



Euro Tax Flash from KPMG's EU Tax Centre



[Background](#)

[Resolution on the EU list of non-cooperative jurisdictions](#)

[EU Tax Centre comment](#)

European Parliament resolution on reforming the EU list of non-cooperative jurisdictions

[European Parliament – Code of Conduct Group – Harmful Tax Regimes – EU Blacklist – Tax Transparency](#)

On January 21, 2021, the European Parliament adopted a resolution asking the Council and the European Commission to reform the EU list of non-cooperative jurisdictions for tax purposes (the EU blacklist).

The members of European Parliament recognized the “positive impact” the list has had since its introduction, but expressed concerns regarding the transparency and efficiency of the current process and requested an update of the listing criteria and a more coordinated approach to defensive measures.

Background

The EU blacklist, first adopted on December 5, 2017, is part of the EU's efforts to clamp down on tax avoidance and harmful tax practices. Out of the ninety-two jurisdictions initially chosen for screening, seventeen jurisdictions were placed on the blacklist in December 2017. The list was updated several times over the course of 2018, 2019 and 2020, following the monitoring commitments made by most of the countries and territories on the list to comply with the EU's criteria. Following the latest revision of the EU blacklist (October 7, 2020), twelve jurisdictions are included: American Samoa, Anguilla, Barbados, Fiji, Guam, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, US Virgin Islands, Vanuatu - see Euro Tax Flash [issue 435](#) for details.

Resolution on the EU list of non-cooperative jurisdictions

In its January 21, 2021 plenary meeting, the European Parliament adopted [a resolution](#) on reforming the “EU list of tax havens”. The resolution was first discussed in the Parliament’s FISC Subcommittee (permanent Subcommittee on Tax Matters) and adopted in the ECON committee in December 2020.

The plenary vote follows [a debate](#) attended by representatives of the Council and the European Commission.

While the beneficial impact of the list was acknowledged, the resolution notes that the list has failed to “live up to its full potential” and, in the Parliament’s view, currently includes jurisdictions that cover a reduced percentage out of the overall global tax revenue losses. The European Parliament therefore calls on the Council and Commission to make a number of changes to the criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions.

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

The European Parliament recommended that the process of revising and amending the EU blacklist is formalized via a legally binding instrument, no later than the end of the 2021. The resolution also asks for increased transparency in the listing and monitoring process and related work of the Code of Conduct Group, including inter alia:

- demanding that the Council tasks the Commission with the assessment of third jurisdictions based on clear and transparent criteria and with making a listing proposal to the Council that should be released publicly before its adoption;
- granting the Parliament an observer role in the Code of Conduct Group discussions;
- disclosure of all discussions and positions taken by Member States, as well as timely publication of letters and commitments taken by monitored third jurisdictions;
- disclosure of the methodology for assessing third-country regimes and regular exchanges between the Chair of the Code of Conduct Group and the European Parliament;
- screening of EU Member States using the same criteria as for third countries.

Updating the EU listing criteria

The European Parliament also calls for broader and stricter listing criteria, including :

- widening the fair taxation criterion to look at broad tax exemptions and transfer pricing mismatches, suggesting the automatic inclusion on the EU blacklist of third jurisdictions with 0% corporate tax rate or with no taxes on the profits of companies (as a standalone criterion);
- more clarity on the forthcoming transparency criterion with regard to ultimate beneficial ownership (in line with the EU’s 5th Anti-Money Laundering Directive);
- stronger screening criteria, including substance requirements based on a formulaic approach.

The Commission is encouraged to consider the benefits of adopting an initiative on a minimum taxation similar to Pillar II of the OECD/G20 Inclusive Framework, if global consensus is not reached at the OECD level on the implementation of such measures by the end of 2021.

Coordination of defensive measures

While acknowledging that the reputational impact triggered by the inclusion on the EU blacklist represents an incentive for third countries' engagement in the screening process and the measures introduced so far (e.g. the link between tax good governance standards and the use of EU funds the European Parliament calls for measures to ensure that businesses with economic links to non-cooperative jurisdictions are not eligible support under State aid and Member States' national support programmes and requests stronger countermeasures to be applied by Member States.

EU Tax Centre Comment

Resolutions adopted by the European Parliament are not binding on the Council and European Commission, therefore the adoption of any changes requested or suggested by Parliament in its resolution on reforming the EU list of non-cooperative jurisdictions is at the discretion of the two institutions. It therefore remains to be seen which of the reforms asked by Parliament will be taken on the Council's and the Commission's agendas. As noted in the text of the resolution, there is some certainty (albeit - the Parliament considers, not sufficient transparency) with regard to the beneficial ownership criterion, which was approved by the Council in November 2016 as future criterion 1.4 and which is currently under discussion in the Code of Conduct Group.

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