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Anatomy of the EU tax list: a case-study on EU external tax policy
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1 Introduction

1.1 INTRODUCTION

This dissertation analyses the EU list of non-cooperative jurisdictions for tax purposes (hereafter referred to as the EU tax list), approaching this multi-purpose tax initiative as a case study of the EU tax external policy, primarily established in response to international tax avoidance and harmful tax competition, but also in protection of the tax base and foreign investments of EU Member States.

This introductory chapter begins by outlining the research subject and purpose of the dissertation. The first section provides context for the readers, offering a brief overview of the EU tax list, its background, and the motivation behind this study. It includes a review of current literature on the topic, explains the research questions, the research scope, and its contributions to existing literature and policy context.

The chapter continues by detailing the epistemological stance from which the research questions are examined (section 1.2), followed by the methodological design, data collection, and analysis that underpin the study (sections 1.3-1.5). This section also discusses the assessment and analytical frameworks used in the data analysis. Finally, section 1.6 concludes the chapter with an overview of the dissertation's structure.

Given the potential ambiguity of certain terminology used in this research, Appendix I provides a glossary to clarify commonly used but equivocal terms such as tax avoidance, harmful tax competition, and tax haven. It is important to note that, despite indirect references, this research does not study tax havens. References to tax havens may appear in interview quotes and stakeholders' perceptions of blacklisted countries, although some EU member states and the European Commission may disagree with this classification (see Chapter 4). This research does not aim to construct a new definition of tax havens as, instead, it relies on the EU's framework, including the EU listing criteria and the COCG's assessments of countries' tax systems. Indeed, the purpose of this research is to evaluate the efficacy of the EU tax list (see subsections 1.1.2 and 1.1.3), not to investigate tax havens. Therefore, the dissertation examines the COCG's assessments (Chapters 5, 6, and 8) and critically discusses its listing criteria (Chapter 6). Any definitions or references to tax havens by interviewees should be interpreted as their personal understanding and opinion (see Appendix I).

1.1.1 Introduction to the research topic: the EU tax list

Since the beginning of its prioritization after the global financial crisis of 2007-2009,¹ corporate tax planning and tax avoidance have been subject to acute public attention. Tackling harmful corporate tax competition and tax avoidance has been at the forefront of the international policy agenda. The need for action to stop tax avoidance has been highlighted by a number of societal and political actors, such as NGOs,² and the European Parliament.³ Meanwhile, international organizations such as the OECD, and supranational executive powers as the European Commission, have worked to design initiatives that could reduce tax avoidance and control countries' tax competition.⁴ The social relevance gained by tax avoidance is also exemplified by the media coverage on the topic, with special mention of projects of the investigative journalism which led to some of the most famous tax scandals in recent years, i.e. the LuxLeaks (2014), Panama Papers (2015), Paradise Papers (2017), and Pandora Papers (2021).

Tax avoidance involves legally minimizing tax payments in ways that conflict with the intent of tax laws. Common strategies include shifting debt within corporate groups, relocating intangible assets, and manipulating transfer pricing.⁵ Though difficult to measure due to its hidden nature, studies estimate annual corporate income tax losses in the EU at around € 36–37 billion.⁶ Micro-level analyses, such as one examining Dutch firms, reveal significant untaxed financial flows – averaging € 9.7 to € 11.9 billion annually in royalties and interest sent to low-tax jurisdictions between 2009 and 2013 – highlighting the scale and complexity of tax avoidance practices.⁷

Evidence on the significance of corporate tax avoidance in terms of lost tax revenues has been reported in literature and in formal policy documents drafted, for example, by the European Commission, the European Parliament, and the OECD. Tørsløv et al. estimated that approximately 36 percent of MNEs' profits are diverted to tax havens, and that "if profit shifting ended, profits booked in tax havens would fall by 55 percent, and by as much as 90 percent in havens such as Malta and Bermuda".⁸ Nearly 40 percent of global foreign direct investments (FDI) results artificial, lacking substantial economic

1 Brauner, 2014.

2 Oxfam, 2016; Global Tax Justice, 2019; Tax Justice Network, 2020.

3 European Parliament, 2013, 2017, 2019, 2021.

4 E.g., the G20/OECD BEPS Actions, the work of the OECD FHTP, Global Forum, and Inclusive Framework; Commission's proposal for ATADs and DACs.

5 European Commission, 2022, p. 64.

6 European Commission, 2022, p. 64; Alvarez-Martínez et al., 2021; Tørsløv et al., 2018; Dover et al., 2015.

7 European Commission, 2022, p. 64; Kerste et al., 2019.

8 Tørsløv et al., 2018.

activity and presence.⁹ As reported by the European Commission,¹⁰ a total of EUR 932 billion in 2022 (about 35 percent of foreign profits) are found to be shifted to low-tax jurisdictions. According to the European Parliament, corporate tax avoidance ranges from EUR 160 to 190 billion (European Parliament, 2021); according to the OECD, MNEs' shifting profits to letter-box companies in low or no-tax jurisdictions via payments of passive income costs countries USD 100-240 billion in lost revenue annually, equivalent to 4-10 percent of global corporate income tax revenue.¹¹

When assessing the role of harmful tax competition in facilitating tax avoidance, Tørsløv et al. identified certain countries (i.e. the Netherlands, Ireland, Switzerland, British Virgin Islands (BVI), Luxembourg, Puerto Rico, Singapore, Hong Kong, and Bermuda) as the main destinations for profit shifting.¹² These data were confirmed by the Joint Research Centre of the European Commission.¹³ The European Tax Observatory identified jurisdictions with high company registration density (i.e. high number of registered companies per 1,000 adults), which suggests the presence of shell companies used for tax planning: globally, the BVI, Delaware, and the Cayman Islands score the highest density value; in Europe, Liechtenstein, Gibraltar, and the Isle of Man lead in this metric; in the EU, Estonia, Luxembourg, and Cyprus are first in the list.¹⁴ Furthermore, according to the European Commission, the increase in phantom investments¹⁵ indicates that tax policies offering very low or zero corporate tax rates continue to attract fake foreign direct investments, helping multinational companies reduce their global tax liabilities.¹⁶

The data reported on tax avoidance and harmful tax competition had caused worries within the EU, especially given their global nature and their potential to defeat the tax collection of other countries. As explained by the European Commission, the EU blamed tax avoidance and harmful tax competition for enabling MNEs to shift profit from the EU, and depriving developing countries from their tax revenues: based on UNCTAD data, tax avoidance results in annual losses of \$70 billion to \$120 billion for developing countries.¹⁷ Furthermore, the public pressure for an institutional response to tax avoidance as a reaction to the early-mentioned tax scandals and journalistic leaks pushed the EU Member States to implement anti-tax abuse measures.¹⁸

9 Damgaard, 2019.

10 European Commission, 2024, p. 98.

11 OECD website on BEPS.

12 Tørsløv et al., 2018.

13 Delis et al., 2023; European Commission, 2024, p. 98.

14 Aliprandi et al., 2023; European Commission, 2024, p. 98.

15 Damgaard, 2019.

16 European Commission, 2020, p. 52.

17 European Commission, 2020, p. 52; UNCTAD, 2015.

18 The impact of public pressure for the purposes of tackling tax avoidance and harmful tax competition is shown in Chapter 3.

More specifically from the EU perspective, the initiative of individual Member States to introduce tax measures to protect their tax base was reported as unsuccessful by the European Commission given that the lack of a cohesive approach allowed MNEs to re-direct their transactions through Member States with less anti-tax abuse rules. Concerns were shared on the erosion of EU tax base and abuse of the EU freedom of establishment within the internal market, as well as the risk of losing private investments for the benefit of low-tax jurisdictions.¹⁹

To address such challenges, the Council of the EU eventually decided for a coordinated approach to protect the internal market from global tax avoidance and harmful tax competition, and to promote EU principles of fair taxation across the globe.²⁰ The decision culminated in the establishment of a EU-based listing mechanism at a global scale, namely the EU tax list. This revolves around multiple objectives, with one of them being to fight against harmful tax competition and tax avoidance by means of a coordinated and cooperative approach. Additionally, the list aims to safeguard the tax base of EU Member States, strengthen the EU economy and its international tax influence, and maintain its global competitiveness (this is concluded in Chapter 4, on EU's goals behind the EU tax list).

Via the EU tax list, the EU evaluates non-EU countries' tax systems and their alignment with anti-tax abuse standards, which are generally referred to by the EU as standards for tax good governance. More specifically, as explained in Chapter 6, non-EU countries are assessed against three main tax standards:²¹

- Tax transparency: countries are scrutinised for their compliance with the OECD standards on automatic and on-request exchange of information, and their tax transparency agreements with EU Member States;
- Fair Taxation: jurisdictions with low or no corporate tax rates are scrutinised for the implementation of economic substance requirements for legal entities. Other countries are assessed on the harmfulness of their tax regimes. The aim is to ensure that these regimes do not facilitate harmful tax practices.
- Implementation of BEPS minimum standards: countries are scrutinised for their compliance with the OECD BEPS minimum standards,²² and for their membership to the OECD Inclusive Framework.

¹⁹ European Commission, 2012.

²⁰ Council Conclusions, 2013; European Commission, 2012, p. 2-3, 2016, p. 2-3, 2020, p. 65; for a thorough analysis on the history, development, establishment, and aims of the EU tax list, see Chapters 2-4.

²¹ Council Conclusions, 2016.

²² The OECD BEPS minimum standards cover the OECD BEPS Action 5 (on harmful tax practices), Action 6 (on tax treaty abuse), Action 13 (on Country-by-Country Reporting), and Action 14 (on Mutual Agreement Procedure).

Countries that do not comply with one or more of the criteria are requested to reform their tax system. If countries respond with commitment, they are included in a greylist as cooperative countries and generally have a one-year deadline to finalise their changes. Countries which do not commit, or do not complete the reforms within the timeline, are generally blacklisted (see Chapter 5 on the EU listing process). As further explored in this dissertation (see Chapter 7), blacklisted countries may be subject to reputational risks and a set of defensive measures imposed by the EU and its Member States.

The listing process involves three main actors of the EU: the Council, the EU Member States, and the European Commission. As explained in Chapter 2, the Council, which is composed by all the EU Member States' ministers of finance, unanimously finalises and adopts the listing decisions drafted by the COCG (i.e. a Council working body, composed by representative of all EU Member States). The European Commission offers technical support to the COCG, particularly with the assessment of countries' tax systems against the listing criteria (see Fig. 3.1 in Chapter 3 for a schematised representation of decision-making and influencing actors involved in the EU tax list).

The EU listing process relies on a series of documents circulated and discussed among the actors just mentioned. The documents include: meeting minutes, countries' assessments, and Communications drafted by the European Commission; agenda documents, progress reports, six-months reports, Council's Conclusions, and edited countries' assessments drafted by the General Secretariat of the Council. These and additional official documents were relevant for the data collection in my research, as explained in subsection 1.4.1.1.

There is no unanimous definition of the EU tax list – whether it should be described as a blacklist or a platform for cooperation and tax reforms – as different stakeholders define it differently (see Chapters 3 and 4). Therefore, the nature and identification of the EU tax list are part of study of this dissertation, which concludes in favour of a definition that emphasises the coercive nature of the list, given its *modus operandi*, its deterrence, and its interaction with non-EU countries (see Chapters 5, 6, 7, 8, and 9).

1.1.2 Literature review, research motivation, and research question

General literature on tax blacklists²³ has acknowledged the shortcomings in their use for tax compliance. They have been criticized for being arbitrary and lacking transparency, undermining legitimacy. They challenge principles of evidence and fairness, while politically, blacklisting is seen as biased and vulnerable to lobbying. The fact itself that only some countries have the

23 Fung, 2017; Ozai, 2020b; Hakelberg et al, 2018.

capacity to create blacklists is seen as questioning the power distribution among jurisdictions. Powerful countries like the USA can resist such pressure, while weaker nations are more affected. This imbalance allows dominant states to manipulate tax cooperation for their own gain, violating principles of sovereignty and fairness by imposing standards they themselves often ignore.

Importantly, the EU tax list should differ from the traditional national lists discussed above. As further explained in this dissertation, the EU tax list is built on the expectation that non-EU countries will change their tax policy to avoid being blacklisted, while national blacklists are typically used by governments to facilitate the application of national anti-tax abuse provisions (without the expectation and intra-states dialogue aimed at tax policy changes).²⁴

As shown throughout the dissertation, the EU tax list represents a novel external approach of the EU to international tax competition. The complexity given by its resolute character, while being susceptible to diplomatic influence, has made this initiative a distinct EU-based response to tax competition. Unlike the OECD tax list, which exclusively focused on imposing tax transparency requirements,²⁵ the EU tax list aims to shape countries' tax regimes and systems, and influence their stance on tax competition from multiple fronts: tax transparency and the design of tax systems.

According to the reports of the European Commission, via the EU tax list, the EU has been increasing pressure on non-EU countries to comply with standards of tax good governance, therefore achieving significant results in the fight against harmful tax competition and tax avoidance. In a 2020 report, the Commission wrote that "the introduction of an EU list of non-cooperative jurisdictions for tax purposes contributed to raising the standards of tax good governance on a global scale".²⁶

However, since its introduction in 2017, the EU tax list has sparked intense debate among media outlets, NGOs, and policymakers. On the one hand, the EU's decisive stance against tax avoidance has been celebrated by the European Commission and some EU Member States as a potential turning point in addressing harmful tax practices.²⁷ On the other hand, questions about the list's credibility have surfaced, particularly concerning alleged political bias in its application and the inclusion of developing countries. For example, as acknowledged by the same Commission's report previously quoted, some NGOs criticise the EU tax list due to the lack of support for developing countries in implementing the required tax policy changes.²⁸ Additional questions raised by NGOs and media-coverage concerned the potential of political

24 Chapter 5, 7; interview MS4.

25 OECD, 2002.

26 European Commission, 2020, p. 53, 65.

27 European Commission, 2020, p. 53; Chapters 4 and 5.

28 European Commission, 2020, p. 53; Eurodad, 2016; Eurodad, 2019; NGOs Eurodad articles

interferences in the EU listing decisions given the exclusion of countries generally known as tax havens, including some EU Member States, from the EU blacklist.²⁹ The debate was also featured by the position of the European Parliament, which shared concerns on political obstructions, on the effectiveness of the listing criteria and the EU's scrutiny for anti-tax avoidance purposes, as well as on the impact of reforms pushed by the EU tax list on developing countries.³⁰

The numerous concerns from various stakeholders have cast doubts on the credibility and effectiveness of the EU tax list, as well as its cooperative spirit. This raises significant questions: can the EU tax list in fact mark the end of, or at least mitigate, harmful tax competition and tax avoidance? Does it have the potential to do so? Is it the right supranational approach to address global tax avoidance issues? What impact will it have on international tax relations?

Current literature on the EU tax list has not yet sufficiently answered these questions, although it confirmed their relevance. The first academic mention of the EU tax list date to 2017, when a brief note confirmed the existence of an acute debate among EU institutions and civil society concerning the credibility and objectivity of the EU tax list.³¹ Similarly, a 2018 Intertax Editorial gave a brief mention of the listing criteria and procedure, remarking the risk of low credibility if the same EU standards are not applied to the EU Member States.³² Koutsouva outlined the EU tax list's formal goals and decisions, sharing preliminary reflections on its efficiency despite political concerns, the exclusion of EU Member States, and potential risks for developing countries.³³ Another paper questioned the list's fairness,³⁴ while Mosquera's paper shared some initial concerns for developing countries and the legitimacy of the list.³⁵ Mosquera also doubted the list's reliability due to criticism from civil society and the European Parliament, calling for more research on the EU listing criteria (especially those on fair taxation) and potential changes to be recommended.³⁶

This literature demonstrates the relevance of investigating the EU tax list, highlights the most pressing questions, and confirms the ongoing debate on the list. Although it emphasises the concerns raised by civil society, it does not provide a definitive answer, as it lacks a detailed and comprehensive analysis of those issues.

29 E.g, European Commission, 2020, p. 54; Oxfam, 2017, 2019; IFC Review, 2023; Tax Justice Network Blog, 2018, 2019; Eurodad, 2016; BBC, 2017; Euronews, 2021, 2021b.

30 European Parliament, 2020, 2021, 2021c.

31 Haines, 2017.

32 Dourado, 2018.

33 Koutsouva, 2020.

34 Ahairwe et al., 2021.

35 Mosquera Valderrama, 2019.

36 Mosquera Valderrama, 2020.

Meanwhile, other literature focused on specific aspects of the EU tax list. Melis et al. mainly relied on the evaluation of soft law to suggest a more institutionalised approach to the EU tax list, and wonder on the treatment of general low tax regimes within the EU.³⁷ Yearwood et al. criticised specifically the offshore criterion, imposing substance requirements on low-tax jurisdictions, as impractical.³⁸ Collin³⁹ and Oei⁴⁰ argued that some countries may have joined the OECD Inclusive Framework and committed to implementing the OECD BEPS minimum standards primarily due to the threat of being listed by the EU. Rusina examined the effect that the publication of the first 2017 EU blacklist had on share prices of MNE groups with subsidiaries in the blacklisted countries.⁴¹ Vincent et al. highlighted the politicization surrounding the EU tax list and, interestingly, investigated whether it could lead to bottom-up pressure for policy change in Switzerland.⁴² Casano⁴³ and Riccardi⁴⁴ originally examined the reaction of non-EU countries to the EU tax list both from a diplomatic and tax technical perspective, but their study is limited to six countries in total (three per paper).

This scholarship has had a great role in examining the main aspects of the EU tax list. However, it does not seem to embark on a comprehensive study that constructively balance the perspectives of multiple involved stakeholders. It does not clarify whether the list can effectively tackle tax avoidance and harmful tax competition. Consequently, it remains unclear whether this list, even with adjustments, is the right tool to improve international taxation, or if more radical changes are needed, and what their direction should be.

Moreover, from a tax technical perspective, current scholarship does not actually assess whether EU Member States are subject to the same listing standards as those imposed by the EU tax list on non-EU countries – although it acknowledges this as a key element for the credibility of the list. It does not clarify the value and application of the EU listing criteria, and in particular the standards for fair taxation, by analysing the reforms implemented by non-EU countries. It does not evaluate the potential of the EU listing criteria to tackle tax avoidance, or observe the influence of EU tax law and standards on national policies and on the OECD's tax approach.

Additionally, the literature has limited empirical data on non-EU countries' experiences and their actual views on fairness and legitimacy. These have also

37 Melis et al., 2019.

38 Yearwood et al., 2020.

39 Collin, 2020.

40 Oei, 2022.

41 Rusina, 2020.

42 Arel-Bundock et al., 2023.

43 Casano, 2024.

44 Riccardi Sacchi, 2023.

not been balanced with EU-centred perspectives favouring the EU tax list. It also does not analyse countries' strategic responses, which could provide insights into their reforms and organizational behaviours under external pressure.

Finally, the literature has not yet connected the reflections derived from the analysis of the EU tax list to broader theoretical frameworks to draw conclusions on the current status, formation, and evolution of EU tax policy, and its constructivist nature, on countries' diplomatic and technical responses to conformity pressure, on intra-relational and post-colonial elements as factors conditioning international (tax) policy initiatives and their success.

This research addresses all these gaps in current literature on the EU tax list. In particular, the dissertation investigates the efficacy – i.e. the ability to produce the intended results (Cambridge Dictionary) – of the EU tax list to stop or at least mitigate harmful tax competition and tax avoidance, as well as achieving its implicit goals of cooperation and EU market protection. The research does so by answering the following main research question:

What is the level of efficacy of the EU tax list towards the achievement of its pre-fixed goals?

The research question requires investigating the goals of the EU tax list and creating a model for the assessment of its efficacy. More specifically, the main research question is studied through the following sub-research questions:

- *How, why, and from which background has the EU tax list developed? (Chapters 2 and 3)*
- *Who are the main actors playing a role in the governance of the EU tax list? (Chapters 2 and 3)*
- *What power dynamics does the EU tax list imply inside the EU (i.e. among EU institutions and stakeholders)? (Chapters 3);*
- *What are the goals of the EU tax list? (Chapter 4);*
- *What is the modus operandi of the EU tax list with reference to its geographical scope and listing procedure? (Chapter 5);*
- *What technical and political elements determine the EU listing decisions, and which of these elements prevail over others? (Chapters 2, 3, 5, 6, 7, and 8);*
- *What are the listing criteria of the EU tax list and how do they function? (Chapter 6);*
- *What reforms do compliant countries have to implement? (Chapters 6 and 8);*
- *Does the EU tax list have a deterrent effect? If so, how? (Chapters 7 and 8);*
- *What is the compliance strategy of compliant countries? (Chapter 8);*
- *What are the implications of the EU tax list on the national tax policy of compliant non-EU countries? (Chapter 8)*
- *Are there implications of the EU tax list on international taxation? (Chapters 6 and 8).*

- *What power dynamics does the EU tax list imply outside the EU (i.e. between the EU and non-EU countries)? (Chapter 8).*

These research questions have been studied through a constructionist epistemology, which informed the inductive and empirically qualitative research design. This is further explained in sections 1.2. and 1.3 below.

1.1.3 Research scope and contributions

The research covers developments related to the EU tax list up to 2024 due to the extension of the data collection period, as explained in the methodological section 1.4. Additionally, the scope of the research includes 19 non-EU countries (as detailed in subsection 1.4.2) to reflect on the experiences and reactions of these countries to the EU tax list.

Compared to current studies, this research provides a comprehensive and in-depth understanding of the governance and *modus operandi* of the EU tax list, and the issues it raises (Chapters 2-7). It also investigates the perceptions of the stakeholders directly or indirectly involved in the EU tax list, both inside and outside the EU. As explained in section 1.2 on the epistemological stand of this study, perceptions are key because they shape reality, knowledge, and how institutions and organizations act and re-act. For example, as shown in Chapters 6, 7, and 8, non-EU countries perceptions on the EU tax list and its deterrence influence their response to the EU tax list; their perception on application of different standards between EU and non-EU countries influences their relation to the EU listing process and the EU itself, regardless of whether double standards actually occur.

By examining institutional power dynamics within the EU beyond their formal structures, the research unveils the implicit and unofficial goals of the EU tax list (Chapter 4). It uses the EU tax list as a case study to analyse informal intra- and extra-institutional relationships in the area of taxation. The study demonstrates how the EU tax list results from the reshaping of these relationships, blending formality and informality, which could influence the development of future EU tax policy initiatives. This research contributes to political science theories on EU studies, revealing the applicability of a constructivist approach to EU tax matters, beyond the traditional rationalist perspective (Chapter 3).

This research examines the EU tax list's external impact beyond EU's borders, investigating its consequences at the international tax level, as well as level of EU's influence on countries across the world. It assesses whether the EU tax list acts as a tool of cooperation and dialogue or as a means of coercion. This analysis includes understanding the experiences, strategic reactions, and perceptions of non-EU countries subject to the EU tax list and the power dynamics influencing compliance behaviours. The research con-

tributes to sociological response theories in regulatory compliance and reputational damage. It integrates and problematises these theories into the context of taxation and coercion, provides empirical insights to shape their hypotheses and predict countries' conformity or resistance (and related strategies) to regulatory compliance mechanisms such as blacklisting (Chapters 7 and 8).⁴⁵ Finally, when addressing the experiences of developing countries, the research adopts a decolonizing approach to international tax dynamics, valuing the voices of emerging economies. It specifically addresses their concerns regarding power dynamics with the EU and the risk of misalignment between EU-requested tax reforms and their social, economic, and tax-policy priorities (Chapter 8).

The contributions so far explained were enabled particularly by adopting an epistemological stance that highlights the importance of perceptions, experiences, and interactions in shaping reality and knowledge, as detailed in section 1.2 below. The collection of interview data was crucial for gathering insights from non-EU countries, EU-based agents, and other stakeholders. Therefore, this research addresses information gaps in official documents, overcoming the limitations of document analysis alone. By integrating interview data, it provides valuable, unique, and innovative insights into perceptions, experiences, and interactions, useful for exploring power dynamics, political interferences, and reality perceptions, which integrate current literature on the EU tax list (see section 1.3 on the research methodology).

From a legal perspective, this research studies the legislative techniques used by non-EU countries to rapidly implement EU-requested tax reforms and the EU's influence on their tax policies via the EU tax list. It empirically contributes to legal transplant theories by studying the influence of EU laws and standards on non-EU countries as a result of compliance with the EU tax list (Chapter 8).

Additionally, the research also analyses the technical steps required for effective compliance with EU's requests and the changes in countries' tax systems after compliance, including the implementation of economic substance requirements and other EU tax standards on corporate tax regimes (specifically, foreign source income exemption (FSIE) regimes and manufacturing regimes) (Chapters 6 and 8). This offers practical support to countries striving for compliance.

Finally, the study clarifies the interpretation and application of the EU listing criteria. It especially evaluates their potentiality to reduce tax-avoidance loopholes and their relation with the OECD tax standards, highlighting the new stance the EU tax list sets in international tax law, influencing OECD standards towards a more rigid approach to harmful tax competition and pushing towards a global rethinking of the concept of tax haven (Chapter 6).

⁴⁵ The need for such an empirical integration specifically for response theories was made evident by Prof. Oliver (Oliver, 1991).

The clarity in interpreting and applying the EU listing criteria sheds light on the standards of tax good governance established by the EU. In contribution to current literature on tax good governance, this dissertation provides a practical understanding of the concrete actions and reforms expected from countries, and the implications and challenges these reforms may pose for non-EU countries, particularly developing ones facing administrative difficulties with international tax standards and compliance – but also a fundamental disagreement with the tax reforms requested by the EU (Chapter 8).

Overall, as summarised in Chapter 9, the dissertation leads to reflections on the efficacy, benefits and shortcomings of the EU tax list. It establishes a new theoretical framework through which analysing the evaluations on the EU tax list as a supranational tax policy tool, and on non-EU countries response to its coercive demands. The dissertation concludes that one of the main shortcomings of the EU tax list is its policy inconsistency, which penalises mainly developing countries, while scattering EU's resources at the expenses of a more targeted anti-tax avoidance action. The benefit of the EU tax list is the revitalization of the discussion on tax competition and the need for countries to pre-assess their regimes in terms of harmfulness and socio-economic contribution. These and other reflections of this dissertation, which also build on a thorough analysis of stakeholders' interviews, criticism, and perspectives, led to reflections on whether the EU tax list, with its current features, is the right tool to achieve its goals, and to constructive policy recommendations elaborated in Chapter 9. Finally, the variety and richness of insights and contributions of the research lay the foundations for new research routes drawn on this dissertation, as suggested in Chapter 9.

Some parts of this research's conclusions have been reported in shorter research outputs.⁴⁶

1.2 EPISTEMOLOGICAL POSITION

This section explains the epistemological stance taken for the research. Epistemology offers philosophical grounds to examine the relationship between research and knowledge, the methods of acquiring knowledge, and its validity and scope.⁴⁷

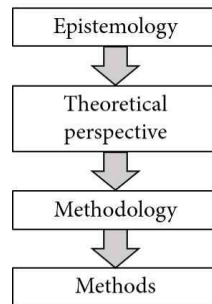
According to Crotty represents the interaction between epistemology, theoretical perspective, methodology, and methods is a vertical relation where the epistemology informs the theoretical perspective, which influences the methodology, which in turn determines the selection of research methods (see Fig. 1.1 below).⁴⁸

46 Casano, 2020, 2024, 2025.

47 Maynard, 1994, p. 10.

48 Crotty, 1998, p. 12.

Fig. 1.1: Crotty's representation of the interaction among epistemology, theoretical framework, methodology, and methods.



*Epistemology means the theory of knowledge embedded in the theoretical perspective and thereby in the methodology. The theoretical perspective is the philosophical stance informing the methodology, therefore providing a context for the process and grounding its logic and criteria. Methodology indicates the strategy, plan of action, process or design lying behind the choice and use of methods. The methods are the techniques or procedures used to gather and analyse data related to the research question.*⁴⁹

This research adopts a constructionist epistemology by assuming that reality is subjective and multiple, constructed and interpreted by individuals based on their experiences. Differently from objectivism, constructionism rejects the notion of an objective truth. In fact, it sees truth as relative, created through our engagement with the world. Meaning is constructed, not discovered, so different people may interpret the same phenomenon differently. As Crotty states, “subject and object emerge as partners in the generation of meaning”.⁵⁰

By adopting, under the umbrella of constructionism, the angle of interpretivism as theoretical perspective in social science, the aim of this research is Understanding (*Verstehen*), namely comprehending social phenomena from the perspective of those involved. In the words of Crotty, “*Verstehen* sociology locates the study of society in the context of human beings acting and interacting”.⁵¹ Accordingly, this research aims to understand and explore the interpretation that those involved in the EU tax list have about the list. This knowledge is relevant since the research is based on the constructionist assumption that a phenomenon has the meaning given by the interaction and understanding of those that interact with it. Therefore, their perspectives are key to define, explain, and assess the EU tax list through their comparison. The Understanding (*Verstehen*) in this dissertations is then pursued for the purpose of Explanation (*Erklären*). As stated by Weber, this means “understand-

49 Crotty, 1998, p. 11.

50 Crotty, 1998, p. 17; Furlong et al., 2010, p. 190-191.

51 Crotty, 1998, p. 80; Furlong et al., 2010, p. 190-191.

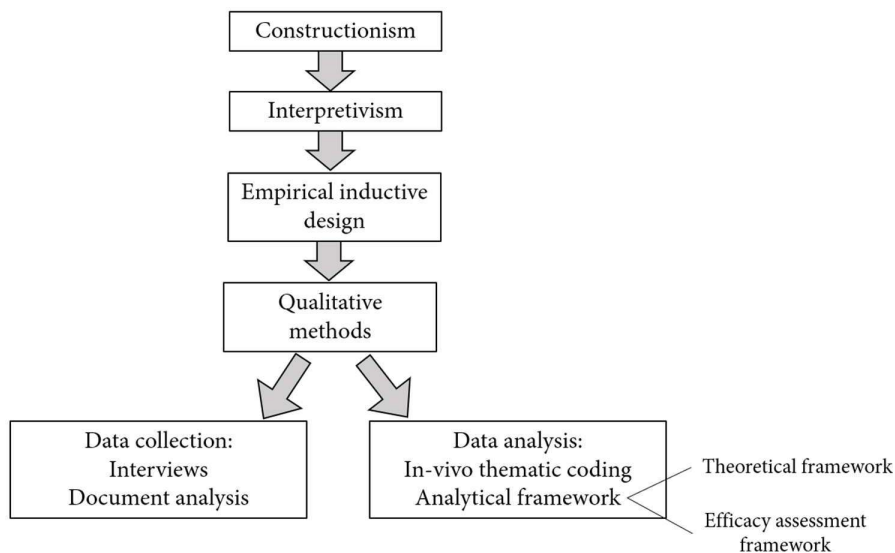
ing social actions to arrive at a causal explanation of its course and effects".⁵² My research is not limited to the understanding and descriptions of the EU tax list and its features, but it extends to understand their 'why', namely their reasons, their purposes, and their implications.

The constructionist epistemological stance and the interpretivist theoretical perspective have shaped the research design and methodology of this study, as the use of qualitative empirical methodology and the gathering of information via interviews were crucial to capture those valuable perceptions, experiences, and interactions that have shaped the EU tax list (as further explained in section 1.4).

1.3 RESEARCH DESIGN AND METHODOLOGY

This section explains the research design and methodology adopted in this study. As a consequence of the described epistemological position, the research has an empirical design and it adopts qualitative methods. Fig. 1.2 below gives an overview of the methodology and its connection with the research's epistemology.

Fig. 1.2: Schematization of epistemology, theoretical perspective, methodology, and methods in this research.



⁵² Weber, 1968, p. 3.

This research is based on an empirical inductive design, which gives the research an explorative character towards the nature, features, and implications of the EU tax list.⁵³ Two reasons explain the choice of an inductive design. Firstly, the limited availability of academic literature on the EU tax list, and the limited extent of the few available publications by the time this research started in early 2020.⁵⁴ Secondly, inductive design reduces theoretical bias in data collection and analysis as these occur before engaging with a theoretical framework. Integrating the theoretical framework (described in subsection 1.4.2.1) after the data analysis allowed for a more empirically grounded approach⁵⁵ which enhanced the identification of new categories and patterns unidentified by existing theories (e.g., on the classification of countries' compliance behaviours). Thus, the inductive design has been better suitable for an explorative research which, for the first time, offers an in-depth analysis of the EU tax list.

Finally, this research also features a historical methodology to explain the policy evolution that led to the EU tax list, as well as the policy goals behind the initiative. Inductive methodology well combines particularly with historical institutionalism as the latter tends to rely on "empirical explanations, rather than theorising";⁵⁶ "historical institutionalists prefers to identify the motivation, interests, and identities of organizational actors by sifting through the empirical record first and generalizing about it later".⁵⁷

More details on the methods used in this research are reported in the sections below. In particular, section 1.4 addresses the methods of qualitative empirical research for data collection and analysis. Section 1.5 refers to the doctrinal method which integrated the empirical research.

1.4 EMPIRICAL RESEARCH METHODS

1.4.1 Data Collection

The collection of empirical data through qualitative methods – i.e. interviews and data analysis – aligns with the constructionist epistemological position

53 Contrary to deductive designs, which aim at testing existing theoretical hypothesis instead of exploring the research field with less theoretical bias (Bijleveld, 2023, p. 17-21).

54 As explained in subsection 1.1.2, before 2020/2021 only a few studies had been published on the EU tax list, offering a non-in-depth overview of the main features of the EU listing process and criteria. A few later studies from 2020 and 2024 are integrated in the dissertation, although they do not capture the entirety of the EU tax list but some of its specific effects.

55 In Lockean terms (see J. Locke, [1689] 1996), in an inductive design the researcher tries to approach a phenomenon with a 'pure mindset', namely the mindset of a person whose knowledge is built by means of experience and interactions.

56 Marriott, 2012, p. 102.

57 Campbell, 1997, p. 23; Marriott, 2012, p. 102.

and the inductive research design of this dissertation. These methods allowed for the gathering of qualitative information on interactions, perceptions, relations, and opinions shaping the EU tax list, without requiring a theory-based set of hypotheses to test, thus enabling a more grounded approach.

Primary empirical data were collected through interviews and document analysis. Interview data were gathered between 2022 and 2023, while the documents' temporal range spans from 2013 to 2023 (but including documents published in 2024 and 2025 when relevant to reflect potential updates on matters discussed throughout the dissertation).

The subsections below give more technical information on the document analysis and the interview data collection.

1.4.1.1 Document analysis

The documents analysis used a set of EU formal and informal documents drafted by a variety of EU institutions or working bodies. More specifically, the set included:

- agenda documents, drafted by the GSC;
- working papers, drafted by the GSC;
- minutes of COCG's meeting, drafted by the European Commission;
- minutes of meetings of the Platform for Tax Good Governance (PTGG), drafted by the European Commission and approved by the PTGG's members;
- progress reports on non-EU countries' commitments and compliance, drafted by the European Commission and/or the GSC;
- COCG's reports to the Council, drafted by the GSC;
- COCG's assessments of non-EU countries' tax system/regimes, drafted by the GSC;
- European Commission's draft-assessments of non-EU countries tax system/regimes, for discussion at the COCG;
- minutes of public hearings held by the European Parliament;
- Council's Conclusions drafted by the GSC and approved by the ECOFIN Council;
- European Parliament's Resolutions;
- European Commission's Communications.

Hundreds of formal and informal documents have been analysed. As all were drafted by, or involved, EU bodies contributing to the EU tax list either formally or informally, these documents have been crucial in understanding the historical development, establishment, and features of the EU tax list. In the analysis, consideration has been given to the different natures of the documents (e.g., whether formal conclusions, internal drafts, or meeting minutes), and to the role of the drafting EU body and its potential bias. The data validity has been controlled by means of data triangulation, combining documents'

data, interview data, and secondary data as much as possible (according to data availability).

– *Confidentiality around the EU tax list*

A significant issue for the data collection has been to overcome the confidentiality characterising the discussions on the EU tax list at the COCG and the Council. Their deliberations are confidential due to their diplomatic nature, making its work and impact on tax policy largely unknown to the public.⁵⁸ Member States believe confidentiality is essential for the COCG's function, therefore little is known about the their political handling of tax policy within and outside the EU (particularly, with regards harmful tax regimes) or the rationale behind their decisions. The roles and positions of EU Member States in these discussions are also often unclear.⁵⁹ As a result, at least most of the EU documents related to the Council's and COCG's work on the EU tax list has been classified and, therefore, not publicly available.

To collect enough relevant data despite the confidentiality classification, the first strategy adopted was to formally request documents (via freedom-of-information (FOI) requests) to the Council and the European Commission on the basis of the EU Transparency Regulation.⁶⁰ A request was also submitted to the Dutch Ministry of Finance as a member of the COCG. However, all requests were fully or partially rejected (more details on the FOI requests process and its results are explained in Box 1.1 below).

As a result, only around 200 of the analysed documents were unpublished documents accessed via FOI requests (although some of them were not strictly related to the EU tax list, or were replicating information of public documents). The most useful documents were minutes of COCG's meetings drafted by the European Commission, although most of them were granted with redactions.

58 Nouwen, 2017, 2021, p. 4-5, 194-195; Queen Mary University, 2020; European Parliament, 2015, par. 87, 2015 b, par. Rec B2, 2016, par. 47-49, 2017, par. 185-189, 198-200, 2017 b, 2018, 2019, par. 411-418, 2020, 2021 b, 2021 c; EU Observer, 2017; Spiegel International, 2015, 2021; Oxfam, 2017.

59 Nouwen, 2017, 2021, p. 194-195; European Parliament, 2021 c.

60 Regulation (EC) No. 1049/2001.

Data from unpublic documents were integrated with public documents accessed via the Council database⁶¹ and the website of the PTGG. It was also integrated by means of interviews, as explained in the subsection below.

Box 1.1. – The FOI requests process and its results

Between 2020 and 2021, eleven FOI requests were sent to the Council to obtain access to any Council's and COCG's documents concerning the works of the EU tax list from 2016 to the date of the request. Only a few documents were disclosed.⁶² Against the decision, confirmatory applications⁶³ were sent to the Council in 2021 on the basis of the EU Transparency Regulation.⁶⁴ The decisions on the confirmatory applications mainly confirmed the Council's position of first instance. The Council used the following arguments to justify the limitation to the FOI requests.⁶⁵

- the confidentiality of the COCG since, as stated by the Council, "Member States should feel free to speak";⁶⁶
- the protection of the public interest as regards international relations since, as stated by the Council, "disclosure of the documents would result in [non-EU countries] request[ing] to reopen negotiations for obtaining more favourable conditions, thus backtracking on commitments made";⁶⁷
- the protection of negotiations from undue stakeholders' pressure on non-EU countries and Member States;
- the protection of the Council's decision-making process since, according to the Council, "there is no closure in the EU listing process".⁶⁸

A similar experience relates to the FOI requests sent to the European Commission in 2020 (asking access to any Commission's documents concerning the works on the EU tax list at the Council and the Commission from 2016 to the date of the request),

61 Over the last two or three years, more documents on the EU tax list have been shared through the Council's database as a response to the pressure on the COCG's from more transparency by the European Parliament (European Parliament, 2018, 2017 b, 2020, 2021 b, 2021 c). This significantly facilitated the data collection. The newly public documents concerned COCG's assessment of countries, part of correspondence between the COCG and some non-EU countries, COCG's six-months reports to the Council. However, the publication has not been systematic (for example, some assessments and some correspondence, and only in relation to some countries and in a certain year, are published) and, in some cases, the publication may occur with at least months or a year of delay from their adoption at Council.

62 Around eight percent of documents have been released out of the first request, five percent out of the second, 20 percent out of the third and 50 percent out of the fourth request.

63 Confirmatory applications are second-round FOI requests by which the applicant asks the transparency department of the EU institution concerned to reassess its position and grant access to documents.

64 Regulation (EC) No. 1049/2001, Art. 7(2).

65 Information extracted from the decisions to all Council's confirmatory applications of this author.

66 Quotation extracted from the decisions to all Council's confirmatory applications of this author.

67 Quotation extracted from the decisions to all Council's confirmatory applications I submitted.

68 Quotation extracted from the decisions to all Council's confirmatory applications I submitted.

reflecting similar justifications⁶⁹ to limit the requested access to meeting minutes taken by the Commission at COCG's meetings. As a consequence, the documents that were granted did not include any references to Member States' positions, and any content related to assessments of specific non-EU countries, such as the USA, and to specific aspects of the EU tax list (e.g., the implementation of the EU listing criteria and their upcoming developments). Against these limitations, I submitted seven confirmatory applications to the European Commission, which received negative responses.

1.4.1.2 Interviews

Interviews were used to triangulate, interpret, and complete the information found in the EU documents. The use of interviews makes the data set more valuable and unique because it allowed for the gathering of exclusive information on the first-hand experience and views of policymakers and stakeholders (in)directly involved in the process and dynamics of the EU tax list. The data are unique particularly given the level of confidentiality around the work of the EU tax list and the interactions with the non-EU countries. It is noteworthy and exceptional that I was able to conduct interviews with participants and elicit detailed discussions on such a confidential topic. This achievement is particularly significant given that even the European Parliament has not been able to access the intricate details of the COCG's work on the EU tax list.⁷⁰ Such elements increase the innovative character of this research.

Interview data were collected by conducting semi-structured interviews. This means that each interview was based on a broad list of topics which I had set to be covered in the discussion; however, control over the conversation and the range of topics was limited and largely dependent on the flow of the discussion. This facilitated smooth interaction, discursive flow, and 'free-talk' with the interviewees. Each interview lasted on average two hours.

Interviews generally covered, for example, questions on the establishment and goals of the EU tax list, the steps of the listing process, strength and weaknesses of the EU listing approach, diplomatic and policy reactions from non-EU countries, effects of EU-requested tax reforms on non-EU countries (A more specific list of topics covered in the interviews is reported in Appendix III). The interviews covered the professional knowledge of the interviewees

69 As the Council, also the European Commission referred to the risk of undermining the public interest as regards the financial or economic policy of the EU Member States, and the decision-making process of the COCG "because it would make Member States more hesitant to express their frank views and undermine the confidence of discussions in the Group, which could affect the Group's effectiveness". Since non-EU countries are assured of confidentiality during the screening process, "the release of records would breach that confidentiality". Quotations are extracted from the decisions to the FOI requests I submitted to the EU Commission.

70 Interview EP3; European Parliament, 2015, par. 87, 2016, par. 47-49, 2018; Spiegel International, 2015, 2021; EU Observer, 2017.

as stakeholders involved in the EU tax list (e.g., on the steps of the listing process), as well as their own experience and opinion on the matter (e.g., the strength and weaknesses of the EU listing approach).

The interviewees were policymakers, tax-policy advisors, and tax experts involved in the EU tax list from a variety of perspectives and levels of involvement. As discussed throughout the dissertation, these include EU institutions and their policymakers, NGOs, policymakers and private stakeholders from non-EU countries assessed under the EU tax list, independent private stakeholder acting as tax consultant, international fora as the OECD. More specific details on the interviewees and the number of interviews are as follows:

- Category interviewee 1: policymakers from EU Member States
 - These are civil servants of EU Member States, employed as diplomats in Brussels or at the ministry of finance. They are COCG members who represent EU Member States at COCG’s meetings;
 - Total number of countries: 6;
 - Total number of interviewees: 8.
- Category interviewee 2: policy makers from EU institutions
 - These work in and for the EU institutions as civil servants and/or policy advisors;
 - European Commission (which supports the COCG’s work on the EU tax list): total number of interviewees: 2;
 - Council of the EU (ultimate decision-maker on listing decisions): total number of interviewees: 1;
 - European Parliament (informal role as political influencer⁷¹): total number of interviewees: 3.
- Category interviewee 3: policymakers from non-EU countries
 - These are civil servants from non-EU countries’ ministry of finance who dealt with the EU and the national implementation of the EU-requested tax reforms under the EU tax list. They were not involved in the decision-making of the EU tax list;
 - Total number of countries: 7;
 - Total number of interviewees: 7.
- Category interviewee 4: independent private stakeholders
 - A private tax consultancy firm which advises non-EU countries’ governments on how to manage compliance with the EU tax list and how to implement the EU-requested reforms into national law: total number of interviewees: 1;
 - A private entity based in a non-EU country assessed under the EU tax list: total number of interviewees: 2.

71 See Chapter 3 for more details on the role of the European Parliament in relation to the EU tax list.

- Category interviewee 5: policymakers at international fora whose work has been impacted by the EU tax list
 - OECD:⁷² total number of interviewees: 1.
- Category interviewee 6: internal advisors at NGOs (informal role as political influencer⁷³)
 - Total number of interviewed NGOs: 3;
 - Total number of interviewees: 3.

Saturation⁷⁴ was reached once information from an interviewee to another started repeating, so that no new data were being collected. This was achieved at a total number of 28 interviewees, including 13 interviewed countries. Interviews were conducted in person and online from 2022 to 2023.⁷⁵ Appendix II provides an overview of all conducted interviews with pseudonymised⁷⁶ interviewees and year of data collection. It can be noted that mostly one interviewee per country has been interviewed. This is due to practical reasons, i.e. either because only one member of staff works on the EU tax list within the relevant office (e.g., ministry of finance, national representation at COCG), or because only one member of staff gave availability for the interview (indeed, reaching interviewees has been particularly difficult given the perceived sensitivity of the topic in light of diplomatic implications).

It should be noted that interviews, when used to collect subjective experiences, are intended to capture perceptions rather than objective truths.⁷⁷ Therefore, within the scope of subjective experiences, the focus is on stakeholders' perceptions, as these perceptions influence their behaviour and,

72 See Chapter 6 for more details on the relation between the OECD and the EU tax list.

73 See Chapter 3 for more details on the role of NGOs in relation to the EU tax list.

74 Saturation refers to the point at which no new information is observed in the data through data collection. It is a criterion used to determine when data collection can be stopped as additional data will not provide any new insights. Saturation is achieved when the researcher finds that further interviews or observations are yielding repetitive information, indicating that the research question has been thoroughly explored (Grady, 1998; Saunders et al., 2018; Bouncken, 2025).

75 A list of all interviews with information on interviewees and interview year is reported in Appendix II. Many more potential interviewees (e.g., from EU Member States and non-EU countries) were invited to participate in the research. However, these declined or did not reply to the invite, probably in view of the perceived sensitivity of the topic. To protect the identity of those who participated, the affiliation of invited potential interviewees can be disclosed only on request, on a case-by-case basis.

76 I used certain procedures to protect the interviewees, such as pseudonymization of their identity, password-protected storage of the data, and limited access to the interview data (recordings, transcripts, etc.): only I had full access; my supervisors had only access to the pseudonymized transcripts when needed; access has not been granted to anyone else. To check the interview data, access can be granted to pseudonymized transcripts on request, on a case-by-case basis.

77 Vromen, 2010, p. 258; Richards, 1996, p. 199; Mason-Bish, 2019, p. 274; Delaney, 2007; Bijleveld, 2023, p. 70-71; Lancaster, 2017, p. 94.

consequently, shape and determine the development of the EU tax list (as explained under to the epistemological position of this research, section 1.2).

1.4.2 Data analysis and analytical framework

Given its inductive design, the collection of empirical data was the first step of the research. Once the interview data were collected, I transcribed the interviews manually to familiarise with the data content; similarly, I read the documents used for data collection (see subsection 1.4.1.1) at least once before starting the analysis. This also helped familiarising with the data. Data familiarisation was a key component to inform further data collection.

After the familiarisation stage, documents' and interviews' data were analysed both manually and on Atlas.ti to identify patterns, trends, and themes. Inductive in-vivo thematic coding⁷⁸ were the analytical methods used for this purpose, prior to integrating a theoretical framework. To support the robustness of the codes assigned to the data, codes and groups were reviewed at least once.

Related codes were combined into broader categories to organise the data into meaningful clusters (Appendix IV offers an overview of the main code-categories and codes identified during the analysis of the interviews on Atlas.ti). The categories were analysed to find patterns and overarching themes.

Findings were drawn by looking at the dispersion of themes across the data, searching for major themes in the data and clustering them into patterns. The findings, including interviews' and documents' quotes, are reported throughout the dissertation, together with the analysis of their implications in relation to the research questions.

To conclude the data analysis, the findings (i.e. patterns, trends, and themes relevant to answering the research questions) were interpreted through two analytical frameworks: the theoretical framework and the efficacy assessment framework. With the latter, the findings were interpreted based on an assessment scheme that builds on the concept of efficacy (subsection 1.4.2.2). Under the theoretical framework, the findings were interpreted to the lens of sociological and legal theories (see subsection 1.4.2.1). By comparing the empirical findings with the theoretical framework, the dissertation assesses whether the findings align with current theories or if new themes problematise current theoretical assumptions.

During the in-vivo coding of interviews' and documents' data, the coding included a bifocal approach towards two areas, useful to direct the analysis towards the research questions: i) the governance, features, goals, and *modus*

78 In-vivo coding is a method where the researcher uses the exact words or phrases of participants to create codes. This approach helps to keep the analysis close to the data and preserves the authenticity of participants' language (Saldaña, 2013).

operandi of the EU tax list; ii) information related to a selection of non-EU countries included in the research as units of analysis. These countries are:

1. Australia;
2. Bahamas;
3. Barbados;
4. BVI;
5. Bermuda;
6. Cayman Islands;
7. Costa Rica;
8. Curaçao;
9. Hong Kong;
10. Jersey;
11. Mauritius;
12. Namibia;
13. Panama;
14. Seychelles;
15. Switzerland;
16. Turkey;
17. United Arab Emirates (UAE);
18. Uruguay;
19. USA.

These non-EU countries have been scrutinised by the EU under the EU tax list, and were selected as units of analysis for the following reasons:

- They have been involved in the EU tax list as they were blacklisted and/or greylisted, or assessed and not listed;
- Together, they represent different levels of countries' development status (i.e. developed countries, developing countries with(out) a financial centre⁷⁹);
- Together, they are representative of different geographical and geopolitical positions towards the EU;
- There was sufficient availability of empirical data (interview data and/or document data) to enable an in-depth study. Indeed, data from interviews, documents, or both were available for all selected countries.

The selected countries have been studied using primary data from conducted interviews and analysed documents (see sections 1.4.1.1 and 1.4.1.2, respectively), as well as secondary information from the literature.

The selection of these countries helps define the research scope, as they form the focus of this dissertation within the context of countries' experiences.

⁷⁹ To define the development status of a country, the dissertation relies on the label assigned by the Council (see Appendix I on glossary).

1.4.2.1 Assessment framework

To assess the efficacy of the EU tax list, I built a framework based on its explicit and implicit goals identified in Chapter 4. These goals were determined via the analysis of document data and interview data from EU-based stakeholders (i.e., formal and informal EU documents as explained in subsection 1.4.1.1, and interviews with EU Member States and EU institutions) that provide insights into the reasons behind the establishment of this initiative.

Once identified, the goals were grouped and used throughout the dissertation to test the efficacy of the EU tax list. Each feature of the EU tax list, as identified and analysed in this dissertation, is compared and assessed against the identified goals, chapter by chapter. Considerations are made on whether each specific feature aligns with the list's goals and, therefore, contributes to its efficacy.

1.4.2.2 Theoretical framework

The theoretical framework is composed of multiple theories from social, political, and legal sciences, which contribute to the interpretation of the EU tax list as a policy instrument, and connect its features to broader theoretical areas besides taxation. Their relation with the topics and chapters of this dissertation is schematised in Fig. 1.3 below, and further explained in this subsection. In-depth analysis of their theoretical stands and implications can be found in each respective chapter.

Fig. 1.3: Thematic relation between the dissertation and its theoretical framework

EU interinstitutional and extra-institutional relations	Social Institutionalism & Constructivism in EU studies Intergovernmentalism in EU studies Power theories Governance theories
International reputation	Strategic response: rationalist constructivist approach Reputation theories in international law
Response to regulatory compliance	Strategic response: institutionalist and resource dependence approach Strategic response: rationalist constructivist approach Reputation theories in international law
Policy and legal influences	Legal Transplant theories Legitimacy theories Power theories
Perspective of developing countries	Decolonization theory Power theories

Theories of social institutionalism and constructivism have been particularly important in the analysis of the empirical findings of this research. By adapting an interpretivist perspective, social institutionalism (as well as constructivism) emphasize the “impact of cultural rules, models, and mythologies on organizational structures and practices”,⁸⁰ it highlights the importance of perception for the evolution of organizations. Specifically, new institutional sociology helps understand interactions between institutions and non-institutional actors.⁸¹ This has helped understanding, for example, the relations of EU institutions with media and NGOs in Chapter 3. In the same chapter, institutional sociology has helped interpreting the tendency of some EU institutions to resist change.⁸²

Institutional sociology also allows the study of power dynamics as it offers a framework to consider the role of certain actors and organizations, the power they have, the source of such power and the way they use such power, along with the associated implications. As noted by Covaleski et al., “institutionalization as a process may be profoundly political and reflects the relative power of organized interests”.⁸³ As shown in Fig. 1.3, the concept of power and the theories related play a relevant role in both Chapters 3 on intra-EU policy power, and Chapter 8 on power relations between the EU and (developing) non-EU countries.

A core concept within new institutional sociology is legitimacy. As explained by Mulligan, “the concept is rooted in the idea that organisations need to be socially acceptable and credible in order to survive in their social

80 Edelman et al., 1997, p. 493; Mulligan, 2012, p. 80.

81 Mulligan, 2012, p. 87.

82 Mulligan, 2012, p. 80; Zucker 1991.

83 Covaleski et al., 2007, p. 8; Mulligan, 2012, p. 88. 80-81.

environment”.⁸⁴ According to Suchman, legitimacy is “a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions”.⁸⁵ The relevance of legitimacy plays a role in the analysis of research findings in Chapter 8, when discussing the legitimacy of EU’s influence in non-EU countries’ tax policy (especially developing countries).

Jason Sharman’s rational constructivism in response theory has been crucial for analysing the research findings in this dissertation (especially deterrence and countries’ response behaviours, Chapters 7 and 8 respectively). Sharman studied countries’ strategic behaviour towards blacklisting by combining constructivist and rationalist approaches, emphasizing language, identity, the making and re-making of policy through speech, while accepting the rationalist view of materially derived preferences, cost-benefit calculations, and strategic interaction. He argues that perception plays a significant role, integrating insights from both theories to address political life where discourse and self-interest are important.⁸⁶ Sharman highlights the empirical relevance of reputation in countries’ decisions to comply and reform, driven by the desire to avoid future costs from blacklisting. He stresses that economic data alone underestimate the pressure of blacklists, which are speech acts with constitutive and causal effects within a sociological context. Speech acts create ‘institutional facts’ through collective belief.⁸⁷ Sharman’s study is key to the theoretical framework of this dissertation, given its capacity to capture collective acceptance and perception as key factors that together generate social construction power,⁸⁸ to conceptualize blacklisting as a coercive mechanism and speech act that excludes dialogue, with its effectiveness depending on perceptions of fairness and inclusivity.⁸⁹

Another important contribution to the theoretical framework is Oliver’s work on organizational response to institutional pressure.⁹⁰ His interpretation of institutionalism and resource dependency theories has offered additional theoretical support to interpret countries’ responses to the EU tax list in Chapter 8.

Guzman’s theory on reputational damage based on international law differs from Sharman’s and Oliver’s by adopting a rationalist approach based on international law dynamics rather than sociology and politics.⁹¹ His theory focuses on cost-benefit analysis, nonetheless highlighting the significance of reputational damage. This contributes to explaining the deterrent effect of the

84 Mulligan, 2012, p. 81.

85 Suchman, 1995, p. 574; Mulligan, 2012, p. 81.

86 Sharman, 2009, p. 574, 580, 594-595.

87 Sharman, 2009, p. 576, 579, 581; Wendt, 1998; Barnett et al., 2004.

88 Barnett et al., 2004, p. 7; Sharman, 2009, p. 580.

89 Sharman, 2009, p. 594.

90 Oliver, 1991.

91 Guzman, 2006

EU tax list in Chapter 7, as well as countries' compliance strategies in Chapter 8.

Finally, the dissertation adopts a decolonisation framework when discussing the perspective and position of developing non-EU countries towards the EU tax list (Chapter 8, subsection 8.3).

1.4.3 Methodological limitations

The use of qualitative empirical methodology and units of analysis brings certain limitations which are intrinsic to the nature of these methods. The limitations are here discussed.

One potential element is the presence of researcher's bias. Managing personal bias in qualitative research can be achieved through transparency and self-reflexivity.⁹² Self-reflexivity involves the researcher's awareness of their own values and preconceptions and how these relate to the investigation. To this end, the epistemological stance that informed this research, which concerns the formation of knowledge and reality, is discussed in section 1.2. An inductive research design, detailed in sections 1.3 and 1.4, was employed to minimize theoretical biases in data collection and analysis as much as possible. Although some prior knowledge of tax law, derived from my previous studies, may have influenced the research, it is realistic to conclude that this impact is primarily confined to the technical analysis of tax law within this dissertation. Furthermore, when interacting with interviewees, the dynamics of the interview may involve reciprocal influences.⁹³ However, interviewing 'elite' participants – experts such as policymakers who were asked to discuss their work-related experiences – created circumstances in which the respondents were well-informed, in fact more informed than me. The use of semi-structured interviews and my restraint from steering questions allowed these knowledgeable participants to largely dominate the conversation, despite my attempts to guide it towards my list of topics. For these reasons, it can be reasonably concluded that my personal bias had limited influence on the participants.

As for transparency, in qualitative research this is not intended to guarantee replicability, as is the goal in positivist research, but rather to establish the trustworthiness of the findings.⁹⁴ To enhance transparency, this chapter aims to accurately document research decisions and activities.⁹⁵

92 Kuper et al., 2008, p. 689; Morris, 2009; Tracy, 2010; Mason-Bish, 2019, p. 264; Valentine, 2002, p. 125-126.

93 Mikecz, 2012; Richards, 1996, p. 199; Vähäsantanen et al., 2012; Brinkmann, 2014.

94 Pratt et al. 2019.

95 As suggested in Creswell et al., 2000, p. 128.

Another aspect of qualitative research is credibility. To enhance the credibility of this research methodology, this dissertation provides a comprehensive description of the findings, incorporating numerous interview quotes to offer detailed insights. Additionally, triangulation and the inclusion of diverse empirical and theoretical perspectives are employed. Triangulation is achieved by combining interviews and documents from various stakeholders, with data interpreted through multiple theoretical frameworks. Interviews serve to fill gaps left by publicly accessible documents and to inform the research with a variety of stakeholders' views on the studied subject matter. Some interview data can be used to triangulate document data and vice versa, while other interview data – specifically those concerning stakeholders' perceptions – provide unique insights not found in the documents accessible to me. Exceptions include instances where non-EU countries' perceptions are evident in their commitment letters to the EU and/or public statements when available. Due to their uniqueness, not all interview data could be triangulated.

In this regard, it is also important to acknowledge the inherent bias in interview data, as interviewees provided their opinions, experiences, and perceptions based on their personal experiences. The information shared was at their discretion, beyond my control. Consequently, when interpreting the data and results, the potential bias of interviewees must be considered. Similarly, when interpreting public documents, potential bias and inner goals of the drafting institution should be taken into account.⁹⁶ This is not, however, contrary to the aim of this study as this was to capture institutions', organizations', and interviewees' opinions and views, aligning with the epistemological stance that interactions and opinions shape reality, and there is no singular universal truth. Therefore, the findings are valid, relevant, and significant for understanding reality.⁹⁷ Furthermore, this research controls stakeholders' bias by means of triangulation and by comparing their multiple voices and views, and analysing them in light of these comparisons.⁹⁸ Nonetheless, the sources' bias should be taken into account when evaluating the results and attempting to generalize them. This underscores the importance of follow-up research to test the findings on a broader scope.

Finally, on the notion of generalizability of findings, it should be noted that since qualitative research seeks contextualized knowledge (an example can be offered by the fact that qualitative interviews pursue participants' opinions, experiences, and perceptions based on *their* personal experiences), its findings are typically not generalizable as in meaning of quantitative

96 Public documents are typically drafted to serve specific objectives and maintain a positive public image. Consequently, they may be selectively written (Bowen, 2009; Coffey, 2014; Hutten, 2024).

97 Richards, 1996, p. 199; Mason-Bish, 2019, p. 274; Delaney, 2007; Bijleveld, 2023, p. 70-71; Lancaster, 2017, p. 94; Vromen, 2010, p. 258; Peabody et al., 1990, p. 454; Leech, 2002; Brinkmann, 2014.

98 Bijleveld, 2023, p. 71; Vromen, 2010, p. 258.

research. The notion of generalizability should rather be intended as the usability of research findings in other contexts.⁹⁹ To this purpose, this dissertation connects its empirical findings to a theoretical framework that is not necessarily within the remit of law or taxation, reaching conclusions that hold relevance outside the current context (e.g. in EU studies of governance, political science, institutional sociology, international relations) and striving to show the level of abstractions which the findings can reach. The latter is further expressed in Chapter 9, by emphasising the direction of future research that this studies can lead to, stressing its implications besides its direct subject matter. The detailed report of empirical findings and quotes in each chapter, and the explanations of the study's context (in Chapters 1-4), can facilitate the reader in assessing the accuracy of results' abstraction.

1.5 DOCTRINAL RESEARCH METHOD

Besides the empirical methodology, the research also employs doctrinal methods based on desk research, which is key for the analysis of the tax issues discussed in the dissertation. These relate, for example, to the interpretation, application, and assessment of the EU listing criteria, and to the analysis of non-EU countries' tax reforms requested by the COCG. The legal research is based on the analysis of the following sources:

- Tax law literature on tax matters discussed throughout the dissertation, such as tax regimes, tax-avoidance schemes and risks, OECD tax standards;
- EU tax legislation and soft law, especially the EU Code of Conduct for Business Taxation;¹⁰⁰
- The (tax) legislation of the selected non-EU countries.

1.6 STRUCTURE OF THE DISSERTATION

The dissertation can be divided in three main parts. The first part aims at understanding the EU tax list as a strategy of the EU external policy on taxation. To this end, it investigates the historical context around the development of the list and the actors involved in its evolution, establishment, and operations (Chapters 2 and 3). Relevantly, the chapters assess the EU interinstitutional relations in the context of anti-tax avoidance policy, and the relations

⁹⁹ Fingeld-Connett, 2010.

¹⁰⁰ Generally, the analysis adopts the latest version of the EU Code of Conduct, as reformed in 2022 (i.e., after the establishment of the EU tax list in 2017). When the difference between the 2022 EU Code and its previous version (the 1997 EU Code) is relevant, this is specifically remarked in the dissertation (e.g., in Chapter 6, when assessing the EU listing criteria and their relation with the Code's reform).

of the EU institutions with other actors such as NGOs and media. Particularly Chapter 3 stresses the role of actors (i.e., the European Parliament, NGOs, and the media) which informally managed to shape some of the features of the EU tax list despite the lack of formal role or power within the remit of EU tax policy. These findings are connected to political science theories on EU studies and power dynamics.

Part one continues by investigating the explicit and implicit goals of the EU tax list (Chapter 4), and its *modus operandi*, namely the geographical scope, the listing process (Chapter 5), and the listing criteria (Chapter 6) of the EU tax list. In particular, Chapter 6 evaluates the soundness of the listing standards and their potential ability to close tax-avoidance loopholes and tackle harmful tax regimes and tax systems across the world. It also analyses the relation between the listing criteria and the OECD tax standards, reflecting on the implications of the EU tax list on the OECD's work.

Part one concludes by analysing the deterrence capacity of the list (Chapter 7). This examines the consequences established by the EU tax list for listed countries and their contribution to deterrence. To this purpose, the chapter reflects on the reasons why non-EU countries did (not) comply or may have (not) complied with the EU-requests under the EU tax list. It also explains the role of blacklisting as a reputational sanction and its relevance in comparison to defensive measures. The findings are interpreted in relation to rationalist constructivist studies and reputational theories in international law. The chapter also discusses the issues around national defensive measures, primarily the struggle of coordination and their possible legal incompatibility with other legal sources.

Given its partial reliance on non-EU countries' perceptions on deterrence, which highlights the deterrent effect of reputational damage (or its mere risk), Chapter 7 opens the pathways to the second part of the dissertation. This analyses the experience of non-EU countries reacting to the EU tax list (Chapter 8). It offers a series of concrete examples on how the listing criteria and process apply, and it analyses countries' reforms with technical explanations on their applications. It reflects on countries' response behaviours, their compliance strategies and copying mechanisms. It also reflects on countries' national process to incorporate EU-requested reforms and on countries' perceptions of the EU tax list, which show a certain degree of disagreement with the EU listing approach and its coerciveness. The empirical findings are used to draw conclusions on tax technical takeaways to pursue compliance, and to establish (dis)continuity with current compliance response theories. The chapter also ponders over the influence of the EU (via the EU tax list) on countries' national tax policy and its legitimacy, and over the general international tax discussion. Particular emphasis is given to the perspectives of developing countries, whose perspective is discussed through the framework of decolonization theories.

Finally, part three offers final remarks by reflecting on the research's findings overall to draw policy recommendations and suggestions for follow-up research (Chapter 9). This concludes the dissertation.

It should be noted that each chapter mainly follows a two-fold structure. Besides the introduction and the conclusions, each chapter has a first part where the empirical findings are reported and explained; a second part where these findings are discussed and connected to the relevant theoretical framework and efficacy assessment framework.

The chapters may also contain in-text boxes for additional content or explanations, such as: (tax technical) details, clarifications, countries-related and companies-related examples.