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## The EU list of tax havens: PROGRESS AND CHALLENGES

FINANCE

By Pamella Eunice Ahairwe, Luckystar Miyandazi and San Bilal

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The Pandora Papers by the International Consortium of Investigative Journalists (ICIJ) reveal how some of the global elite continue to channel wealth to offshore tax havens, avoiding taxes and also engaging in financial crimes, especially money laundering. Coupled with the growing inequalities among the richest and poorest of the world, which COVID-19 has not only laid bare but also exacerbated, this has rekindled debates on global tax governance and the need for the wealthy to pay their fair share of taxes and contribute to sustainable development. The European Union (EU) contributes towards international tax good governance through its list of non-cooperative tax jurisdictions (the EU list of tax havens). This list exposes non-EU countries that encourage abusive tax practices and whose tax systems affect the EU tax base.

This paper discusses the historical foundations, features, criteria and process of the EU list of tax havens and how it impacts the listed developing countries. It concludes that the EU list has reputational issues with negative economic consequences on developing countries, and its fairness remains questionable. It suggests that the EU should address the unintended economic consequences, enhance its cooperation and consultation with developing countries and resolve fairness issues by equitably applying tax good governance standards to EU and non-EU countries.

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## Acronyms

ACP	African, Caribbean and Pacific
AEOI	Automatic Exchange of Information
BEPS	Base erosion and profit shifting
CNOOC	China National Offshore Oil Corporation
CRS	Common Reporting Standard
EAG	External Action Guarantee
EC	European Commission
ECDPM	European Centre for Development Policy Management
ECOFIN	Economic and Financial Affairs Council
EFSD	European Fund for Sustainable Development
EFSD+	European Fund for Sustainable Development Plus
EU	European Union
FATF	Financial Action Task Force
G7	Group of Seven
G20	Group of Twenty
ICIJ	International Consortium of Investigative Journalists
IMF	International Monetary Fund
MNE	Multinational enterprise
NDICI-Global Europe	Neighbourhood, Development and International Cooperation Instrument—Global Europe
OACPS	EU-Organisation of African, Caribbean and Pacific States
OECD	Organisation for Economic Co-operation and Development
SDC	Swiss Agency for Development and Cooperation
SDG	Sustainable Development Goal
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
WBG	World Bank Group

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## 1. Introduction

Following the release of the Panama papers in 2016, the International Consortium of Investigative Journalists (ICIJ) has now published the Pandora papers. The latter reveals how some of the world's powerful elite continue to channel wealth to offshore tax havens, not only avoiding taxes but also engaging in financial crimes especially money laundering (ICIJ 2021). The Pandora evidence comes almost a year into 2021-2030, a crucial and determinant decade of whether countries will attain the Sustainable Development Goals (SDGs). However, the ongoing coronavirus (COVID-19) pandemic and its associated socio-economic crisis have threatened the potential of developing countries to realise sustainable economic transformation.

COVID-19 recovery processes also reveal a great divide between the richest and poorest countries. Sub-Saharan Africa in particular is expected to experience the slowest growth rate in about two decades whereas advanced economies are projected to grow at the highest rate in almost 5 decades (Gill and Nishio 2021). The African private sector has also been greatly exposed to this great recession yet African governments are unable to offer economic stimuli to protect millions of jobs offered by the private sector (Bilal et al. 2020). Indeed, developed countries possess a great financial backbone to 'build back better' while developing countries are facing serious fiscal constraints, which have threatened their achievements before the pandemic (Furceri et al. 2021; Furceri et al. 2021a; Agrawal et al. 2021).

Despite the broad regional inequalities, many large multinational corporations have been able to make significant profits.<sup>1</sup> From March 18 to December 31, the wealth of billionaires increased by US\$3.9 trillion as the masses battled with job losses, business failures, and vaccine shortages (Oxfam 2021). Such a paradox rekindles debates on global tax governance and creates a need for the well off to pay their fair share of taxes and contribute to sustainable development. International organisations such as the United Nations (UN), World Bank Group (WBG), International Monetary Fund (IMF) and Organisation for Economic Co-operation and Development (OECD) have stressed the vital role of governments in creating effective tax systems to this end (World Bank 2018). The UN has also established a sustainable tax framework to promote good tax governance and transparency among businesses and organisations.<sup>2</sup> The fight against unfair tax practices has also attracted increasing global attention leading to several evaluation listings, including the OECD list of uncooperative tax havens, European Union (EU) list of non-cooperative tax jurisdictions (EU list of tax havens) among others.<sup>3</sup>

The pandemic-induced inequalities have also encouraged global leaders to make haste on the essential steps that can promote international tax governance. On 5 June 2021, the Group of Seven (G7) reached an agreement on endorsing the international OECD/Group of Twenty (G20) inclusive framework agreement, committed to reach an equitable solution on the allocation of taxing rights and to provide appropriate coordination to affect the new tax reforms (G7 2021). On 8 October 2021, 136 countries and jurisdictions agreed to a ground-breaking tax deal, which will ensure that Multinational Enterprises (MNEs) pay their fair share of taxes – a minimum 15% tax rate starting from 2023.<sup>4</sup> The 136/140 countries and jurisdictions joined a new two-pillar plan to address the tax governance gaps that have been created by globalisation and digitalisation of economies, ensuring that MNEs pay taxes to countries in which they operate and earn profits while promoting much-needed certainty and stability to the international tax system (G20 2021).<sup>5</sup> This new international tax reform ensures that each country in the supply chain can receive its

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<sup>1</sup> [Corporate earnings growth could hit a decade-high despite COVID-19.](#)

<sup>2</sup> [SDGs and tax.](#)

<sup>3</sup> [The OECD Issues the List of Unco-operative Tax Havens.](#)

<sup>4</sup> [International community strikes a ground-breaking tax deal for the digital age.](#)

<sup>5</sup> [130 countries and jurisdictions join bold new framework for international tax reform.](#)

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fair share of taxes from the largest and most profitable multinational companies (including digital companies) through the reallocation of taxing rights (Djankov 2021; G20 2021, EC 2021).

Since 2016, the EU has also taken up the challenge of promoting tax good governance in a way that is well-aligned with the international standards especially those presented by the OECD/G20. This has been through its famous list of non-cooperative tax jurisdictions, which is based on OECD standards for tax transparency.<sup>6</sup> Through its list of non-cooperative tax jurisdictions, the EU intends to improve the international tax governance among its member states and developing countries whose tax systems affect its tax base. Within the EU, the European Commission (EC) has updated its rules as per the OECD global standards to combat aggressive tax practices by big corporations.<sup>7</sup> Outside the EU, the focus is on third countries that are not playing fair with their tax systems to curb tax fraud, tax evasion, and tax avoidance, while at the same time, achieving a level playing field that would benefit developing countries in this agenda (CoEU 2016).

The latest EU listings of non-cooperative tax jurisdictions for tax purposes has however attracted public discourses about the usefulness, effectiveness, fairness, credibility and legitimacy of the listing process. To the EU, the listing is its concrete measure to address global tax avoidance and abuses, albeit, it is at times perceived by developing countries as a political tool that is applied to pressurise third countries so that they can comply with international and EU good governance principles in the tax area. The EU list of non-cooperative tax jurisdictions is also thought of as somewhat unfair as it excludes some of the most prominent tax havens within the EU such as Luxembourg, the Netherlands, and Ireland, and in other European countries like Switzerland (Abraham 2019; Oxfam 2017).

The EU listing has led to better legislation and tax practices of some developing countries in line with EU standards which has consequently improved tax good governance. This is signalled by the progress achieved by several countries as they have been able to move from the 'blacklist' to the 'greylist' and even the 'whitelist.' This achievement however may come along with negative consequences and these may impede the development of some countries and jurisdictions. The EU listing of non-cooperative tax jurisdictions for tax purposes has also increased attention and awareness on tax governance issues in developing countries and has allowed the listed countries to engage with the EU through technical cooperation and at times political cooperation to address the identified tax issues. Technical cooperation also advances knowledge sharing and promotes capacity building. The EU listing has also fostered international tax transparency as it requires developing countries to be part of the Global Forum on transparency and exchange of information for tax purposes.<sup>8</sup>

Although the EU listing stresses the cooperation between the EU and developing countries, the limited cooperative and consultative nature of the process sought by the EU has at times been perceived as a diktat that makes markets uncertain, creates financial instability, and undermines the credibility of the targeted developing countries. Secondly, formerly listed countries such as Mauritius and Morocco are also international financial centres that are of regional importance. These financial hubs act as gateways for international investors and financial institutions (including those from Europe) to invest in Africa. The listing of such countries and the likely threats in the form of sanctions (defensive measures) has negative implications that may be far beyond national borders.<sup>9</sup>

The issue is even more sensitive in the face of the COVID-19 that has imposed a socio-economic and political crisis on Africa, creating a need for more investments to address these challenges. The spontaneous nature of the EU listing has however caused reputational damages, making some partners perceive it as a name and shame initiative. This is also more likely to discourage foreign direct investments and even force the existing ones to pull out amid

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<sup>6</sup> [List of Unco-operative Tax Havens.](#)

<sup>7</sup> [Fair Taxation: Commission presents new measures against corporate tax avoidance.](#)

<sup>8</sup> [Global Forum members.](#)

<sup>9</sup> [Questions and Answers on the common EU list of non-cooperative tax jurisdictions.](#)

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COVID-19. For example, some countries such as Belgium, Denmark, France and Poland have already indicated that companies whose businesses are linked to blacklisted countries might not benefit from their COVID-19 relief measures (Meredith 2020). The listing has also raised concerns on fairness considerations, signalling double standards on the side of the EU and mixed reactions from the civil society. These have demonstrated that developed countries lead to more global tax losses (98% – \$419 billion) than developing countries (2% – \$8 billion) (Cobham et al. 2020)

In helping to address harmful tax policies and promoting tax transparency, the EU listing process needs to apply appropriate cooperation and consultation measures with developing countries while continuing to use formal listing and defensive measures as a last resort. The legitimacy of the process would also be improved if the EU could more effectively address the scepticisms on the fairness and inclusivity of its listing process, clearly addressing the lack of policy coherence between its internal and external processes (Oxfam 2017). This paper, therefore, intends to provide a foundation for dialogues and engagements between the relevant stakeholders in the EU and listed developing countries. It presents the origin and motive of the listing, the listing criteria, and the listing process. Finally, it assesses policy achievements of the listing as well as the challenges encountered especially by the listed countries.

## 2. A snapshot of the EU listing: origin and motive

On 1 December 1997, the EU adopted a resolution on Code of Conduct for business taxation as a political commitment to curb harmful tax competition among its member states through the standstill and rollback processes.<sup>10</sup> The standstill process required that EU member states re-examine and amend or abolish existing harmful tax competition measures while the rollback process called for refraining from introducing new ones in the future. The adoption of these fair tax competition policies has since been extended beyond Europe, to third countries through a series of requests and policy processes.

In May 2013, the European Council requested that the EU tighten its grip on tackling tax fraud, tax evasion and aggressive tax planning at the national, EU and global levels (CoEU 2016). This request was later recalled by the Economic and Financial Affairs Council (ECOFIN) ministers who supported the establishment of an EU list of non-cooperative jurisdictions and the associated defensive measures. On 28 January 2016, the EU announced a new process for listing third countries that refuse to play fair on tax matters, and this process would provide a basis for the EU to take on a coordinated wide response in dealing with global corporate tax avoidance and enhance fair tax competition.

On 5 December 2017, the European Council adopted its first-ever EU list of non-cooperative jurisdictions for tax purposes. This list, which aims at promoting tax good governance and has its basis on the global standards developed by the OECD should not be confused with the EU list of high-risk third countries.<sup>11</sup> Unlike the former, the latter aims at promoting good financial governance, builds on the Financial Action Task Force (FATF) listing, and focuses on developing countries that harbour strategic deficiencies in their anti-money laundering and counter-terrorist financing regimes.<sup>12</sup> Although the two lists complement each other, they have different objectives, criteria, listing processes, and countries under either list face disparate consequences (EC 2017). They also have different legal

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<sup>10</sup> [Code of Conduct Group \(Business Taxation\)](#).

<sup>11</sup> [Fair Taxation: Commission presents new measures against corporate tax avoidance](#).

<sup>12</sup> [Article 9 of Directive \(EU\) 2015/849 \(4th Anti-Money Laundering Directive\)](#) legally requires the European Commission to identify high-risk third countries that have strategic deficiencies in their anti-money laundering, and counter terrorist financing regimes through adoption of delegated acts, to protect the integrity of the EU financial system and the proper functioning of the internal market, reinforce internal security, and promote sustainable development.

bases and are managed by unique parties as presented in Table 1, however, this paper will focus on the EU list of non-cooperative tax jurisdictions for tax purposes, also the EU list of tax havens.

**Figure 1: Features of EU list of non-cooperative tax jurisdictions and EU list of high-risk third countries**

ELEMENT	EU LIST OF NON COOPERATIVE TAX JURISDICTIONS	EU LIST OF HIGH RISK COUNTRIES
 <b>LEGAL BASIS</b>	It was first conceived in the Commission's 2016 External Strategy for Effective Taxation.	Regulatory requirement as under the Fourth and Fifth Anti-Money Laundering Directives
 <b>OBJECTIVE</b>	It addresses the external risks that third countries, which do not comply with international tax good governance standards, pose to Member States' tax bases.	Addresses risks that third countries with deficiencies in their anti-money laundering and counter-terrorist financing regimes cause to the EU's financial system.
 <b>MANAGEMENT</b>	Is managed directly by the Member States, through the Code of Conduct Group, and with the support of the Commission.	Is managed and compiled entirely by the European Commission as provided for in Article 9 of Directive (EU) 2015/849
 <b>LEADING ROLE</b>	Council led process and the council makes conclusions.	Commission led process, as established by the EU anti-money laundering rules.
 <b>DECISION MAKING</b>	The Code of Conduct Group decides which jurisdictions should be listed and makes a recommendation to EU Finance Ministers, who take the final decision.	Entirely compiled by the European Commission based on its own methodology for identifying high risk third countries.
 <b>MAIN EXTERNAL PARTNER</b>	Collaborates with the OECD throughout the entire listing process, for consistency of its 'tax purposes' listing with the international standards.	Collaborates with the Financial Action Task Force (FATF) in the third countries listing for compliance with international standards.

Source: Adapted from the EC (2019, 2020)




### 3. Listing non-cooperative tax jurisdictions: state of play

The EU listing of non-cooperative tax jurisdictions is an outcome of gradual coordinated policy efforts among the Council of the European Union including the Economic and Financial Affairs Council and the Code of Conduct Group, the European Commission, the OECD and other relevant players. It involves a series of inter-linked procedures that are intended to achieve the objectives of the listing. These are; the criteria for listing non-cooperative tax jurisdictions, the listing process, the linked repercussions including the defensive measures, and the list revision and delisting processes.

### 3.1. Criteria for listing non-cooperative tax jurisdictions

The council endorsed the criteria for screening out jurisdictions that have harmful tax practices in November 2016, with the end goal of promoting tax certainty and inspiring economic growth. The three-point criterion assesses countries as non-cooperative tax jurisdictions based on: tax transparency, fair taxation, and the implementation of anti-base erosion and profit shifting (BEPS) measures as explained in Table 2.

**Figure 2: Criteria for listing non-cooperative tax jurisdictions**

CRITERIA	OBJECTIVE	REMARKS
<b>TAX TRANSPARENCY</b> 	To assess if the jurisdiction complies with the international standards on information exchange.	Commitment to implement the OECD automatic exchange of information (AEOI), either by signing the Multilateral Competent Authority Agreement (MCAA) or through bilateral agreements.  Membership of the OECD led Global Forum on transparency and exchange of information for tax purposes and satisfactory rating.  Signatory and ratification of the OECD Multilateral Convention on Mutual Administrative Assistance or network of agreements covering all EU Member States.
<b>FAIR TAXATION</b> 	Intends to assess if a country has harmful tax practices or regimes.	The jurisdiction should have no tax regimes that facilitate offshore structures which attract profits without real economic activity.
<b>ANTI-BEPS</b> 	Intends to assess if a country applies anti- base erosion and profit shifting measures.	Membership of the OECD/G20 Inclusive Framework on BEPS or implementation of BEPS minimum standards.

Source: Adapted from the [European Commission](#)

### 3.2. Cooperation with the OECD on the listing criteria

To ensure its adherence with international/global standards on tax governance, the EU strongly builds its criteria for listing of non-cooperative tax jurisdictions on the works of the OECD. The EU also leaves room for its criteria to be adjusted in the future as can be required by changes in global markets and tax reforms led by the OECD/G20. It is important to note that in 2000, the OECD employed its criteria that it had established in 1998 to identify and list several jurisdictions as uncooperative tax havens (OECD 2000, 2009).<sup>13</sup> By the end of 2009, all the listed jurisdictions

<sup>13</sup> [The 1998 OECD criteria for identifying tax haven included 4 key factors](#), that is: No or nominal tax on the relevant income; Lack of effective exchange of information; Lack of transparency; and No substantial activities.



had agreed to implement the OECD’s standards of transparency and exchange of information.<sup>14</sup> OECD has also collaborated with the G20 countries to fight against tax avoidance and tax evasion by establishing the OECD/G20 Inclusive Framework on BEPS, which enables more than 135 countries and jurisdictions to work jointly to promote good tax governance (OECD 2013, 2013b).<sup>15</sup>

For its Anti-BEPS criterion measure, the European Council considers whether a jurisdiction has membership to the OECD/G20 Inclusive Framework on BEPS and its ability to implement the BEPs minimum standards before it lists it as a non-cooperative tax jurisdiction. The EU also assesses the tax regimes of the jurisdictions to ensure that they adhere to the standards of the OECD Forum on Harmful Tax practices (OECD 2021, EC 2017). As regards the tax transparency assessment, the EU also considers the OECD Automatic Exchange of Information (AEOI) standard – the Common Reporting Standard (CRS) that requires the annual exchange of information on financial accounts held by non-resident individuals and entities in a pre-defined format. The CRS is also a result of an OECD and G20 partnership and requires jurisdictions to annually and automatically exchange the information obtained from their financial institutions with other jurisdictions.<sup>16</sup> The EU requires jurisdictions to commit and effectively implement the AEOI CRS with at least a “largely compliant” rating by the Global Forum (CoEU 2016a, OECD 2017).

### 3.3. The listing process of non-cooperative tax jurisdictions

The listing of non-cooperative tax jurisdictions is a continuous process as illustrated in Figure 1<sup>17</sup>. It constitutes establishing the listing criteria, screening countries against these criteria, engaging with countries that do not comply with it, listing and delisting those that (do not) reform to comply with it and continued monitoring to ensure adherence to the stated reforms.<sup>18</sup>

**Figure 3: The EU listing process of non-cooperative tax jurisdictions<sup>19</sup>**



Source: Adapted from the [European Commission](#)

<sup>14</sup> [List of Unco-operative Tax Havens.](#)

<sup>15</sup> [Base erosion and profit shifting \(BEPS\) are tax planning strategies used by multinational enterprises that exploit gaps and mismatches in tax rules to avoid paying tax.](#)

<sup>16</sup> [What is the CRS?](#)

<sup>17</sup> The listing process summarised in this section is advised by the Council of the Europe Union’s outcome of the proceedings on the criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes.

<sup>18</sup> [Taxation: EU list of non-cooperative jurisdictions.](#)

<sup>19</sup> [Common EU list of third country jurisdictions for tax purposes.](#)

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From Figure 1, the European Commission supports the Council by doing the preparatory work (stage 1/scoreboard) for member states of the Code of Conduct Group using the scoreboard tool.<sup>20</sup> The criteria in section 3.2 are also a cornerstone in this pre-analysis of the listing process. Its elements, that is, transparency and exchange of information; the existence of preferential tax regimes; and no corporate income tax or a zero corporate tax rate are used as risk indicators and form a basis upon which the scoreboard examines jurisdictions for further screening.<sup>21</sup> The scoreboard also employs the risk indicators in complementarity with the economic, financial, and stability objectives as represented by the jurisdiction's economic ties with the EU, its institutions' stability levels, and the soundness of its financial sector respectively. Together they measure the risk levels posed by the nature of the jurisdiction's tax governance on the European internal markets. The findings from the scoreboard methodology advise the Code of Conduct Group on what jurisdictions to consider for further screening.

The Code of Conduct Group for Business Taxation employs the criteria in Table 2 to conduct and oversee the screening process but with the support of the General Secretariat of the Council (CoEU 2016a). This screening process also builds on the Global Forum on Transparency and Exchange of Information for Tax Purposes as well as the OECD/G20 Inclusive Framework for Tackling Base Erosion and Profit Shifting.<sup>22</sup> Jurisdictions that are selected for screening are informed and invited to transparently take part in this process through written contacts and bilateral dialogues to either explore solutions to the concerns in their tax systems or provide high-level commitments to address them.

Based on the outcome of engagements with the jurisdictions, the state of play, and the necessary preparatory steps taken by the Code of Conduct Group for Business Taxation, the Council coordinates with the High-Level Working Party on Tax Questions and endorses the EU list of non-cooperative tax jurisdictions. The listed jurisdictions are sent letters, communicating with clarity why they have been listed and what needs to be done to be delisted. The EU cooperates with and closely monitors these jurisdictions to take into consideration any addressed prerequisites. The council regularly updates the EU list based on information available to the Commission or the Code of Conduct Group for Business Taxation.

### 3.4. The white list, grey list and black list

The EU listing of non-cooperative tax jurisdictions can be classified into three categories: whitelist, greylist, and blacklist (EC 2016).<sup>23</sup> The 'whitelist' contains jurisdictions that cooperate with the EU, which meet all criteria requirements as stated in Table 2 at the time of the release of the EU list of non-cooperative tax jurisdictions and have implemented all their high-level commitments as required by the European Council.

The 'greylist' comprises jurisdictions that belong to Annex II of the EU list of non-cooperative tax jurisdictions (CoEU 2020). These are jurisdictions that are cooperating with the EU to implement their high-level commitments within a given timeframe. The EU reviews their statuses regularly, and if they fulfil all their obligations, they can be moved up to the 'whitelist'. The Council and the Commission work hand in hand to closely monitor the 'greylist,' are expected to offer any necessary technical assistance, and to update the status of the list based on the information available. For instance, as of 5 October 2021, Anguilla, Dominica and Seychelles are on the 'greylist' because they have not yet complied with all international tax standards but have committed to implementing tax good governance

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<sup>20</sup> [Scoreboard of indicators: methodology.](#)

<sup>21</sup> Ibid 20.

<sup>22</sup> With 161 members, the [Global Forum on Transparency and Exchange of Information for Tax Purposes](#) is the leading international body working on the implementation of global transparency and exchange of information standards around the world.

<sup>23</sup> [EU promotes tax good governance worldwide.](#)

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principles (CoEU 2021).<sup>24</sup> As of February 2020, Botswana, Namibia, Morocco, Saint Lucia among others were on the greylist as non-cooperative jurisdictions that had committed to implementing tax good governance principles.<sup>25</sup>

The 'blacklist' contains jurisdictions that belong to Annex I of the EU list of non-cooperative tax jurisdictions. These are jurisdictions that do not cooperate with the EU and which have not fully implemented or expressed any high-level commitment to implement any of the concerns of the listing criteria within the set deadline. The blacklist is also regularly reviewed and monitored by the Commission and the Code of Conduct Group to assess the progress of the blacklisted jurisdictions for the EU list updating.<sup>26</sup> As of October 2021, nine jurisdictions including American Samoa, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu were on the blacklist.<sup>27</sup> Other jurisdictions that were on the blacklist for not having implemented the concerns in their tax systems by February 2020 were Barbados, Seychelles, Trinidad and Tobago, and Fiji.

Notably, at any updating of the EU list of non-cooperative tax jurisdictions, countries can be moved to any of the three lists provided they have or have not fulfilled the obligations at hand. 'Blacklisted' countries can be 'greylisted' if they express a high-level commitment to cooperate with the EU and address the concerns in their tax systems. Though Anguilla, Dominica and Seychelles were on the 'blacklist' in February 2020, they were able to move to the 'greylist' in October 2021 (CoEU 2021). Countries on the greylist may also be blacklisted if they fail to implement all their commitments by the agreed timeframe. Barbados, United Arab Emirates, and the Marshall Islands were moved from 'greylist' to 'blacklist' for not having followed up the commitments they had previously made in the agreed timeline (CoEU 2017).<sup>28</sup>

Jurisdictions can also be moved to the 'whitelist,' that is, be generally been delisted. For instance, having fulfilled all the requirements of the criteria, Australia, Eswatini and Maldives were delisted as of October 2021.<sup>29</sup> These jurisdictions have addressed all the concerns of the EU through their high-level commitment and have aligned their tax systems with the good tax governance criteria, deserving to be removed from the listing document (CoEU 2018). The Code of Conduct delists such countries in the updated list and recommends the council to delist them as well. The new list then officially applies once it has been published in the Official Journal of the European Union.<sup>30</sup>

It is worth noting that in 2020, EU member states agreed that the EU list of non-cooperative tax jurisdictions for tax purposes would be updated no more than twice a year so as to ensure a more stable listing process for business certainty and for effective application of defensive measures against listed countries.<sup>31</sup>

### 3.5. The economic sanctions faced by the listed tax havens

In 2016, the Council of the European Union endorsed and provided conclusions that now allow the EU and its member states to impose defensive measures on the listed countries (CoEU 2016, 2016a, Schober 2017).<sup>32</sup> Defensive measures may be tax area or non-tax area and aim at preventing the listed jurisdictions from using their legislation, policies or administrative practices for aggressive tax evasion and abuse (CoEU 2019). Defensive measures may also vary depending on the national tax system of each EU member country and Table 3 presents the different defensive

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<sup>24</sup> [Taxation: Anguilla, Dominica and Seychelles removed from the EU list of non-cooperative jurisdictions.](#)

<sup>25</sup> [Official Journal of the European Union 2020.](#)

<sup>26</sup> [Questions and answers on the EU list of non-cooperative tax jurisdictions.](#)

<sup>27</sup> Ibid 25.

<sup>28</sup> [Questions and answers on the EU list of non-cooperative tax jurisdictions.](#)

<sup>29</sup> Ibid 26.

<sup>30</sup> Ibid 19.

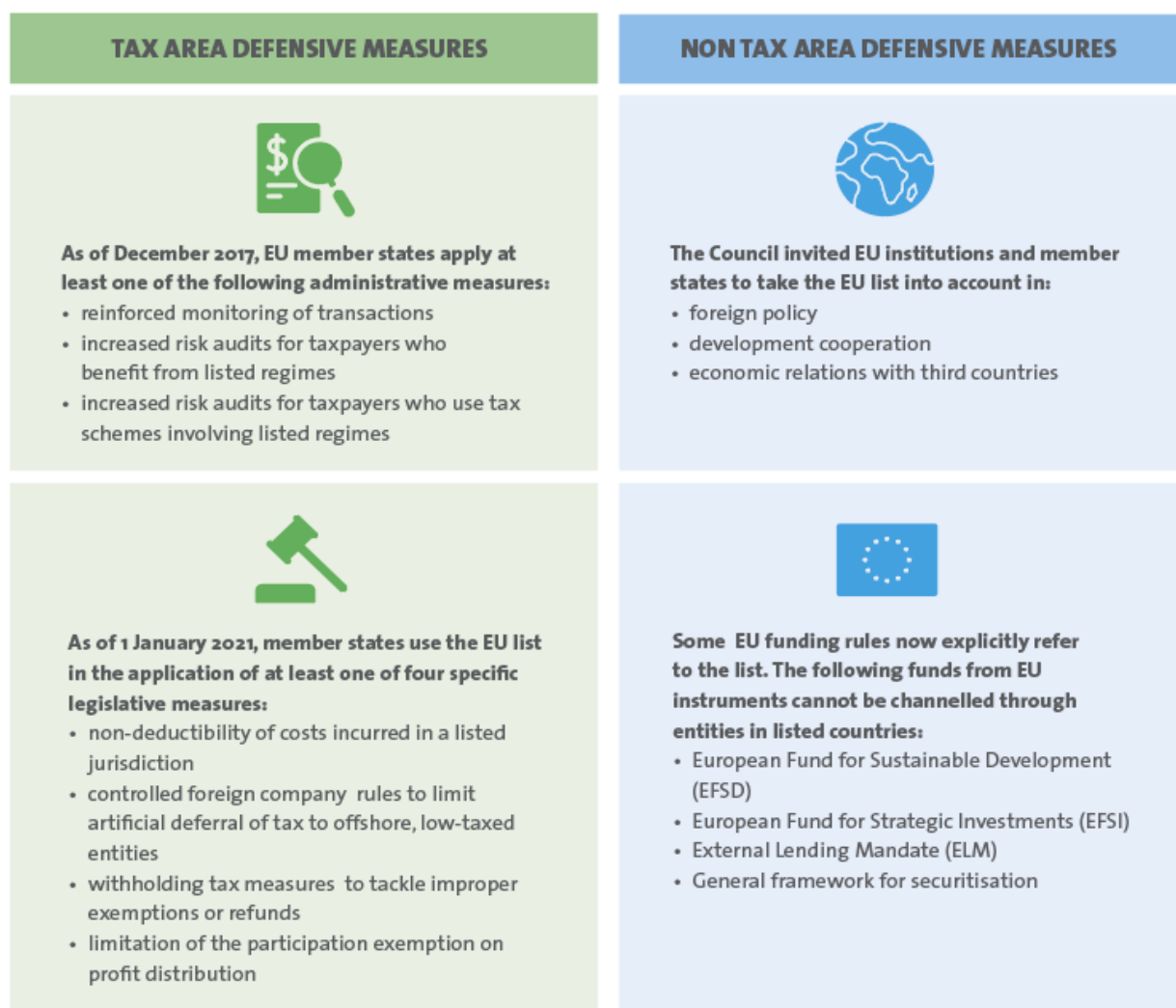
<sup>31</sup> Ibid 20.

<sup>32</sup> Ibid 21.

measures that the EU and its member states may apply to the listed countries, particularly those on the ‘greylist; and ‘blacklist.’

Table 3 also demonstrates that the EU can also use its external development policies to impose non-tax defensive measures on non-compliant tax jurisdictions. In its 2021-2027 multiannual financial framework, the EU has adopted the new external programming, the Neighbourhood, Development and International Cooperation Instrument – Global Europe (NDICI-Global Europe), which intends to offer developing countries about €79.5 billion in interalia loans, grants, and human assistance through the External Action Guarantee (EAG) and the European Fund for Sustainable Development Plus (EFSD+). However, as per the defensive measures outlined in Table 3, listed countries will not be able to benefit from the EAG and EFSD+.

**Figure 4: Defensive measures on the EU list of non-cooperative tax jurisdictions**



*Source: Adapted from the CoEU (2019)*

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## 4. Has the EU list of tax havens delivered on tax good governance?

The EU list of tax havens has **increased the attention and awareness on the tax good governance issue in developing countries through flagging non-compliant jurisdictions and sometimes subjecting them to defensive measures**. It is also argued to have helped improve tax good governance in developing countries. According to the European Commission, **the EU listing process has eliminated more than 120 harmful tax regimes globally, encouraged dozens of countries to apply tax transparency standards in their tax systems and led many jurisdictions to join international tax platforms** such as the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes and OECD/G20 Inclusive Framework for Tackling Base Erosion and Profit Shifting (EC 2020). Empirical evidence also demonstrates that countries listed by the EU are more likely to join OECD/G20 Inclusive Framework, increasing their chances of implementing the BEPS minimum standards (Collins 2020)

**The EU listing has also provided opportunities for engagement between the EU and developing countries.** The listing process requires the Code of Business Conduct Group in cooperation with the Commission to **engage extensively in technical and political consultations with the listed countries to ensure that they make high-level commitments and implement the listing criteria requirements**. Several countries from the Africa, Caribbean and the Pacific regions have been able to cooperate with the EU to fulfil the requirements necessary for them to be removed from both the ‘greylist’ and the ‘blacklist’. By 2021, countries such as Morocco, Namibia, Australia, Eswatini and Maldives have been removed from the EU list of non-cooperative tax jurisdictions after implementing all the necessary tax reforms.<sup>33</sup>

**Based on the listing process, it can be argued that to some extent, the EU has been able to encourage jurisdictions to reform their tax systems, aligning them not only with the Code of Conduct Group screening criteria but also with the OECD/G20 international standards.** Since 2017, more than 120 countries have been listed and delisted, directly showing that such developing countries have been able to meet international tax standards as required by the EU. Jurisdictions that are usually ‘blacklisted’ have harmful tax reforms that may accommodate tax fraud, tax evasion and tax avoidance both within and beyond their borders. When ‘blacklisted’ jurisdictions are eventually delisted, the EU verifies them as having made the required tax good governance reforms.

Harmful tax practices do not only harm the EU tax base; they may also harm the countries in which they are being practised. Practices such as profit shifting lower government revenues and may attract unfavourable tax policies such as higher taxes rates for other taxpayers, discouraging especially small and medium enterprise formation (Janský 2020). If the EU list of non-cooperative tax jurisdictions helps eliminate such harmful tax practices, **it may also directly or indirectly address the harmful and unfair tax practices that exist in internal business markets of the listed jurisdictions, broadly boosting their capacity to mobilise increased internal resources that can support socio-economic development projects.**

Generally, the EU list of tax havens has the potential to help improve legislation and tax practices of developing countries in line with the EU and the overall international standards. However, available literature stresses that there is difficulty in proving this effect by the EU as most of the blacklisted jurisdictions would have taken independent steps to be part of the OECD/G20 tax bodies and also address some of the harmful tax practices in their tax systems (EC 2019; Collins 2020). Nevertheless, the role that the EU has played in pressurising these countries to reform their tax systems cannot be underestimated.

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<sup>33</sup> Ibid 25 and [Timeline - EU list of non-cooperative jurisdictions](#).

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## 5. Drawbacks and setbacks of the EU listing of tax havens

The EU listing of tax havens has not occurred without any challenges. Several drawbacks and setbacks both on the side of listed jurisdictions and on that of the EU have been encountered. The EU hopes to use its listing of tax havens to trigger positive changes in legislation and practices through consultation and cooperation processes with the concerned jurisdictions and using defensive measures to pressure reforms where necessary.<sup>34</sup> This is not intended to be a name and shame exercise, however, it may be having this very effect on the blacklisted jurisdictions and has over the years raised tensions and questions on its legitimacy (Valderrama 2020).<sup>35</sup> Other concerns have also been raised on the lack of consultations and the unfairness of the process as discussed in the subsections below.

### 5.1. Reputational damages and wider economic development effects

The immediate and direct negative impact faced by the non-cooperative tax jurisdictions is the reputational damages that may halt the flow of additional financing for sustainable development from the public and private investors. The listed jurisdictions may directly suffer sanctions in the tax area and non-tax areas from the EU and its member states as presented in subsection 3.5. **The Council conclusions and endorsements allow the EU to temporarily cut off the listed countries from receiving financing under the EU external investment plan including European Fund for Sustainable Development (EFSD) – now the European Fund for Sustainable Development Plus (EFSD+), and the external lending mandate (CoEU 2019).** Member states that offer direct financing programmes are also discouraged from supporting sustainable development projects in the listed countries by using their foreign policies, development cooperation, and economic relations with third countries to rather impose non-tax defensive measures (CoEU 2019).

Such defensive policy measures were embraced during the COVID-19 pandemic when EU member states, such as Belgium, Denmark, France and Poland indicated that companies whose businesses were linked to blacklisted countries would not benefit from their COVID-19 relief measures (Meredith 2020). **Penalising companies that are highly investing in listed developing countries during a recession such as that induced by the current COVID-19 pandemic runs counter to the spirit of the EU, which aims at supporting these countries to realise a sustainable and inclusive economic recovery.** During the December 2020 Public hearing by the EU Subcommittee on Tax Matters, it was stated that some of the listed jurisdictions usually have little economic weight on the global tax landscape but dire economic challenges with limited resources to address them and excessively depends on international trade (Valderrama 2020).<sup>36</sup> This calls on the EU and its member states to be considerate when applying sanctions in the form of defensive measures on these countries.

Overall, the EU external dimension programmes are pro-poor and aim at supporting developing countries and vulnerable groups of people including women, youth, children and the poor. The EU has for decades provided financial assistance and technical support to such countries to help improve the quality of life of their people and create broad economic transformation. **Cutting off critical development financial, technical and policy dialogue programmes would negatively impact the economic growth and development of the listed jurisdictions directly signalling policy incoherence on the side of the EU.**

**It may also discourage private external investments in these countries as investors in blacklisted countries are likely to face stricter due diligence measures, limiting the overall flow of foreign direct investments (Fox 2020; Rusina 2020).** In Tunisia, for example, the EU blacklisting is alleged to have discouraged foreign direct investment

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<sup>34</sup> Ibid 31.

<sup>35</sup> [FISC Public Hearing on 1st December 2020.](#)

<sup>36</sup> [About the BEPS Inclusive Framework and the role of the OECD.](#)

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flows and weakened efforts to pursue democratic policies (Cohen-Hadria 2017; Toplensky, Peel & Harris 2018). Furthermore, aggressive tax strategies imposed by the EU on developing countries may limit the competitiveness of exports from developing countries on the EU market, reducing their export earnings (Valderrama 2020, 2019).

**Political representatives of the listed countries have also expressed concerns regarding the legitimacy of the EU list of non-cooperative jurisdictions for tax purposes.** Though the list is now being updated twice a year, mostly in February and October, countries that meet their commitments earlier still have to wait for the next official update. This waiting period may also delay other socio-economic programmes. Morocco, for instance, which was on the grey list from 2017 to 2021, found it ‘uncomfortable’ to wait for five more months amid the COVID-19 pandemic to get out of the list after having implemented all the required tax reforms (Berrada 2020). The ambassador of Botswana to the EU, Samuel Outlule, also stressed that the September 2020 EU listing of tax havens came as a shock and its release during the pandemic could destroy the economy of Botswana (Fox 2020).

**The EU listing may also have impacts beyond the national borders of the listed jurisdictions especially for the case of countries that double as financial hubs hosting various regional business headquarters.** Developing countries need external financing and investments to foster sustainable development through job creation and increased overall national output (economic growth). However, not all countries are politically stable and economically sound to attract big multinational companies. Some countries, such as Mauritius and Morocco act as key international financial centres in Africa, channelling financial and investment flows to the rest of the continent, including from international development financiers. Others, such as Botswana and Tunisia, seek to offer competitive investment packages, such as tax holidays and tax incentives, in the hope to attract multinational corporations and other private investors.

Given the general stable political environments of these countries, investors utilise them as regional gateways to investing in the continent. For instance, in 2018, about US\$36.4 billion was invested in Africa via Mauritius, while Morocco-based Casablanca Finance City has seen a hike of funds invested in greenfield projects of Africa rise from US\$61 million in 2010 to US\$5 billion in 2015 (Klasa 2019; SBM 2019). **Blacklisting such tax jurisdictions and subjecting them to defensive measures may have long-lasting effects on the reputation of these financial centres, potentially lowering the indirect financing of development projects on the entire African continent.**

**The EU listing of non-cooperative tax justifications for tax purposes is even more sensitive in the face of the COVID-19 pandemic and its unprecedented socio-economic and political consequences.** Amid the pandemic, many large multinational corporations from developed countries have been able to make significant profits. Over the period March 18 and December 31, the wealth of billionaires increased by US\$3.9 trillion as the masses battled with job losses, business failures, and vaccine shortages (Oxfam, 2021). Developed countries have also been able to vaccinate their masses and possess a great financial backbone to ‘build back better,’ whereas, developing countries are facing serious fiscal constraints, which have threatened their achievements before the pandemic and continue to limit their ability to realise the United Nations agenda 2030 and some continental agendas such as the Africa agenda 2063 (Furceri et al. 2021; Furceri et al. 2021a; Agrawal et al. 2021).<sup>37</sup>

Particularly in sub-Saharan Africa, the pandemic is expected to push about 26 million people to extreme poverty (UN 2020). COVID-19 has also triggered business inactivity globally and even worse in developing countries that lack social protection policies to protect investors and their employees. This has increased the capital fights, and in consequence, is expected to reduce the African foreign direct investments by circa US\$10 to US\$20 billion this year (UNCTAD 2020). As of September 2020, the United Nations estimated that the African continent needs about

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<sup>37</sup> [Agenda 2063: The Africa We Want.](#)

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US\$200 billion to recover from the COVID-19 health and economic crisis (UNCTAD 2020). For the continent to recover economically, it needs more countercyclical investments, which should be facilitated, not impeded.

Ensuring proper tax governance could help strengthen the confidence of domestic and international investors, but in doing so, the EU should give careful attention to possible unintended consequences that may unnecessarily damage the reputation of countries, limiting the much-needed financing and investment flows that would otherwise support economies to have an inclusive and sustainable recovery.

## 5.2. Consultation, cooperation, and support should be pragmatic

The listing process requires that the Code of Conduct Group in cooperation with the Commission engage extensively in technical and political consultations with the countries in question to ensure that they make commitments and implement the listing criteria requirements. This is a crucial stage in the process, as it provides an opportunity for constructive engagement and dialogue between the EU and the targeted tax jurisdiction. The political salience of the issue however differs from country to country, both in the way the EU engages with the targeted country and in the way the country responds to this engagement or not.

**While the blacklisting process is a well-codified exercise by the EU, it is also subject to power relations and political dynamics driven by specific interests, as seen in the case of Turkey whose inclusion on the EU list of tax havens has divided the EU member states (Koutsouva 2020).**<sup>38</sup> Some EU member states opposed giving Turkey additional time to cooperate on tax matters to avoid being blacklisted whilst Germany pushed back against its inclusion – as Berlin is trying to improve the bilateral relationship to maintain Ankara’s cooperation on migration and other dossiers (Valer 2021).

**The quality and extent of the political and technical consultations are therefore critical as a warning system, to stimulate reforms that would prevent blacklisting.** In the case solutions failed to be found in time, and a country ends up being blacklisted by the EU, political and technical engagement remain crucial to discuss the necessary steps on how they can meet the criterion requirements, commit and implement them and eventually become delisted (CoEU 2017, 2019). **Cooperation, consultation, and technical support are also key to help address the possible tense relationship resulting from the blacklisting process.** This is a diplomatic as much as a technical and political process. Based on GLOBTAXGOV findings, some countries lack the technical capacity to enforce anti-avoidance measures (Valderrama 2020). For such countries, development cooperation and technical assistance might help pave the way out of the blacklisting process in a cooperative manner. To this end, the EU should put greater efforts into adopting a more transparent and comprehensive approach to its blacklisting process, building on coherent technical, political, diplomatic and development assistance strategies.

**Many developing countries have indicated a lack of consultation and prior warning before blacklisting.** A country like Barbados has appalled the EU blacklisting, arguing that the process has ignored its efforts to correct the deficiencies in its tax compliance for the period 2015 to 2018 (Copper-Ind 2020). In Morocco, officials argue that the EU is “only out to protect its own interests and deter other powers like China from accessing the Moroccan market” (Berrada 2020). All these perceptions present a challenge that the EU ought to address to ensure ownership of its listing while striking a balance between fighting harmful tax policies within and beyond Europe. To Valderrama (2021), the EU should employ its listing in a clear transparent way that takes into account the needs of developing countries and these include not only clarity on fair taxation but also fair tax competition.

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<sup>38</sup> [EU ‘black’ list of tax havens, Turkey’s fate still divides Member States.](#)



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**The partnership between the EU and its member states, of one part, and the members of the Organisation of African, Caribbean and Pacific States (OACPS) on the other part (that is, the post-Cotonou Agreement that was concluded on 15 April 2021) offers a good basis for more transparent and structured dialogue and cooperation on tax issues (tax evasion and avoidance) and illicit financial flows.**<sup>39</sup> The two parties commit to implementing the principles of good governance in the tax area by promoting international cooperation.<sup>40</sup> Article 12 of the Agreement on good governance in the tax area commits the parties to “*cooperate to enhance capacity to comply with these principles and standards and reap the benefits of a thriving rules-based financial sector. They agree to engage in timely partnership dialogue at bilateral and international levels on tax matters.*” (Art.12.6, *emphasis added*).<sup>41</sup>

### 5.3. Fairness considerations: double standards and mixed reactions

The EU listing of non-cooperative tax jurisdictions has also attracted questions on its fairness from civil society organisations, academia, regional advocacy organisations and even from within the EU itself. Indeed, the EU Parliament referred to the EU list of tax havens as “confusing and inefficient,” underlining its limitation in targeting the actual tax havens.<sup>42</sup> Other stakeholders have emphasised that the EU fails to blacklist big jurisdictions that are its member states and yet, lists small countries like Mauritius, Morocco, Botswana and Barbados which cannot do as much harm as the big states on the global tax scale (Pence 2018).

**The EU stresses that its list of tax havens is a tool for securing a level playing field for developing countries, however, available evidence suggests that the ground may not be levelled** and this would highly be due to different perceptions on what fairness actually is, which may differ for the EU and developing countries (EP 2018; Burgers and Valderrama 2017). The EU does not apply its listing standard requirements equally across all countries of its concern. For instance, for China and the Philippines, it only calls for exchange of information and the standard of good tax governance in general respectively and yet for other developing countries, it requires more than that (Valderrama 2017).

**The latest data also demonstrate that developed countries are responsible for the 98% – \$419 billion of tax losses in the world, while lower-income countries, which double as EU listed jurisdictions, take only 2% – \$8 billion (Cobham et al. 2020).** This leaves questions on the vitalness of the EU list of tax havens in promoting global good governance in the tax area. Most of the unfair tax practices within developing countries also lead to high revenue flows to developed countries. The United States is alleged to harbour the headquarters of the most tax aggressive multinational corporations which use countries such as the Cayman Islands and Bermuda to avoid taxes, and these countries have just been removed from the list after implementing their commitments (Janský 2020, CoEU 2021). Janský and Palanský (2019) emphasise that developing countries within Africa and Asia are more likely to lose tax revenue due to aggressive profit shifting relative to their total tax revenues.

**The credibility of the EU listing is also weakened by the EU's inability to feature EU countries, focusing on only countries outside the EU.** European countries such as Ireland, Luxembourg, Netherlands are argued to offer the most competitive tax incentives in the world, albeit these continue to miss on the EU list of tax havens (Oxfam 2017). According to Oxfam, ‘charity should begin at home,’ with the EU member states that have harmful tax practices appearing top on the EU list of non-cooperative tax jurisdictions. To Oxfam, the EU allows the biggest global

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<sup>39</sup> [Negotiated Agreement text initialled by the EU and OACPS chief negotiators on 15th April 2021.](#)

<sup>40</sup> Ibid 39

<sup>41</sup> Similarly, the parties “agree to cooperate in the fight against money laundering and terrorism financing and engage in timely partnership dialogue at bilateral and international levels on matters related to anti-money laundering and terrorism financing.” (Art.12.4).

<sup>42</sup> [EU tax haven blacklist is not catching the worst offenders.](#)

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corporations to pay very minimal taxes in some European countries, while it penalises poorer countries for adopting the same policies. For instance, Denmark, which cannot feature on the EU blacklist, provided about €89 million in state aid to tax haven linked corporations.<sup>43</sup>

**Oxfam also pointed out that the EU countries also avoid taxes at the EU watch**, giving examples such as that of the Netherlands, which assisted the biotech giant Qiagen to avoid about \$105 million in taxes. Such harmful tax policies also affect the tax bases of developing countries by denying them high tax revenues that they could otherwise have used to finance sustainable development.<sup>44</sup> This is the case of the tax agreement between the Netherlands and Uganda, which provided special tax advantages to Dutch subsidiary companies of Total and its partner China National Offshore Oil Corporation (CNOOC). This will cost Uganda about €245 million in tax revenues in the next 25 years, an amount that would highly support Uganda’s social-economic development if it was to be collected as tax revenue.<sup>45</sup> This is just one of the numerous examples of the North-South dimension of global tax politics as Global North continues to reap the benefits of competitive tax practices in the Global South, which the Global South countries get blacklisted for (Hearson 2021).

**Whether in Europe or Africa, tax incentives lure footloose investments, encourage rent-seeking behaviour and put countries at the risk of illicit financial flows (TJN 2019). Yet the EU focuses its attention on fostering better tax governance abroad, regardless of unfair tax competition policies among its member states.** This has made its listing attract too much traction from many civil society organisations that have questioned its legitimacy and dubbed it ‘controversial’. First, the EU list of tax havens automatically excludes all EU countries, and secondly, it focuses only on screening the governments of developing countries, notably in the African, Caribbean and Pacific (ACP) regions. The ACP policymakers have also disputed its fairness, calling it ‘unilateral and discriminatory.’ These have argued that it is lacking in consultations with the affected countries and fails to subject European countries to the same standards (Fox 2020).<sup>46</sup>

**Looking forward, the post-Cotonou Agreement should be the basis for the EU to engage in a more open dialogue on how to remedy its framework, based on a more transparent, cooperative and supportive process to improve tax governance in a fair manner.** It is worth noting that the Agreement foresees that all parties, including the EU and its member states “shall work towards improving the fairness [...] of their tax systems, including by broadening the tax base”, “shall undertake measures to tackle tax avoidance, tax evasion and other harmful tax practices, through increased international cooperation, improved domestic regulation as well as strengthened capacities and exchange of information”, and “agree to cooperate in international forums on international tax matters” (Art.83).<sup>47</sup> This should definitely provide sufficient ground for a stronger cooperative approach, based on fair principles, between the EU and a range of developing partners, which calls for a list that subjects countries from both parties to the same equitable standards.

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<sup>43</sup> [Weak EU tax haven blacklist allows corporate tax dodgers to pocket millions of euros in bailouts – Oxfam.](#)

<sup>44</sup> Ibid 45.

<sup>45</sup> Ibid 46.

<sup>46</sup> [OACPS Secretary-General condemns unilateral addition of seven more OACPS Members to the latest EU Blacklist.](#)

<sup>47</sup> Ibid 41.

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## 6. Conclusion

The EU has taken substantial steps to promote tax good governance through encouraging fair tax competition and eliminating harmful tax practices. However, the EU should pay greater attention to the reputational damages that the listing causes and their wider economic development effects. It should adopt more systematic and transparent political, diplomatic and technical engagements with potentially non-cooperative jurisdictions, and accompany this process with the appropriate development cooperation measures when needed, to assist the targeted countries.

The fairness, credibility and coherence of the EU blacklisting system would be enhanced if the EU would equitably subject its member states to the same tax good governance standards as it subjects the developing world. Building on global standards and on the established EU-OACPS partnership, the EU should more actively engage with developing countries through multilateral, bilateral and timely consultations to address the lack of ownership of this listing. As fairness is expected in the EU-OACPS partnership, the EU should also enhance its international cooperation with developing countries to avoid 'surprise blacklisting' and should promote the legitimacy of the listing through a balance of technical and political cooperation with the end goal of promoting fairness and inclusivity in its global good governance policies in the tax area

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**HEAD OFFICE**  
**SIÈGE**  
Onze Lieve Vrouweplein 21  
6211 HE Maastricht  
The Netherlands *Pays Bas*  
Tel +31 (0)43 350 29 00  
Fax +31 (0)43 350 29 02

**BRUSSELS OFFICE**  
**BUREAU DE BRUXELLES**  
*Rue Archimède 5*  
1000 Brussels *Bruxelles*  
Belgium *Belgique*  
Tel +32 (0)2 237 43 10  
Fax +32 (0)2 237 43 19

[info@ecdpm.org](mailto:info@ecdpm.org)  
[www.ecdpm.org](http://www.ecdpm.org)  
KvK 41077447