sufficiently broad to cover all Member States, effectively allowing both EOIR and AEOI;

2. Fair taxation

Criteria that a jurisdiction should fulfil in order to be considered compliant on fair taxation:

2.1. the jurisdiction should have no preferential tax measures that could be regarded as harmful according to the criteria set out in the 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, and

2.2. The jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction.

3. Implementation of anti-Base Erosion Profit Shifting (BEPS) measures

3.1. Initial criterion that a jurisdiction should fulfil in order to be considered compliant as regards the implementation of anti-BEPS measures:

– the jurisdiction, should commit, by the end of 2017, to the agreed OECD anti-BEPS minimum standards and their consistent implementation.

3.2. Future criterion that a jurisdiction should fulfil in order to be considered compliant as regards the implementation of anti-BEPS measures (to be applied once the reviews by the Inclusive Framework of the agreed minimum standards are completed):

– the jurisdiction should receive a positive assessment for the effective implementation of the agreed OECD anti-BEPS minimum standards.

¹ Source: EU.

TUVALU GOVERNMENT**PRIME MINISTER****Ref:1-19**

10 October 2019

His Excellency Mr Donald Tusk
The President of the European Council
Wetsraat 175
B-1048 Brussel
BELGIUM

Your Excellency,

The Leaders of the Pacific Islands Forum (PIF) are deeply concerned that the European Union (EU) continues to approach the issue of international tax good governance in a way that does not fully take into account the realities faced by some of our members and particularly those that are Small Island Developing States. PIF members are concerned about the EU's utilization of criteria that go beyond those developed by the Organization for Economic Cooperation and Development (OECD), and the insufficient level of transparency and dialogue that has been demonstrated in the EU's assessment of non-cooperative tax jurisdictions.

2. In its latest assessment, the EU has classified four of our member countries (Fiji, Samoa, Republic of the Marshall Islands and Vanuatu) as non-cooperative tax jurisdictions and an additional five member countries (Australia, Cook Islands, Nauru, Niue, Palau) are being monitored for their commitments to implement reforms to their tax regimes. Regrettably, this assessment has inflicted serious reputational damage to the region overall, given the negative perception it creates, and its potentially serious economic and development implications on some of our Members as some of the smallest, inherently disadvantaged and highly vulnerable to climate and economic shocks in the global economy.

3. The Pacific ACP Group of States wish to stress to the EU the importance of Articles 8 and 12 of the Cotonou Partnership Agreement, which prescribes that deep political dialogue should be pursued through meaningful consultations to establish clear mutual understanding on such matters and accordingly respect for democratic principles by all parties. This should be the fundamental basis for any such dialogue on tax jurisdiction matters. The lack of consultations and the approach adopted by the EU in its application of the tax good governance criterion used, risks undermining those agreed principles.

4. PIF Members remain firmly committed to the principles and intent of the Addis Ababa Action Agenda on international tax cooperation. Our Members will continue to cooperate with the OECD, the Global Forum on Transparency and Exchange of Information for Tax Purposes, and the Group of 20 on base erosion and profit shifting (BEPS). The gradual and progressive adoption of automatic exchange of tax information by our Members' tax authorities will require technical assistance from, and mutual dialogue with partners, including the EU, on timelines and milestones of reform. This dialogue must consider the different needs and capacities of the small island vulnerable economies in our region.

5. Despite our Members' efforts and commitment to comply with the criterion on tax transparency and anti-BEPS minimum standards, some of our Members have been labelled as non-cooperative tax jurisdictions principally on the basis of hosting preferential tax regimes or offshore financial structures and arrangements. Members of the EU have used similar incentives to support development in their economies. For small island economies, tax incentives are part of the limited menu of policy options that exist in order to attract the much-needed investment required to boost domestic economic activities.

6. We particularly note that Action 5 of the BEPS Action Plan committed the Forum on Harmful Tax Practices (FTHP) to adopt a holistic approach to evaluate preferential tax regimes in the BEPS context, and to engage with non-OECD members on the basis of the existing frameworks and its subsequent revisions or additions. It is vital that sufficient time is given to our Members to undertake necessary adjustments to their taxation regimes, considering technical capacity limitations and the due processes underlying sovereign policy and legislative decisions.

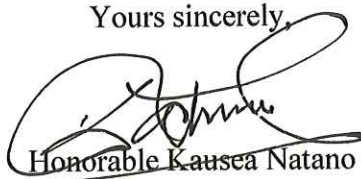
7. Furthermore, the PIF expresses its serious reservations regarding the Council of the EU's deliberations and outcomes in March 2019 that its conclusions on non-cooperative tax jurisdictions will be considered by the European Commission in the implementation of EU financing and investment operations, as well as the coordinated defensive measures on non-tax areas. This is all the more disconcerting when we contemplate its potential implications for the ACP regions in the finalization of the post-Cotonou negotiations, and the yet-to-be determined financing arrangements.

8. Consequently, as a region, we cannot accept that this matter is a purely technical issue that can be resolved exclusively through bilateral engagement between individual concerned members and the EU. Rather, we fully support calls that political dialogue must be established at region-to-region level and at the all-ACP level so that we can collectively voice our common concerns on the issues the EU have highlighted as contributing factors to some of our Members being 'blacklisted'. These issues have been highlighted at the recent ACP-EU Development Finance Committee Ministerial Meeting, as well as in the Joint Council of Ministers meetings in 2018 and 2019.

9. We therefore request immediate removal of the EU list of non-cooperative jurisdictions for tax and invite the EU to engage in constructive dialogue with the Pacific region, and the ACP Group on this issue. Further, we urge the EU to review its assessment criteria being applied to developing countries, and particularly to Small Island Developing States.

10. The Pacific ACP States take this opportunity to re-affirm our Members' commitment to tax good governance principles and standards in the spirit of the Cotonou Partnership Agreement. Accordingly, we would like to sincerely assure the EU of the close collaboration of our Members with the Code of Conduct Group in continuing the dialogue and monitoring of implementation of commitments.

Yours sincerely,



Honorable Kausea Natano

**Prime Minister of Tuvalu, and
Chair of the Pacific Islands Forum, and Chair of the Pacific ACP Group**

cc. HE Mr Jean-Claude Juncker, The President of the European Commission
cc. H.E. Dr Patrick I. Gomes, Secretary General, ACP Group of States.



European Council
The President

SGS 19 / 008745

Brussels, 28. 11. 2019

Dear Prime Minister,

I would like to thank you for your letter of 10 October 2019 regarding the European Union's list of non-cooperative jurisdictions for tax purposes. I appreciate your openness in sharing your concerns with certain aspects of this process, which I have carefully considered. In return, I hope that I can provide some clarifications and reassurance regarding the points that you raise.

The EU listing process was launched by the EU Finance Ministers in 2017 as part of the wider EU agenda to promote fair taxation, within the EU and globally. As a result, EU Member States agreed to adhere to new and legally-binding tax good governance standards which go beyond international requirements. Tax regimes and practices within the EU are also closely scrutinised to ensure that they comply with the principles of fair tax competition.

The aim is to improve the fight against tax evasion and avoidance, and to create a fairer tax environment for all taxpayers and countries. As this is not a goal that can be achieved within the borders of the EU alone, EU Member States seek a similar level of commitment from their global partners with regard to international tax good governance standards. The criteria and assessments for the EU list are closely aligned to the OECD. These are clear and publicly communicated, and aim to reinforce the international work for fair and transparent taxation.

The EU listing exercise is designed as a cooperative process to engage with our international partners on tax matters that affect us all. Dialogue is central to this, as an important means of clarifying information and exchanging views. The EU invests heavily in providing explanations, support and technical advice to any jurisdiction that needs it – at technical, diplomatic and political level. The EU remains committed to discussing the EU list in all appropriate fora, and with all jurisdictions concerned, in a spirit of constructive engagement. The Chair of the EU Code of Conduct Group (COCG) on business taxation, Ms Lyudmila Petkova, stands ready to continue discussions on this topic, as needed.

Honorable Kausea Natano
Prime Minister of Tuvalu
Chair of the Pacific Islands Forum
Chair of the Pacific ACP Group

The EU Code of Conduct Group remains the decision-making forum for these matters. The EU and the Pacific countries should indeed aim to intensify political dialogue on tax good governance issues, with a view to meeting global tax governance standards, in regular political dialogues, established in the framework of the Cotonou agreement and under the future successor agreement between the EU and the ACP countries. So far, these matters have been discussed regularly as part of the political dialogues as well as in the Regional Steering Committee.

The EU listing process offers an opportunity to promote sustainable development, ensuring coherence between taxation, economic, social and environmental policies in line with the Sustainable Development Goals. As acknowledged during the Addis Ababa Action Agenda negotiations, tax evasion and illicit financial flows can also erode developing countries' domestic resource base. The EU supports domestic revenue mobilisation efforts, including in the Pacific, focusing on policy reform, capacity-building for tax administration and international cooperation on tax matters. For jurisdictions working to attract foreign direct investment or to build a competitive financial services sector, adhering to high standards of tax good governance is crucial. This will project a stable image to investors and help to entice offshore businesses onshore, thereby creating high quality jobs domestically and boosting sustainable revenues for local investment.

From the outset, Member States have been keen to ensure that the EU listing process is fair and objective, and that it offers a level playing field to all jurisdictions concerned. At the same time, special consideration has been given to those that may lack the capacity to comply at this stage. Least developed countries without offshore centres have been excluded completely from the exercise. Developing countries without a financial centre have benefited from considerable flexibility and exemptions. In certain cases, Member States have also taken on board particular constraints that jurisdictions faced in meeting the deadline to comply with the criteria. A number of Pacific countries have benefited from this flexibility and have been given more time to deliver on their commitments.

The EU stands ready to support government efforts if a country decides to make a commitment, taking into account the realities faced by the Pacific countries, notably in terms of limited capacities to implement reforms. Our support will continue under future EU financial instruments, to be defined in close cooperation with Pacific partners, both at the bilateral and regional levels.

I am confident that Member States will continue to review the EU listing criteria and their application as this process evolves and in light of new developments, with the same sense of objectivity and responsibility as they have up to now.

I trust that this way of proceeding will find your agreement so as to advance on the open issues.

Yours sincerely,



Donald TUSK

**RESOLUTION
OF THE 110th SESSION OF THE ACP COUNCIL OF MINISTERS
HELD IN NAIROBI, KENYA, ON 7 DECEMBER 2019**

**EUROPEAN UNION LIST OF NON-COOPERATIVE
JURISDICTIONS FOR TAX PURPOSES**

2019

The ACP Council of Ministers,

- Meeting in Nairobi, Kenya, on 7 December 2019,
- A. HAVING REGARD** to the Georgetown Agreement establishing the African, Caribbean and Pacific Group of States;
- B. HAVING REGARD** to the ACP-EU Cotonou Partnership Agreement, in particular Articles 8 and 12;
- C. HAVING REGARD** to the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda on financing for development adopted by the United Nations General Assembly;
- D. TAKING INTO ACCOUNT** the conclusions of the EU Council on the EU list of non-cooperative jurisdictions for tax purposes, published on 5 December 2017, and its various revisions, including the developments as at 14 November 2019;
- E. UNDERSCORING** the devastating economic, social, and political consequences of the list on the countries concerned and the considerable harm done to their image and economy, in particular the serious blow dealt to economic competitiveness and resource mobilisation in the ACP countries concerned;
- F. CONSIDERING** that the EU unilaterally and arbitrarily established a standard for the definition of international tax good governance, which goes beyond that set by the OECD, without any prior consultation with the ACP Group, as stipulated in Article 12 of the Cotonou Partnership Agreement;
- G. CONSIDERING** that the Organisation for Economic Cooperation and Development (OECD) remains the only body authorised to set standards and rules in terms of international tax cooperation, and that the majority of ACP countries included on the list are in compliance, for the most part, with the OECD's standards on international tax good governance;
- H. RECALLING** the relevance of the proposals for the creation of an intergovernmental tax body within the framework of the United Nations and for the involvement of the ACP Group Member States;

- I. **AWARE** of the challenges of international tax governance for the economies of ACP countries and the importance of establishing fair and equitable international tax standards for all;
- J. **CONSIDERING** that the bilateral approach adopted by the EU in dealing with the affected ACP countries on the list is not equitable and has not yielded the expected results;
- K. **CONSIDERING** the major political, legislative, legal, and technical work undertaken by the countries to reform their tax policies, in order to comply with the EU's international tax good governance criteria;
- L. **HAVING REGARD** to the resolutions on the EU list of non-cooperative jurisdictions for tax purposes, the reports of the Ad hoc ACP Ministerial Contact Group on tax matters, and the outcome of the 110th Session of the Council of Ministers;
- M. **HAVING REGARD** to the letters from the ACP Group calling on the EU to effectively engage in political dialogue on the EU list of non-cooperative jurisdictions for tax purposes, under the Cotonou Partnership Agreement;
1. **Expresses** once again, its deep concern about the unilateral, non-transparent, and discriminatory approach adopted by the EU in the publication of this list of non-cooperative jurisdictions for tax purposes, and its indignation at the lack of political will and the fact that the EU has not responded appropriately to the ACP Group's repeated call for political dialogue on this matter;
 2. **Condemns** in the strongest terms, the pressure put on ACP States by the EU to comply with the European tax standard imposed, in blatant violation of their sovereignty, and with complete disregard for the objective procedures and constraints they face to implement the commitments made;
 3. **Also expresses** its concern about the EU Council's recommendation to its Member States, following the list's publication, calling for coordinated defensive tax measures, in keeping with their national legislation and obligations under European and international law, and about the considerable financial repercussions of any sanctions on the vulnerable economies of the countries concerned, as well as the publication by the Netherlands, of their own, more restrictive lists of non-cooperative jurisdictions for tax purposes;
 4. **Fears** that this attitude jeopardises the mutual trust needed for the negotiations currently under way for a post-2020 ACP-EU partnership agreement;

5. **Calls on the** ACP Group and its Member States to send a strong, high-level political message to the EU for real political dialogue at the all-ACP level on the list and on tax issues, in general, in the framework of the ACP-EU partnership agreement;
6. **Calls on** the EU for an urgent moratorium on the establishment and implementation of the EU list of non-cooperative jurisdictions for tax purposes and urges it to engage in constructive and frank political dialogue at the all-ACP level, at the earliest opportunity, in keeping with the Cotonou Partnership Agreement and the conclusion on this issue, of the 28th meeting of the ACP-EU Ministerial Committee on Development Finance Cooperation, held in Brussels on 23 May 2019;
7. **Calls** on the ACP Group's Member States to provide coordinated support for any proposal on the creation of an intergovernmental tax body, within the framework of the United Nations, with the adequate means and powers to set standards and rules which provide international tax architecture, using a universal approach; and
8. **Instructs** the President of Council to forward this Resolution to the European Commission, the Council of the European Union, the European Parliament, and the African Union Commission and regional integration organisations.

esg

Nairobi, 7 December 2019

TRANSLATION

Ref : 8/1/22(vol.3)/20
MDFIP Dept. [BL/fv]

Brussels, 7 May 2020

**H.E. Mr. Gordan Grlić Radman,
Minister of Foreign and European Affairs of Croatia
and Co-President of the ACP-EU Council of Ministers
General Secretariat of Council
Rue de la Loi 175
B-1048 Brussels**

Mr. Co-President,

Re: EU's money-laundering blacklist of countries

On behalf of the President of the Council of Ministers of the Organisation of African, Caribbean and Pacific States (OACPS), I wish to extend warm congratulations to you on your current presidency of the European Union and to wish you every success during your tenure.

The Organisation of African, Caribbean and Pacific States (OACPS) has closely followed the publication by the European Commission (EC) of the European Union's (EU) money-laundering blacklist of countries. Among the new countries targeted, there are seven (7) OACPS countries, namely Barbados, the Bahamas, Botswana, Ghana, Jamaica, Mauritius, and Zimbabwe, which are deemed to pose significant threats to the EU's financial system.

The OACPS laments the unilateral publication of this list, without proper prior consultation with the OACPS countries mentioned on the list. In fact, to date, neither the OACPS Secretariat nor the Member States concerned have been apprised of this EC list. In the spirit of partnership that exists between the OACPS and the EU and both their Member States, I request that the adoption of list be postponed and call for consultations to be held, as soon as possible, in accordance with Articles 8 and 12 of the Cotonou Partnership Agreement. The OACPS and its Member States wish to express their firm commitment to combatting money laundering as well as terrorism financing.

./..

At a time when the COVID-19 pandemic is affecting the economies of States, and the EC and OACPS States are working together to find solutions to the crisis, the publishing and adoption of such a list would only worsen the health and economic crisis affecting the countries concerned, and tarnish their image.

I avail myself of this opportunity to renew to you, Mr. Co-President of the ACP-EU Council of Ministers, the assurance of my highest consideration.

(signed)

Georges Rebelo Pinto CHIKOTI
Secretary-General

Guidelines for Further Processing¹**Guidelines for further process concerning the EU list of non-cooperative jurisdictions for tax purposes****1. REVISION OF THE LIST AND DE-LISTING PROCESS**

1.1. The list of non-cooperative jurisdictions for tax purposes set out in Annex I shall be revised by the Council at least once a year and endorsed on the basis of the report from the Code of Conduct Group on Business Taxation to the Council, indicating the starting date of application of that modification.

1.2. This list may be amended or its duration may be modified under the same procedural rules as it has been endorsed. In this process, European Commission should provide the necessary technical assistance.

1.3. The decision of the Council will be based on a report of the Code of Conduct Group, in coordination with the HLWP, and prepared by the Committee of Permanent Representatives.

1.4. As soon as a jurisdiction is placed on the list, it will be informed by a letter signed by the Chair of the Code of Conduct Group, clearly stating:

a) the reasons for its inclusion in the list, and

b) which steps from a jurisdiction concerned are expected in order to be de-listed.

1.5. As soon as a jurisdiction is removed from the list, it will be swiftly informed of its removal by the letter signed by the Chair of the Code of Conduct Group, with the indication of the starting date of the application of such modification.

1.6. Decisions on listing or de-listing a jurisdiction should clearly specify the dates when the defensive measures in tax area should start or cease to apply depending on the nature of the measure, without prejudice to the respective spheres of competence of the Member States, such as adjustment of national legislation on application of defensive measures taken at national level.

Defensive Measures¹

1. Placement of a jurisdiction on the list of non-cooperative jurisdictions for the tax purposes is expected to have a dissuasive effect that encourages jurisdictions to comply with the Criteria, as set out in Annex IV hereto, and as further specified in Annexes V and VI, as well as other relevant international standards.

2. It is important to provide efficient protection mechanisms to fight against the erosion of Member States' tax bases through tax fraud, evasion and avoidance, and consequently, to apply effective and proportionate defensive measures, at the EU and national level, to the jurisdictions in the EU list of non-cooperative jurisdictions for tax purposes.

3. A number of defensive measures in non-tax area at EU level are linked to the EU list of non-cooperative jurisdictions for tax purposes and set out in Part A of this Annex.

4. Moreover, certain defensive measures in tax area could be taken by the Member States, in accordance with their national law, in addition to the non-tax measures taken by the EU, to effectively discourage non-cooperative practices in the jurisdictions placed on the list.

5. A list of such measures in tax area is set out in Part B of this Annex. As these measures should be compatible with the national tax systems of the EU Member States, the implementation of these measures is left to the competence of the Member States.

6. It is to be noted that any defensive measures should be without prejudice to the respective spheres of competence of the Member States to apply additional measures or maintain lists of non-cooperative jurisdictions at national level with a broader scope.

DEFENSIVE MEASURES IN NON-TAX AREA

Article 22 of Regulation (EU) 2017/1601 of the European Parliament and of the Council of 26 September 2017 establishing the European Fund for Sustainable Development (EFSD), the EFSD Guarantee and the EFSD Guarantee Fund contains a link to the EU list of non-cooperative jurisdictions.

Furthermore, should a link with the EU list of non-cooperative jurisdictions for tax purposes be designed in other EU legislative acts in non-tax area in the future, it would be considered as a part of the defensive measures in the context of these Council conclusions.

Overall effects on the compliance by the jurisdictions with the Criteria as a result of such measures should be monitored by the Code of Conduct Group, as well as by the HLWP in the context of implementation of the EU external strategy on taxation.

¹ Source: Council of European Union. Outcome of Proceedings – The EU list of non-cooperative jurisdictions for tax purposes – Council Conclusions. May, 2017.

B. DEFENSIVE MEASURES IN TAX AREA *

B.1. To ensure co-ordinated action, Member States should apply at least one of the following administrative measures in tax area:

- a) Reinforced monitoring of certain transactions;
- b) Increased audit risks for taxpayers benefiting from the regimes at stake;
- c) Increased audit risks for taxpayers using structures or arrangements involving these jurisdictions.

B.2. Without prejudice to the respective spheres of competence of the Member States to apply additional measures, defensive measures of legislative nature in tax area that **could** be applied by the Member States are:

- a) Non-deductibility of costs;
- b) 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;
- h) Mandatory disclosure by tax intermediaries of specific tax schemes with respect to cross-border arrangements;

B.3. Member States could consider using the EU list of non-cooperative jurisdictions for tax purposes as a tool to facilitate the operation of relevant anti-abuse provisions, when implementing Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market. For example, where, in accordance with that Directive, Member States, in transposing CFC rules into their national law, use "black" lists of third countries, such lists could cover at least the jurisdictions listed in the EU list of non-cooperative jurisdictions for tax purposes.