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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on an External Strategy for Effective Taxation

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1. INTRODUCTION

The EU has embarked on an ambitious reform agenda to ensure fair and effective corporate taxation in the Single Market. As part of this agenda, Member States have called for an EU approach to address external challenges to their tax bases, given the global nature of harmful tax competition and aggressive tax planning[1]. The European Parliament has also demanded a unified EU position on international tax arrangements and a stronger stance against tax havens, through its work against corporate tax avoidance[2].

Currently, effective taxation in relation to third countries is mainly tackled through national anti-avoidance measures, which tend to vary considerably. Among the different national approaches are white, grey or black lists, specific provisions for low/no tax jurisdictions or case-by-case provisions against abuse. The basis for deciding which jurisdictions should be subject to these measures, and when, also differs from one Member State to the next.

However, as Member States work to coordinate their corporate tax policies within the Single Market, in order to counter-act abusive tax practices and ensure effective taxation, they also need to address their divergent approaches to tackling external base erosion threats. Certain companies exploit loopholes and mismatches between Member States' defensive measures to shift profits out of the Single Market, untaxed. In addition, businesses face legal uncertainty and unnecessary administrative burdens, due to 28 different national policies for assessing and addressing third countries' tax systems. The diversity in Member States' approaches sends mixed messages to international partners about the EU's tax good governance expectations and creates doubts about when defensive mechanisms will be triggered. A coordinated EU external strategy on tax good governance is therefore essential to boost Member States' collective success in tackling tax avoidance, ensure effective taxation and create a clear and stable environment for businesses in the Single Market.

The need for a common external strategy for effective taxation has become even more pressing in light of recent developments in corporate tax policy, within the EU and internationally.

In June 2015, the Commission presented an Action Plan for Fair and Effective Taxation in the EU. This set out a series of measures for the immediate, medium and long-term, to fundamentally reform corporate taxation in the EU. A central focus of this work is to ensure that profits generated in the Single Market are effectively taxed where the activity

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[1] ECOFIN Conclusions May 2013 and recalled in recent Presidencies' BEPS Roadmaps in Council.

[2] Report with recommendations to the Commission on bringing transparency, coordination and convergence to Corporate Tax policies in the Union:

http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2015-0349+0+DOC+PDF+V0//EN

Report on tax rulings and other measures similar in nature or effect:
http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2015-0408+0+DOC+PDF+V0//EN

takes place. This priority objective has been echoed in political discussions on corporate tax policy between Member States. Among the key elements to securing effective taxation, identified in the Action Plan, is a common approach to third country jurisdictions on tax good governance matters.

At international level, G20 leaders endorsed the final OECD Base Erosion and Profit Shifting (BEPS) package in November 2015. The BEPS package creates new global norms for corporate taxation and proposes a series of measures which countries should implement to tackle corporate tax avoidance and ensure fair tax competition worldwide. All G20 and OECD members and a number of other countries have committed to implementing these new standards. Within the EU, work to deliver on this commitment has already started. Member States are keen to implement the G20/OECD BEPS measures in a coordinated way that safeguards the Single Market, protects the Treaty Freedoms and strengthens EU competitiveness. The Commission has now put forward proposals to facilitate this. In order to prevent negative spill-overs and secure a level playing field, it is important that international partners deliver on their international commitments with the same determination. Member States will need to work together to encourage other countries to implement their OECD BEPS commitments and to monitor this progress.

In addition, in the framework of the Addis Ababa Action Agenda[3] and the 2030 agenda for sustainable development[4], the EU and Member States have also committed to strengthen domestic resource mobilisation in developing countries, including through international support to improve domestic capacity for tax collection. Fighting tax avoidance and supporting developing countries' integration in the international tax good governance agenda is critical in delivering on this commitment.

In light of all of these considerations, this Communication proposes a framework for a new EU external strategy for effective taxation. It identifies the key measures which can help the EU to promote tax good governance globally, tackle external base erosion threats and ensure a level playing field for all businesses. It also considers how tax good governance can be better integrated into the EU's wider external relation policies and support its international commitments, particularly in the area of development.

2. RE-EXAMINING EU GOOD GOVERNANCE CRITERIA

A common external strategy for effective taxation must be founded on clear, coherent and internationally recognised tax good governance criteria, which are consistently applied in relation to third countries.

In 2012, the Commission issued a Recommendation to Parliament and Council on measures to encourage third countries to apply minimum standards of tax good governance[5]. The Recommendation encouraged Member States to use transparency, information exchange and fair tax competition as the three criteria for assessing third countries' tax regimes and, where necessary, to apply common counter-measures. The

3 http://www.un.org/esa/ffd/ffd3/wp-content/uploads/sites/2/2015/07/Addis-Ababa-Action-Agenda-Draft-Outcome-Document-7-July-2015.pdf

4 https://sustainabledevelopment.un.org/

5 C(2012) 8805

Recommendation was endorsed by EU Finance Ministers at ECOFIN in May 2013 and was widely discussed by Member State experts and stakeholders in the Platform for Tax Good Governance.

However, despite general consensus on this approach, it has become clear through work in the Platform that Member States have used the recommended criteria in a patchwork manner, or not at all. Amongst those Member States that do use these criteria, there are inconsistencies in how they are interpreted and employed. Discussions with Member States, MEPs, stakeholders and international partners have highlighted an urgent need for more clarity and coherence in the way that the EU applies tax good governance criteria in relation to third countries.

In addition, in the three years since the Recommendation was issued, there have been a number of major developments in tax good governance which require the EU criteria to be updated.

2.1 Increased tax transparency

Tax transparency has progressed to a new level internationally, with the automatic exchange of information now fixed as the new global standard through the OECD[6]. Almost 100 jurisdictions have committed to implementing this new standard of information exchange by 2018 at the latest. Within the EU, Member States will apply the standard for automatic exchange of financial account information in tax matters from 2017. The EU has also concluded automatic exchange of information agreements with Switzerland, Liechtenstein and San Marino, and is finalizing similar agreements with Andorra and Monaco. These countries made a particular effort to finalise negotiations and sign ambitious transparency agreements within a short timeframe. On this basis, the EU criteria for all third countries on transparency and information exchange should reflect, as a minimum, the new global standard for the automatic exchange of information.

Beyond this, the EU has also embarked on an ambitious new tax transparency agenda within the Single Market, which goes further than international requirements. On 8 December, the Council adopted the Commission's proposal for the automatic exchange of information on cross border tax rulings and advance pricing arrangements, starting in 2017. Public country-by-country reporting requirements have been established for the banking and financial sector under CRD IV[7] and for logging and extractive industries under the Accounting Directive[8]. Work is also underway to determine whether public transparency requirements should be applied to companies in other sectors in the EU. In its work to promote tax good governance globally, the EU should encourage its international partners to also adopt these higher standards, which are applied within the Single Market.

2.2 Fairer tax competition

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[6] http://www.oecd.org/tax/exchange-of-tax-information/Automatic-Exchange-Financial-Account-Information-Brief.pdf

[7] Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD IV).

[8] Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings.

The other EU good governance criterion – fair tax competition – also needs to be reviewed in light of positive progress in this field. When the Commission's 2012 Recommendation was presented, the issue of fair tax competition was not central to the international agenda. The Commission recommended that Member States assess third countries' tax systems on the basis of the Code of Conduct on Business Taxation, which is the EU's own tool for countering harmful tax regimes. In the meantime, after two years of negotiation, the OECD's Base Erosion and Profit Shifting (BEPS) project has been finalized and endorsed by the G20. This has created new international standards for fair corporate taxation, which all G20/OECD members and associated countries have committed to implement. The EU has been an active supporter of the OECD BEPS process. As a major political and economic player internationally, the EU now also has an important role to play in continuing to support BEPS, by pushing for its smooth and timely implementation – in the Single Market and internationally.

Within the EU, Member States have already taken the first important steps in this respect, for example by agreeing to apply the modified nexus approach for Patent Boxes. The June 2015 Action Plan and the Anti-Tax Avoidance Directive create a solid framework for quick and coordinated implementation of other BEPS measures, in a way which is compatible with the Single Market and EU law. In addition, work is underway to update and strengthen the Code of Conduct on Business Taxation, so that it reflects the new EU agenda for corporate taxation. Member States' commitments to these stronger measures for fair tax competition should also be reflected in the EU's approach towards third countries on tax matters. This would encourage other countries to adhere to the internationally agreed good governance standards, ensure a level playing-field for EU businesses and reduce the opportunities for outbound profit shifting.

In view of these fundamental changes in the global tax environment, and the need for more coherence in Member States' assessments of third countries, the EU's good governance criteria should be updated. The Commission has set out new criteria in Annex 1 to this Communication, which it invites the Council to endorse. These updated EU good governance criteria should underlie all EU external policies on tax matters and provide a clearer basis for discussing and promoting tax good governance with international partners.

3. ENHANCING TAX GOOD GOVERNANCE COOPERATION THROUGH AGREEMENTS WITH THIRD COUNTRIES

The EU should use every tool at its disposal to promote tax good governance internationally. Bilateral and regional agreements with third countries can be particularly useful legal instruments in this respect. They offer an opportunity to frame, in a consensual agreement, each side's commitment to adhere to international standards of transparency, information exchange and fair tax competition. They also allow the EU to ensure that its tax policy priorities vis-à-vis third countries are appropriately integrated into its wider external relations.

In the 2015 "Trade for All" strategy, the Commission confirmed that trade agreements should support the promotion of international standards of transparency and good governance, which address aggressive corporate profit shifting and tax avoidance strategies.

Recent progress in the international tax agenda and the EU's own commitment to support the implementation of higher global standards merit a re-assessment of the EU's stance on tax good governance matters when negotiating agreements with third countries.

3.1 Tax good governance clauses

In May 2008, the ECOFIN Council agreed in its conclusions that a tax good governance clause should be introduced into all relevant agreements between the EU and third countries or regions. The Council conclusions set out the wording for the clause, and mandated the Commission to negotiate tax good governance provisions in relevant agreements with third countries on that basis.

In the years that followed, however, EU efforts to insert a meaningful good governance clause into bilateral or regional agreements have had mixed success. While some third countries accepted a reference to the principles of tax good governance, others strongly resisted or refused any explicit commitment on this issue. Certain negotiations were delayed as third countries found the wording of the clause to be unclear on the scope of the good governance requirements. In addition, in light of international developments in the area of tax good governance, the clause agreed in 2008 now needs to be updated. The clause should reflect, for example, the adoption of the automatic exchange of information as the global standard and the new fair tax competition measures set out in OECD BEPS, which have been agreed by the G20.

Member States have acknowledged these problems with the current good governance clause and have started to reflect on the issue within the High Level Party on Tax Questions. There is a need to progress quickly in this work to update the basis for good governance clauses, review the strategy for its inclusion in agreements and develop a system to monitor its implementation.

To facilitate this, the Commission has set out core elements for a renewed good governance clause, which should be included in all negotiating proposals for relevant agreements. These core elements reflect the updated good governance standards and the EU's priority actions against aggressive tax planning, as well as certain international commitments in the context of OECD/BEPS.

However, the diversity of the EU's international partners means that a one-size-fits-all approach is not practical. For example, certain developing countries may have administrative constraints which require a simplified approach or may need assistance in implementing the good governance commitments. Negotiations on a good governance clause should therefore reflect the particular situation of the third country in question.

The elements that should form the basis for negotiating future tax good governance clauses are set out in Annex 2 to this Communication. The Commission calls on the Member States to endorse these elements, so that they can be used in future negotiations.

Another issue that should be addressed is the length of time it takes for the good governance clause to be implemented after it has been agreed. Currently, the good governance clause only takes effect once the wider agreement enters into force, which can take years. In the interim period, there is no obligation on the third country in question to comply with the agreed tax good governance provisions. The Commission will encourage Member States to agree that the tax good governance clause be part of the provisions that would provisionally apply, or to engage in a structured dialogue on tax issues with the relevant third country, pending entry into force of the agreement. In addition, the Commission and the Code of Conduct Group could monitor the third country's tax good governance compliance, in order to activate the agreement's consultation mechanism and address any tax concerns as early as possible.

3.2. State aid provisions

When third countries grant support to certain local companies through preferential tax regimes, administrative practices or individual tax rulings, it can limit market access for EU exporters, by putting them at a disadvantage compared to the subsidised local companies. Such potentially distortive practices are only partially addressed by WTO rules. EU agreements with third countries could further help to ensure a level playing field.

State aid provisions in bilateral agreements, which can increase transparency on subsidies, prohibit the most harmful types of subsidies and provide for consultations on harmful subsidies, would create fairer competition between Member States and third countries in the area of business taxation.

The Commission will therefore work to include state aid provisions in negotiating proposals for agreements with third countries, with a view to ensuring fair tax competition with its international partners.

4. ASSISTING DEVELOPING COUNTRIES IN MEETING TAX GOOD GOVERNANCE STANDARDS

As part of the EU's agenda to promote tax good governance amongst its international partners and support the smooth and coherent implementation of G20/OECD BEPS globally, special attention needs to be given to the situation of developing countries. Assisting developing countries in improving their tax systems and boosting their domestic resources is crucial for inclusive growth, poverty eradication and sustainable development.

In that context, applying tax good governance standards is critical for two core reasons. First, it responds to the EU's wider development commitments to help these countries to secure sustainable domestic revenues and fight off threats to their tax bases. Second, the inclusion of developing countries in the global good governance network can prevent weaknesses in the international tax structure that may create opportunities for base erosion and profit shifting.

4.1 The "Collect More, Spend Better" approach

The EU has a long-standing record of supporting developing countries in their work to secure sustainable domestic revenues, including by tackling tax avoidance, evasion and illicit financial flows. The EU provides €140 million annually to developing countries as direct support for domestic public finance reforms and has budget support programmes in more than 80 countries. Moreover, through the Addis Tax Initiative[9], which the EU helped to launch in July 2015, the Commission and other international partners committed to doubling the support to developing countries for domestic revenue mobilisation.

[9] A specific initiative within in the framework of the Addis Ababa Action Agenda, focussed on increasing development assistance for tax capacity http://www.addistaxinitiative.net/.

The Commission's 2010 Communication *Tax and Development – Cooperating with developing countries on promoting good governance on tax matters*[10], set the policy base for EU assistance to developing countries in building efficient, fair and sustainable tax systems over the past 5 years. In 2015, in light of the Addis Ababa Action Agenda and the 2030 Agenda for Sustainable Development, the Commission presented a new EU approach for supporting domestic public finance in developing countries. The "Collect More-Spent Better" strategy[11] details how the EU intends to assist developing countries over the coming years in building fair and efficient tax systems, including by tackling corporate tax avoidance.

The "Collect More" approach is based on helping developing countries to close both the tax policy gap and the tax compliance gap[12], to increase the domestic revenue mobilisation. Measures to reduce the tax policy gap include broadening the tax base where appropriate, closing loopholes and fighting tax avoidance. Measures to address the tax compliance gap include improving the efficiency and effectiveness of the tax administration, reinforcing voluntary tax compliance, promoting tax good governance and fighting tax evasion and illicit financial flows.

In order to achieve these objectives and to assist developing countries in reaching higher levels of tax good governance, the Commission has developed an ambitious framework of EU support. This includes continuing to promote developing countries' contribution to international tax standard setting and pushing for more inclusive international coordination, among others through the G20-OECD BEPS and Automatic exchange of information initiatives (AEOI), the UN Committee of Experts on International Cooperation in Tax matters and the regional bodies like African Tax Administration Forum (ATAF), centre de rencontres et d'études des dirigeants des administrations fiscales (CREDAF) or the Inter-American Center of Tax Administrations (CIAT). To collect solid and internationally comparable tax collection data, the Commission will support revenue statistics initiatives. Existing bilateral frameworks, such as Article 8 political dialogue under the Cotonou Agreement, should also continue to be used in pursuing tax good governance objectives.

Other areas of EU focus will include providing capacity-building in tax policy and administration, either through direct technical assistance or through partnership programmes[13]; supporting international initiatives to strengthen legislation and regulation notably in the area of transfer pricing; and helping with the development and implementation of fiscal assessment tools such as the Tax administration Diagnostic assessment Tool (TADAT) or the Public Expenditure and Financial Accountability (PEFA).

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[10] COM (2010) 163

[11] Collect More, Spend Better Staff Working Document: https://ec.europa.eu/europeaid/sites/devco/files/pol-collect-more-spend-better-swd-20150921-en.pdf

[12] The tax policy gap is the difference between the tax due under an optimal tax policy and the tax due under current tax policy. The tax compliance gap is the difference between the taxes due under current tax policy and the taxes that are actually paid.

[13] The Commission may also consider other forms of dialogue and exchange of good practice for those countries where suitable development assistance frameworks are not available.

In line with the EU's own strong tax transparency agenda, the Commission will promote international country-by-country reporting and the Extractive Industries Transparency Initiative (EITI) for greater transparency and accountability in the extractive industry.

4.2 Leading by example

The EU seeks to lead by example in the area of tax good governance, both by applying high internal standards and promoting similar measures abroad. It is aware of the need to remain vigilant that domestic tax policies do not have negative spill-over effects on third countries and developing countries' vulnerabilities in tax matters are duly taken into account. For example, Member States should apply a balanced approach to negotiating bilateral tax treaties with low-income countries, taking into account their particular situation. This includes the fact that developing countries are highly dependent on source-based taxation and therefore withholding taxes on outbound payments are an essential component of their tax income. However, tax treaties override domestic rules and consequently reduce withholding taxes collected by many developing countries. The Addis Ababa Action Agenda and the implementation of OECD BEPS treaty-related measures could be an opportunity for Member States to reconsider aspects of their bilateral tax treaties with developing countries, such as provisions on withholding taxes. The Commission will launch a debate with Member States, within the Platform on Tax Good Governance, on how to ensure fair treatment of developing countries in bilateral tax treaties.

5. DEVELOPING AN EU PROCESS FOR ASSESSING AND LISTING THIRD COUNTRIES

Within the EU, Member States must respect legislation on transparency and information exchange, state aid rules and the principles of the Code of Conduct on Business Taxation. Provisions are in place to deal with any breaches of these requirements within the Single Market.

In order to ensure a level playing-field, the EU also needs stronger instruments to respond to third countries that refuse to respect tax good governance standards. The European Parliament, many Member States and stakeholders have expressed strong support for a single EU framework for addressing tax good governance concerns with third countries. A common EU approach in this area would have a powerful dissuasive effect and prevent companies from abusing mismatches between the different national systems. It would also give international partners greater clarity on the EU's expectations in this field and would reduce unnecessary administrative burdens for businesses. It will also ensure that the specific situation of third countries, particularly developing ones, is consistently taken into account.

5.1 A transparent overview of national listing processes

The first step towards developing a common EU listing system was taken with the Commission's Action Plan for Fair and Efficient Taxation in June 2015. The Commission published, for the first time, an overview of all third country jurisdictions listed by Member States for tax purposes. The full consolidated version, covering 121 jurisdictions, was published online while a list of the most frequently listed jurisdictions was annexed to the Action Plan. A primary purpose of this initiative was to create more transparency in national listing processes and to present the information on jurisdictions listed by Member States in a more easily accessible format for third countries and businesses. In October 2015, the Commission carried out a technical update of the online information, to reflect changes and amendments to Member States' national lists for tax purposes.

In line with the commitment in the June Action Plan to periodically review the information on Member States' lists, the Commission has formally updated the consolidated overview of third countries listed by Member States for tax purposes, as part of this Anti-Tax Avoidance Package. The updated information, which is published in an interactive online map[14], will be reviewed again within 12 months.

In terms of transparency, the publication of the 'pan-EU list' had an immediate effect. Certain third countries had been unaware that they were listed at national level until the consolidated version of Member States' lists was published. The 'pan-EU list' prompted new discussion between these jurisdictions and the relevant Member States on tax good governance matters, allowing third countries to clarify issues related to their tax regimes and Member States to detail their concerns. This increased transparency also encouraged those Member States with listing processes to scrutinize their lists and ensure that they were well-founded, accurate and up-to-date. The significant divergences in the national listing processes were highlighted through the pan-EU list, along with the problems this can cause for the Single Market, third countries and businesses. As a result, Member States have shown a new interest in working towards a more coherent approach to listing third countries and applying common defensive measures.

In order to achieve this, there first needs to be a solid overview and understanding of the procedures currently in place across the EU. To this end, the Commission has asked those Member States that list third countries for clarifications on the criteria and processes that they use. The Commission has also asked Member States without national lists to explain the alternative tools that they use to counter-act external tax avoidance risks. This work to increase transparency on Member States' tools for applying tax defensive measures will continue within the Platform on Tax Good Governance over the coming months. The objective is to create more legal certainty for businesses and third countries, while also using the information to shape a more convergent EU approach.

5.2 A common EU approach to listing third countries

The 'pan-EU list' is only intended as an interim solution while work proceeds towards the goal of a common EU system for assessing, screening and listing third countries. The current medley of national systems should ultimately be replaced with a clear and coherent EU approach to identifying third countries that fail to comply with good governance standards, along with a unified EU response to these jurisdictions. Once this common EU list is fully established, Member States in Council should formally agree to use it instead of national lists to address external base erosion threats.

Any EU approach to listing third countries must be fair, objective and internationally justifiable. It must also be compatible with EU commitments under multilateral or bilateral international agreements. To achieve this, the Commission proposes the establishment of a three step process.

[14] http://ec.europa.eu/taxation_customs/taxation/gen_info/good_governance_matters/lists_of_countries/index_en.htm?wtdebug=true

As a first step, the Commission will identify internally the third countries that should be prioritized for screening by the EU. To ensure that this selection is neutral and well-founded, the Commission will develop a scoreboard of indicators to determine the potential impact of jurisdictions on Member States' tax bases. The scoreboard approach, which is further detailed in the Staff Working Document, will include comprehensive indicators on issues such as economic ties with the EU, the level of financial activity and institutional and legal factors. The place of third countries on this scoreboard will not constitute any judgement of their tax good governance standards at that stage, but will simply provide a transparent basis for deciding which jurisdictions to assess in greater detail. The first findings of the scoreboard will be presented to Member States in the Code of Conduct Group by autumn 2016.

As the next step, on the basis of the scoreboard, Member States should decide which jurisdictions should be assessed against the EU's updated good governance criteria. Other factors, such as ongoing cooperation on tax matters, may also be relevant to consider. The Commission should carry out the assessment of the selected third countries' tax systems with the Code of Conduct for Business Taxation Group, given its previous experience in this field. This assessment phase will include a dialogue with the third countries in question, allowing them sufficient time to respond to any concerns that arise in relation to their tax regimes. The dialogue should be used as a framework to resolve the issues in question and develop a stronger partnership in ensuring high tax good governance standards. To this end, full use should also be made of the consultation processes in EU agreements with third countries or regions, where relevant. The conclusions of this assessment process would be presented to Member States in the relevant Council groups.

In the final step, Member States should decide whether to add the jurisdiction in question to a common EU list of problematic tax jurisdictions. This decision will be mainly based on a recommendation from the Commission, resulting from the screening process. However, other factors will also need to be taken into account. For example, some developing countries may show a strong willingness to comply with EU good governance standards, but lack the capacity to do so. In such cases, listing may not be the most effective tool and alternative instruments may be more effective in addressing EU concerns with their tax systems. Similarly, if a third country is already formally engaged with the EU to address tax good governance issues, continuing in this process may lead to more effective results.

Clear conditions for de-listing will also be set out for each jurisdiction added to the common EU list. These should be linked to their efforts to address the concerns raised in the screening process. Member States should mandate the Commission to immediately de-list a jurisdiction once the conditions are met, to avoid any unnecessary delays in this process. The Commission would inform Member States in advance of each de-listing.

5.3 Measures to incentivise transparency and fair taxation in listed jurisdictions

Listing a jurisdiction should always be considered as a last resort option. It should be reserved for those jurisdictions that refuse to engage on tax good governance matters or fail to constructively acknowledge EU concerns with their tax systems. However, once a jurisdiction has been added to the EU list, all Member States should apply common counter-measures against it. These counter-measures should serve both to protect

Member States' tax bases and to incentivise the jurisdiction in question to make the necessary improvements to its tax system.

Currently, Member States apply different sanctions or defensive measures to jurisdictions on their national lists. These are largely tax-based provisions, such Controlled Foreign Company (CFC) rules or the refusal of normal tax exemptions or deductions for payments made to companies in the listed countries.

In some cases, these national provisions will be overtaken by the minimum standards in the Anti-Tax Avoidance Directive (e.g. CFC rules). However, the Directive will not cover all of the defensive measures that Member States currently apply. The defensive measures linked to the common EU list should therefore be a complementary top-up to the defensive measures in the Directive. Options could include withholding taxes and non-deductibility of costs for transactions done through listed jurisdictions. This would make it much less attractive for companies to invest or do business in these jurisdictions, as the administrative burden and risk of double taxation would be higher.

As indicated in the June 2015 Action Plan, Member States will need to decide the exact nature of the counter-measures that should apply towards listed jurisdictions. They should do this before the end of 2016, so that third countries are fully aware of the repercussions once the EU screening process is underway.

The Commission will also use the experience obtained through the listing process to actively contribute to the G20 monitoring of the OECD BEPS measures internationally. It will exchange information with third country administrations that are also actively engaged in this process.

6. Reinforcing the link between EU funds and tax good governance

The EU Financial Regulation (Art. 140 (4)) prohibits EU funds from being invested in or channelled through entities in third countries which do not comply with international tax transparency standards. EU and international financial institutions (IFIs)[15] must also transpose these good governance requirements in their contracts with all selected financial intermediaries. These provisions, which are reinforced in the IFIs' internal rulebooks, are an efficient way of ensuring that decisions on the investment of EU funds help to promote compliance with international transparency requirements.

However, the Commission believes that these provisions could be extended further than the current transparency requirements, to also encompass the EU's principles for fair tax competition. In the past, the Commission has had to block certain projects submitted by the IFIs because they involved unjustifiably complex tax arrangements through harmful or no tax regimes in third countries. Strengthening the provisions to include fair tax competition requirements could prevent such cases from arising. The European Parliament has also asked for measures to ensure that EU funding cannot be routed through low/no tax jurisdictions. The Commission will therefore propose to integrate the EU's updated tax good governance standards – including fair tax competition - into the Financial Regulation, as part of its ongoing revision.

[15] European Investment Bank, European Investment Fund and Global Energy Efficiency and Renewable Energy Fund.

7. CONCLUSION

The Commission has put the fight against corporate tax avoidance and unfair tax competition at the heart of its political agenda. It has presented an ambitious reform programme for corporate taxation within the EU, which Member States must take forward.

However, corporate tax avoidance is a global phenomenon and EU measures to address it must reach beyond the Single Market. This Communication responds to demands from the European Parliament, the Council and civil society for a robust EU strategy to promote tax good governance globally and respond to external tax avoidance threats.

The measures put forward in this Communication support the EU's objectives to ensure effective taxation within the Single Market and secure fairer corporate taxation within the EU and beyond. The Commission calls upon Member States to endorse these initiatives in Council and to give high political priority to their implementation.