
Article:
Casano, F. orcid.org/0000-0002-3122-9823 (2024) The EU tax list of non-cooperative jurisdictions: a Caribbean experience. Caribbean Tax Law Journal, 5. pp. 37-47. ISSN 2949-9356

THE EU TAX LIST OF NON-COOPERATIVE JURISDICTIONS: A CARIBBEAN EXPERIENCE

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1. INTRODUCTION

In recent times, international taxation has been marked by the spread of tax scandals and the consequential public push to tackle tax avoidance. The Organisation for Economic Cooperation and Development (OECD) has long been the main character in the establishment of anti-tax abuse standards. Yet, since 2016, its work has been backed up by the European Union (EU). The latter established the EU tax list of non-cooperative jurisdictions to address harmful tax competition by imposing OECD and EU tax standards on non-EU countries and jurisdictions. This led to the rise of the EU as a significant actor in international taxation.

To understand the impact of the EU tax list, this paper explains the listing experience of three Caribbean jurisdictions: Aruba, Curaçao, and the Bahamas. Specific reasons stand behind their selection: Aruba and Curaçao exemplify how Caribbean jurisdictions could react differently to the EU tax list despite having similar relations to the EU (i.e. the are both Overseas Countries and Territories (OCT) under EU law (see paragraph 3.1). Meanwhile, the Bahamas exemplifies the case of a Caribbean non-OCT jurisdiction whose listing on the EU tax list is connected to the lack of a corporate income tax system. Through the experience of these Caribbean jurisdictions, reflections are made on the EU listing process. The contribution is part of a broader PhD research project carried out by this author to investigate the efficacy of the EU tax list.[1]

The paper is divided in three parts. First, the main aspects of the EU tax list are explained. Second, the inclusion of the three Caribbean jurisdictions in the list, and their experiences are discussed. Last, the third part concludes the paper.

Through the cases of the three Caribbean jurisdictions, this paper exemplifies the interactions between non-EU jurisdictions and the EU as conditioned by the EU tax list. The paper shows the impact that the EU tax list has in determining the tax policy of compliant jurisdictions. It also shows that, although their response to the EU tax list might appear similar in light of analogous reputational risks, trading and funding interests, the attitude of each jurisdiction towards compliance, as well as compliance's obstacles, may determine different listing outcomes. Lessons can be inferred and tested on other countries involved in the EU tax list to understand their reactions, the mechanisms of the EU tax list, and recent developments in international tax policy.

The contribution relies on doctrinal research and qualitative empirical methodology. Empirical data have been collected from EU documents and expert interviews.[2]

The research is based on an interpretivist epistemology which emphasizes the relevance of perceptions and interpretations of reality to create knowledge.

2. THE EU TAX LIST OF NON-COOPERATIVE JURISDICTIONS: MAIN ELEMENTS

The EU tax list is a tax initiative established by the Council of the EU (Council) in 2016. The list is an exercise of screening and scoring non-EU countries and jurisdictions. It is carried out by the Council—specifically by one of its working body, known as the Code of Conduct Group (COCG)—with the technical assistance of the European Commission.

The establishment of the EU tax list is the result of long political discussions that originated in 2012 with the publication of the Commissions' Recommendation on non-EU Tax Havens. The Recommendation suggested the coordination of Member States' tax lists by establishing common listing criteria. These criteria consisted of the implementation of OECD standards on tax transparency, as well as the abolishment of harmful corporate-income-tax (CIT) regimes in line with the EU Code of Conduct. The Recommendation brought to the establishment of the Platform for Tax Good Governance, where the European Commission, the Member States, NGOs, Trade Unions, business associations, and academia have been meeting for the implementation of the Commission's Recommendation. After multiple political discussions and negotiations, the Platform agreed on a first attempt to coordinate, at EU level, the national tax lists of Member States. However, this attempt—known as the Pan-EU list of non-cooperative tax jurisdictions—failed due to the difficulty of ensuring coordination when little power is delegated to the EU institutions. This led the Council to eventually approve the establishment of the EU tax list as a EU

instrument to fight tax avoidance and fraud, and to promote the principle of tax good governance outside the EU borders.[4]

As a political initiative, the EU seems to use the tax list to pursue multiple goals. As officially communicated by the EU, the latter aims at discouraging tax avoidance, while encouraging countries' compliance with OECD/EU tax standards. In addition, the EU tax list is used to protect Member States' tax base from erosion; to protect EU's market competitiveness; and to boost the EU role of leader in anti-tax abuse. Although the European Commission, the Council, and the EU Member States try to identify the EU tax list as a platform for dialogue and tax cooperation, non-EU jurisdictions perceive the list as a naming-and-shaming exercise that limits their tax policy decisions. This perception is elaborated in this paper through the cases of three Caribbean jurisdictions.

The EU tax list started with the selection of jurisdictions to be included in the screening. Such a selection was based on their economic ties with the EU, their institutional stability, and the importance of their financial sector.[5] Selected jurisdictions have been scrutinized under three listing criteria:

1. Tax transparency: countries should exchange information with all EU Member States by satisfactorily implementing OECD standards on Automatic Exchange of Information (AEOI) and Exchange of Information on Request (EOIR) as assessed by the OECD. Countries should participate to the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matter (MCMAA), or have enforced a network of exchange with all EU Member States.
2. Fair taxation: countries should not have harmful preferential CIT measures according to the EU Code of Conduct. Where a country has no corporate income tax system or a zero, or almost zero, nominal tax rate, it is required to impose substance requirements to its resident companies, collective investment vehicles (CIVs), and partnerships.
3. Implementation of OECD/G20 BEPS minimum standards: countries should become members of the OECD Inclusive Framework (IF), or commit to implementing the OECD/G20 BEPS minimum standards. Countries should receive positive OECD assessments on the implementation of the standards on Country-by-Country Reporting (CBCR).

Criteria 1 and 3 rely on the work of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) and OECD IF. Criterion 2 relies on the assessment of the OECD Forum for Harmful Tax Practices (FHTP) on preferential regimes. However, it equally relies on the assessments of the COCG for countries' regimes that are in the scope of the EU Code of Conduct. The latter allows the EU to assess those preferential tax regimes that are not covered by the OECD FHTP. This includes, for example, manufacturing regimes, notional interest deductions, and countries' territorial systems (known as foreign source income exemption (FSIE) regimes by the COCG).

Jurisdictions that commit to comply with the listing criteria are included in the EU grey list. To be de-listed, they generally have one year to accomplish their commitment. Jurisdictions that do not commit to comply, or do not accomplish their commitment within the deadline, are blacklisted. Blacklisted jurisdictions are subject to tax and non-tax defensive measures applied by the EU and the EU Member States in a coordinated manner.[6] Reputational damage (i.e. naming-and-shaming) is also perceived by jurisdictions when grey or blacklisted.

3. THE INCLUSION OF THREE CARIBBEAN JURISDICTIONS IN THE EU TAX LIST

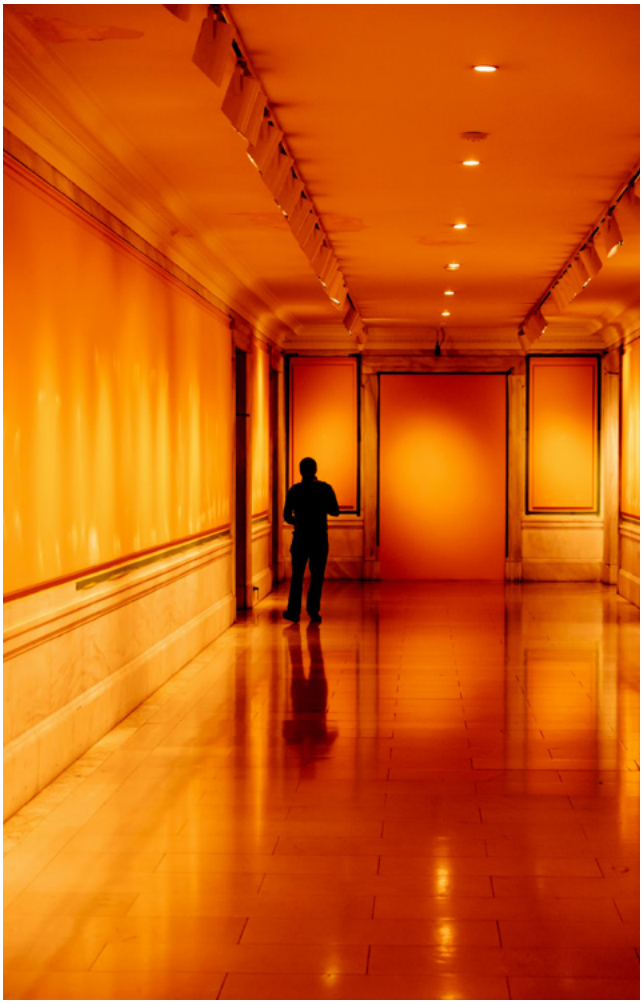
3.1. Factual analysis

The following paragraphs describe the inclusion of Aruba, Curaçao, and the Bahamas in the EU tax list. Their insertion in the geographical scope of the list was justified by the EU in light of their intensive economic ties with the EU, high level of institutional stability, and the magnitude of their financial sector.

It should be noted that, under EU law, Aruba and Curaçao are listed as OCTs in Annex II to the Treaty on the Functioning of the European Union (TFEU). This is because they are constitutionally lands of the Kingdom of the Netherlands and therefore part of a EU Member State (nevertheless, Aruba and Curaçao are neither part of the EU internal market nor of the EU territory). According to Part IV of the TFEU, the EU establishes associations with OCTs to promote their economic and social development and to establish close economic relations between them and the EU.

To this purpose, Curaçao and Aruba receive cooperation and development aids.[7] Furthermore, although OCTs control their own fiscal policies and are not bound by EU law, they have been subject to the application of the EU Code of Conduct for the scrutiny of national preferential tax regimes (see paragraphs 3.2.1 and 3.2.4).[8]

It is plausible that the inclusion of Aruba, Curaçao, and the Bahamas in the scope of the EU tax list is related to the numerous trading and funding agreements that the EU has with the Caribbean jurisdictions.[9] Indeed, one of the functions of the EU tax list is to avoid that its financial aids are abused by addressing countries that facilitate tax avoidance. For this reason, one of the EU non-tax defensive measures consists in prohibiting indirect aids when channelled through blacklisted countries.



3.1.1. Aruba

Under the EU tax list, the EU required Aruba to abolish harmful tax regimes and join the OECD IF. Since Aruba committed to satisfy both demands, the country was greylisted by the EU in 2017, and granted one year to accomplish its commitments.

With regards to OECD IF, Aruba had previously withdrawn its membership from that forum. Yet, due to the request of the EU and the threat of being blacklisted, Aruba was forced to rejoin the OECD IF.

In relation to the harmful regimes, Aruba did not manage to rollback all identified regimes within the one-year deadline. Albeit Aruba had informed the European Commission of the procedural issues causing the delay, ultimately the latter was the direct cause of Aruba's blacklisting until the reform of the regime was approved in 2019.

Afterwards, the screening of Aruba did not raise issues. However, in 2023, following Aruba's low rating on AEOI at the OECD Global Forum, the EU greylisted Aruba again in light of its commitment to solve the issue. [10]

3.1.2. Bahamas

The EU screening of the Bahamas was postponed of one year due to the hurricane's damages that the country faced in 2016-2017. Once the screening started, the EU required the Bahamas to solve tax transparency issues on AEOI and the MCMAA; to introduce substance requirements in its tax system; to commit to the OECD/G20 BEPS minimum standards.

Thanks to the Bahamas' cooperation, none of the identified issues led to the blacklisting of the country, except for the implementation of substance requirements. Indeed, the COCG deemed the Bahamas' commitment as lacking specific words referring to substance. Since the COCG considered this insufficient, the Bahamas were temporarily blacklisted.
Issues were raised again in 2022 as the OECD FHTP's assessment of Bahamas's enforcement of substance requirements was negative. This eventually led to the blacklisting of the country since it failed to take all necessary actions to solve the issue.[11]

3.1.3. Curaçao

The EU requested Curaçao to solve tax transparency issues on AEOI and EOIR, and to rollback harmful tax regimes. As the country committed to such requests, it was greylisted in 2017. Curaçao was already a member of the OECD IF by that time.

In relation to its harmful regimes, Curaçao was subject to the revision of both the OECD FHTP and the COCG due to the different assessment scope of the two fora. This forced the country to review the same regime[12] at least two times, creating confusion at Curaçao's Parliament. Further, Curaçao was one of those countries whose 'exemption of foreign income' regime (introduced to replace previously abolished measures) was negatively assessed by the COCG, pushing Curaçao to amend it.

Issues of tax transparency (AEOI) raised again in the end of 2022 following a negative conclusion from the OECD Global Forum's review. As Curaçao committed to address the issue, it has been greylisted since February 2023.

3.2. REFLECTIONS

3.2.1. Aruba vs. Curaçao

The first reflection draws a comparison between Aruba and Curaçao. The two jurisdictions are similar in their relations with the EU since they both have the OCT status. However, the latter has been reflected in the EU tax list more in the case of Aruba than Curaçao. An example is the intermediation of the Netherlands in the assessment of certain Aruban preferential regimes, which allowed Aruba to eliminate harmful features before being assessed for listing.[13] This does not seem to have occurred with Curaçao. One of the reasons could be a different predisposition of Curaçao's administration, compared to the Aruban one, to rely on (or ask for) Dutch tax support.

3.2.2. Obstacles to compliance

Aruba faced obstacles to compliance. It had procedural issues[14] that did not allow the country to abolish or amend the regimes by the one-year deadline. This led to its blacklisting. This has not happened to Curaçao, which has always been greylisted as a cooperative country. Nevertheless, greylisting for Curaçao did not come without consequences as it impacted its reputation. This is shown, for example, in the lack of willingness of other countries to sign Double Tax Conventions (DTCs) with Curaçao as it is greylisted by the EU.

Obstacles to compliance are observed in Bahamas' case too. The first time that the country was blacklisted was due to the EU's misunderstanding on the seriousness of Bahamas' commitment. This was an obstacle to compliance which, despite not being attributable to the country, penalized the latter. The Bahamas remedied by intensifying its communication with the European Commission, which then led to the greylisting of the country.

3.2.3. Categorization of compliance responses

Although all three jurisdictions are overall cooperative, their responses report different types of compliance and related obstacles. In Curaçao's response, 'reluctant compliance' can be observed, i.e. a type of cooperation that stresses the wrong-doing of the EU. The assessment of Curaçao's 'exemption of foreign income' regime exemplifies one of the most relevant issues in the EU tax list: the EU criticism towards foreign-income tax exemptions, which led to the assessment of FSIE regimes—i.e. source-based taxation. This is an issue that has involved not only Caribbean jurisdictions (Curaçao, Saint Lucia), but also jurisdictions in Latin America (Panama, Uruguay, Costa Rica), Asia (Hong Kong, Malaysia, Qatar), and Africa (Seychelles, Mauritius). Jurisdictions reacted differently, more or less cooperatively, towards the request of solving the harmful features of such regimes. Curaçao decided to comply with the EU demands—to avoid blacklisting—but it also stressed the wrong-doing of the EU in deeming general features of a tax system as harmful.[15] Although it did not materialize as such, Curaçao's reluctancy to understand the EU criticism to its regime could have represented an obstacle to its compliance. A similar type of compliance is observed in other countries (e.g., in Latin America) which complied with the EU requirements while stating the traditional relevance of source-based taxation for net capital importing countries, as well as the international acceptance of the source principle.

They blame the EU for abandoning the multilateral and international table of negotiations on tax standards.[16]

Curaçao also exemplifies another type of compliance: 'foresighted compliance'. Having rolled back its regimes according to the EU demands, Curaçao kept close contact with the European Commission to ensure that future changes to its tax law are in line with the EU Code of Conduct.[17]

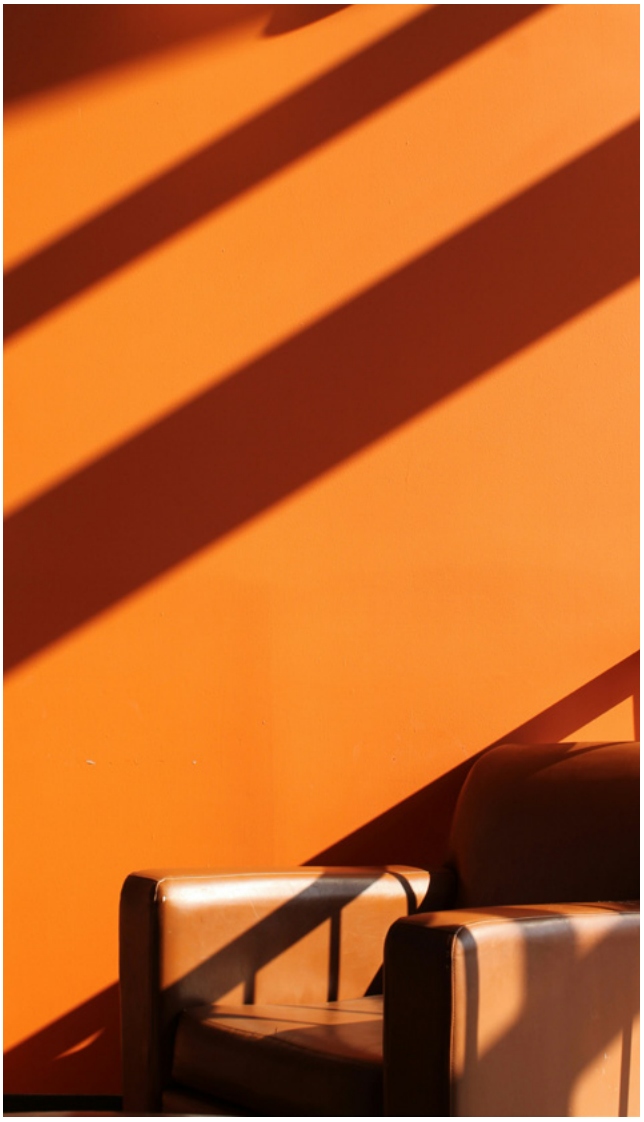
In relation to Bahamas, 'minimal compliance' can be identified. The Bahamas has long had the reputation of 'tax haven'. Nonetheless, the country has shown cooperation with the EU since the establishment of the EU tax list.[18] Bahamas' cooperation is dictated by the willingness to improve its international-tax image. This has been confirmed by conversations with NGOs, which define Bahamas' compliance with OECD standards as a strategy of passing the minimum threshold to be assessed as cooperative. This trend is confirmed in Bahamas' cooperation with the EU. Indeed, Bahamas' lack of effective enforcement of substance requirements shows that the fulfilment of EU demands on the matter had been kept to the minimum—i.e. the introduction of substance requirements in the law, without actual enforcement. This case raises questions on the merit of EU listing criteria demanding the mere implementation of standards in the law. Letting countries being de-listed on the basis of the mere introduction of requirements in the law may imply appreciating a country's tax policy although the lack of enforcement of those requirements may lead to a different conclusion.

3.2.4. Impact of the EU tax list on countries' tax policy ntr

Aruba, Bahamas, and Curaçao confirm that the EU tax list impacts jurisdictions' tax policies. Nevertheless, they experienced the impact differently. Aruba was subject to the Code of Conduct already before the EU tax list as an OCT. Therefore, the EU Code is not a new imposition on Aruban preferential regimes. Yet, the list limited Aruba's free choice to join the OECD IF. This resulted in the imposition of further limitations on Aruba's preferential regimes as the membership in the OECD IF made the country subject to the OECD FHTP's assessments.

The Bahamas' choice to implement the BEPS minimum standards was presumably not pushed by the EU tax list since the country had committed to such standards before being assessed by the EU. Nevertheless, Bahamas' tax policy was limited by the EU tax list as the country was forced to introduce substance requirements and new specific mechanisms to exchange related information. This also implied subjecting the Bahamas, for the first time, to the review of the OECD FHTP (which adopted the same substance requirements as the EU) to assess the effectiveness of the requirements.

Curaçao's exposure to the impositions of the EU tax list are also evident. Although it was already a member of the OECD IF, and therefore subject to the OECD FHTP's peer review, Curaçao was vulnerable to the different scope of regime-assessment between the COCG and the OECD FHTP.



The difference forced Curaçao to reform the same regime two times, causing confusion at the Parliament of Curaçao about the necessity of double reforms and double international standards. As previously mentioned, the EU tax list also pushed Curaçao to rollback its 'exemption of foreign income' regime despite Curaçao's doubts on the appropriateness of the EU's assessment. Finally, the EU tax list influenced Curaçao's tax policy to the extent of inducing the country to consult the European Commission on compliance with the standards of the EU Code of Conduct for upcoming preferential regimes.

3.2.5. Problematic effects of the EU tax list

The EU tax list had the effect of increasing the OECD IF membership.[19] Consequently, more jurisdictions are subject to the review of national preferential regimes under the OECD FHTP, and are required to implement the OECD/G20 BEPS minimum standards. Although this could be perceived positively as more jurisdictions are subject to international standards, questions are raised on the merit of forcing small countries like Aruba to standards that may not be a priority for them. The same issue emerges with regard to small countries in Latin America, Asia, and Africa, especially when they are developing countries and have limited participation to the development of the standards imposed upon them. Ultimately, even the COCG questioned the relevance of the OECD/G20 BEPS minimum standards for the Bahamas. [20]

Furthermore, the country-cases analysed in this article show that instances of misalignment between the OECD FHTP and the COCG are problematic for cooperative jurisdictions, especially when they are required to rollback regimes that are in line with internationally accepted principles—i.e. the source-based taxation. At the level of the jurisdiction, this creates worries as the multiplication of standards between the EU and the OECD increases jurisdictions' workload. It also gives the impression that the EU is leaving the OECD table of discussion to create its own (higher) standards to be imposed on all jurisdictions, although the EU is not an international organization and such

higher standards are not internationally agreed. It creates frustration since the criticism of FSIE regimes implies the criticism of a general principle of taxation that could constitute a traditional and general feature of the system itself; as well as fear that the EU criticism may lead to the end of source-based taxation if such a standard is brought to the OECD table.

4. CONCLUSIONS

Through the analysis of three Caribbean jurisdictions, the paper explains the working mechanisms of the EU tax list and their impact on compliant non-EU countries. It also reflects on jurisdictions' responses to the EU tax list.

Even though jurisdictions may have similar interests in cooperating with the EU, and therefore similar responses to the EU tax list, their listing outcome may differ. Such a difference may be caused by jurisdictions' specific features—e.g., policy culture, administrative capacity—that impact their type of compliance and create obstacles to their cooperation.

The type of compliance identified in this paper are three: reluctant, foresighted, and minimal. They exemplify jurisdictions' strategies in international relations, and their possible responses to coercive triggers.

The EU tax list has an impact on the tax policy of compliant jurisdictions. This impact is allowed mainly because of their fear of reputational damage and loss in EU funding and trading relations. Consequently, jurisdictions' compliance highlights the coercive nature of the EU tax list, rather than a cooperative one. Finally, the cases highlight some of the problematic aspects of the EU tax list, such as the misalignment between OECD's and EU assessment-scope of preferential tax regimes. For non-EU jurisdictions, the misalignment creates workload issues, institutional complaints, and a harm in international tax relations.

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[1] The PhD research investigates the efficacy of the EU tax list by analysing its underneath goals and political dynamics, its coercive vs. cooperative nature, and the reactions that non-EU countries have had to the EU tax list. The PhD research also aims at showing the impact of the EU tax list on countries' tax policy and latest diplomatic and tax trends deriving from the EU tax list.
[2] The doctrinal research is based on the analysis of relevant literature and legal texts. The qualitative empirical research is based on the collection of empirical data via EU official documents—some of which are publicly available, while other were obtained via freedom-of-information (FOI) requests—and interviews. The data was coded and analysed to identify patterns and trends. The interviews used for this paper include formal and informal conversations with stakeholders involved in the EU tax list (i.e. stakeholders from the EU, Caribbean and small Latin American countries, international tax fora, and NGOs). Due to privacy concerns, the identity of the interviewed stakeholders cannot be disclosed.
[3] European Commission, Recommendation of 6.12.2012 regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters, doc. OJ L 338/37 (2012). Council, Conclusions, doc. 9549/13 (2013).
[4]Council Conclusions, doc. 9452/16 (2016); Council Conclusions, doc. 14166/16 (2016).
[5]European Commission, First step towards a new EU list of third country jurisdictions: Scoreboard (2016).
[6] Council Conclusions, doc. 9452/16 (2016); Council Conclusions, doc. 14166/16 (2016); Council Endorsement, Code of Conduct Group: Report to the Council, Annex IV, doc. 14114/19 (2019); Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union, OJ L 193 (2018); Regulation (EU) 2017/2396 of the European Parliament and of the Council, OJ L 345 (2017).
[7] European Commission, International Partnerships: Aruba (available at https://international-partnerships.ec.europa.eu/countries/aruba_en); European Commission, International Partnerships: Curaçao (available at https://international-partnerships.ec.europa.eu/countries/curacao_en).
[8] Council Conclusions, doc. OJ 98/C 2/01 (1997), paragraph M; M. Nouwen, The geographical scope of the Code, in Inside the EU Code of Conduct Group: 20 years of tackling harmful tax competition, IBFD Doctoral Series (2021).
[9] European Commission, International Partnerships: Americas and the Caribbean (available at: https://international-partnerships.ec.europa.eu/countries/americas-and-caribbean_en); EU External Actions, Latin America and the Caribbean (available at: https://www.eeas.europa.eu/eeas/latin-america-and-caribbean_en); European Commission, Trade: Caribbean (available at: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/caribbean_en); European Parliament Think Thank, EU trade with Latin America and the Caribbean: Overview and figures (available at: https://www.europarl.europa.eu/thinktank/en/document/EPRS_IDA(2019)644219); Ajit Niranjan, EU to invest €45bn in Latin America and Caribbean, The Guardian (2023) (available at: https://www.theguardian.com/world/2023/jul/19/eu-to-invest-45bn-in-latin-america-and-caribbean); Caribbean Export, European Union (available at: https://carib-export.com/our-work/partnerships/european-union/).
[10]Latest update of Aruba's listing status: January 2024. On Aruba's factual analysis: see Council, Compilation of letters seeking commitment, doc. 6671/18 (2018); Council, Information, doc. 13890/17 (2017); Council Conclusions, doc. 15429/17 (2017). The preferential regimes that Aruba had to roll back under EU requests were: the 'Special Zone San Nicolas' regime: companies located in San Nicolas, and carrying out activities aimed for more than 75% on export and hotels, could benefit from a reduced 10% tax rate on their profit (Council, Final description and assessment, doc. 7518/19 (2019)); and the 'Transparency' regime: taxable corporations in Aruba could opt for treatment as a transparent entity for Aruban tax purposes by filing a request to the Aruba Tax Authorities. The treatment as a transparent entity implied that the company is exempted from Aruba profit tax, dividend withholding tax, and income (Council, Final description and assessment, doc. 9646/19 (2019)).
[11]Latest update of Bahamas' listing status: January 2024. On Bahamas' factual analysis: Council Conclusions, doc. 15429/17 (2017); Council, Report by the Code of Conduct Group to the Council, doc. 8304/1/18 (2018); Council Conclusions, doc. 7441/19 (2019); Council Conclusions, doc. 13092/22 (2022); Council, Code of Conduct Group (Business taxation): Report to the Council, doc.14674/22 (2022); Council Conclusions, doc. 6375/23 (2023); Council Conclusions, 13879/23 (2023); Council, Report by the Code of Conduct Group to the Council, doc. 15757/23 (2023). Regarding the lack of sufficient commitment on substance requirements, the COCG did not deem Bahamas' commitment sufficient as it did not use specific words (Council, Compilation of commitment letters received from jurisdictions, doc. 6972/18 ADD 45 (2018)). As the Bahamas perceived its blacklisting with surprise, the country started a direct dialogue with the European Commission, which led to a renewed commitment on fair taxation. The country was therefore greylisted until it implemented, by the 1-year deadline, substance requirements and related exchange of information in its national law.
[12] Reference is made to the 'e-Zone' regime, which was modified by Curaçao in 2018 under the request of the OECD FHTP, and then in 2019 under the request of the EU. The latter assessed the manufacturing activities under the 'e-Zone' regime since they are excluded from the scope of the OECD FHTP's analysis. In relation to Curaçao's factual analysis, see: Council, Compilation of commitment letters received from jurisdictions, doc. 6972/18 ADD 26 (2018); Council Conclusions, doc. 15429/17 (2017); Council, Final description and assessment, doc. 7423/20 (2020); Council, Final description and assessment, doc. 7424/20 (2020); Council, Report by the Code of Conduct Group to the Council, doc. 15757/23 (2023). Latest update of Curaçao's listing status: January 2024.
[13]The first assessment of Aruba's preferential regimes was in 1999 (Council, Overview of the preferential tax regimes, doc. 7915/21 (2021)). In 2017, just before the Commission's final assessment for listing purposes, the COCG required Aruba to rollback the 'Imputation Payment Company' regime. The request was made through the Netherlands. Interestingly, the latter was deemed an intermediary between the COCG and Aruba, although Aruba is a fiscal autonomous country (as stressed by the Netherlands: Council, Report by the Code of Conduct Group to the Council, doc. 14750/16 (2016); European Commission, Meeting Report Code of Conduct Group, doc. Ares (2016) 4429918 (2016)). Thanks to the intermediation, Aruba managed to amend its regime before the Commission's final assessment for listing purposes. Once the work of the COCG on the EU tax list progressed, the Dutch intermediation stopped and direct contact took place between Aruba and the European Commission, who reported to the COCG. No evidence is known to this author on the intermediation of the Netherlands between Curaçao and the COCG.
[14]The EU documents do not specify the nature of the procedural issues. It can be supposed that such issues might include: difficulties in reaching an agreement within the government for the design of the reform proposal; difficulties in Parliament's discussions; delays in the collection of public stakeholders consultations.
[15]Council, Commitment letters by some jurisdictions, doc. 6097/19 ADD 5 (2019).
[16]A. Riccardi, Is Latin American and Caribbean Tax Policy in the Hands of the European Union? A Three-Country Case Study: The Source Principle under Attack, 77 Bulletin for International Taxation 9 (2023).
[17]Council, Progress Report – Curaçao, doc. 5361/20 (2020).
[18]Despite Bahamas' blacklisting, the country has been appreciated (especially until 2022) for its high level of dialogue and collaboration with the COCG, which once allowed the country to postpone its compliance deadline—although the postponement was also justified by new hurricanes hitting the country (doc. 5580/20 EXT1).
[19] M. Collin, Does the threat of being blacklisted change behavior? Regression discontinuity evidence from the EU's tax haven listing process, Brookings Global Economy and Development Working Paper 139 (2020).
[20]Council, Compilation of letters seeking commitment, doc. 6671/18 (2018).