

**Addressing the risks  
stemming from uncooperative jurisdictions**

**Concept paper of France**

**Strong and definitive actions towards uncooperative jurisdictions, including tax havens, should be immediately implemented.**

By facilitating illicit financial activities, tax evasion and by creating regulatory and supervisory loopholes, uncooperative jurisdictions challenge our global efforts in favour of increased transparency and integrity of the financial markets. These characteristics constitute sources of potential systemic risks for the global financial stability.

For several years now, international organisations such as the FATF, the OECD, or the FSF have been working to ensure compliance with international standards as regards regulatory issues, anti money laundering systems and tax matters. Yet, if some progress has been made to increase compliance of certain jurisdictions with the highest standards, concerns remain over long lasting uncooperative behaviours.

To take determined steps, we need strong and coordinated actions (i) to establish updated lists of non cooperative jurisdictions, (ii) to improve prudential standards and global financial surveillance so as to protect financial stability and (iii) to define a toolbox of sanctions against uncooperative jurisdictions.

**1- Establishing and updating lists of uncooperative jurisdictions on the basis of the ongoing work undertaken by relevant international organisations**

There is a need to better identify jurisdictions that threaten our financial system by their lack of transparency and their uncooperative behaviours. To do so, the relevant international organisations should establish/revise their criteria in order to map out uncooperative jurisdictions.

- Quality of regulation and cooperation with foreign supervisors in the prudential field

Proposal n°1: Endorse objective criteria aiming at identifying uncooperative jurisdictions in the prudential field.

In all jurisdictions, quality of supervisory framework, cooperation with foreign supervisors and ability to have access to relevant and accurate information are key elements to provide adequate supervision of financial activities. Taking into account these essential features, clear and transparent criteria should be endorsed at political level to identify uncooperative jurisdictions in the prudential/supervisory field. These criteria should build upon the work undergone by the international financial institutions such as the Basel Core Principles, the International Association of Insurance Supervisors Principles, the International Organization of Securities Commissions objectives and principles.

Three broad categories of criteria should be taken into account: (i) the quality of the supervision (this quality being evaluated as regards both the legal framework and its effectiveness) ; (ii) Transparency requirements (ability for supervisors to have access to accurate and timely information as regards beneficial ownership, reporting requirements, cooperation with international financial institutions) and (iii) the willingness to cooperate with foreign supervisors (signature of MMOU, ability to efficiently cooperate with foreign supervisors).

- Anti money laundering and counter terrorism financing

Proposal 2: Strengthen and improve FATF standards related to transparency and international cooperation, and streamline the ICRG procedures

In the perspective of the 4th round of mutual evaluations, tax fraud should be included effectively as a predicate offence for money laundering and the recommendations on transparency of legal persons and on international cooperation should be strengthened.

Moreover, the FATF has established a review group where members can raise issues and present cases for discussion when international co-operation is difficult or when jurisdictions have substantially failed to implement international standards. This exercise should focus on jurisdictions to be listed that represent a real threat to market integrity. Mechanisms for nomination of a jurisdiction to the ICRG should therefore be swiftly reviewed, especially in order to take into account the size and integration of a jurisdiction's financial sector.

- Fight against tax fraud and evasion

Recent scandals have highlighted the impact of tax havens on the economies of both developed and developing countries. Moreover investors located in jurisdictions providing an opaque environment have added to the current financial crisis. Furthermore the need for public funds resulting from this crisis makes the fight against the loss of tax revenue more important than ever.

The OECD shall present without delay an assessment of the implementation of its standards on transparency and exchange of information making a clear distinction between the countries and territories which have substantially implemented them and those which have not. The countries not ensuring effective exchange of tax information should be blacklisted.

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Proposal n°3: The FATF, OECD and FSF (the FSF would gather information from the Basel Committee, IOSCO and IAIS jointly) should submit proposals in their respective fields on lists on uncooperative jurisdictions to the G20 Finance Ministers meeting in March, for review at the London Summit.

## **2- Limiting risks to financial stability by improving prudential standards and multilateral surveillance**

- Raising prudential standards to take into account specific risks arising from non cooperative jurisdiction

Proposal n°4: The capital requirements imposed to financial institutions should be raised when they chose to operate within or through uncooperative jurisdictions.

Uncooperative jurisdictions may threaten the global financial stability by creating regulatory loopholes and opacity. These increased risks should be adequately dealt with through, among others, enhanced prudential standards.

- Increasing corporate governance standards of financial institutions to promote greater accountability when dealing with uncooperative jurisdictions

Proposal n° 5: Specific risk management to address risks arising from uncooperative jurisdictions should be implemented in financial institutions

Clear reporting mechanisms should be put in place in order to increase the accountability of the management in business decisions leading to operations located in non cooperative jurisdictions (implementing the principle called “know your structure” detailed by the Basel Committee).

Specific policies for the identification and management of the full range of risks associated with structures or activities located in non cooperative jurisdictions should be set up and the board of directors should consider the appropriateness of operations in such jurisdictions or the use of such structures and set suitable limit.

- Strengthening financial surveillance of non compliant jurisdictions

Proposal n°6: Jurisdictions in which the financial sector is of “systemic” relevance, related to the size of the real economy, according to objective criteria, should commit to undertake a FSAP with the IMF. If not, these jurisdictions should be regarded as presenting potential financial vulnerabilities, notably within the framework of the early warning exercise to be undertaken by the IMF and the FSF.

Financial surveillance is fully part of surveillance, as a global public good mainly provided by the IMF regarding external stability of its member countries and regarding the stability of their financial sector. Therefore, as all major financial countries (notably as FSF and G20 member countries), jurisdictions in which the financial sector represents a “systemic” proportion of the real economy, with regard to objective criteria to be clearly defined, should commit to undertake a Financial sector assessment program (FSAP) with the Fund on a regular basis.

Jurisdictions, which would not accept such an assessment, would be regarded as potentially presenting financial vulnerabilities, notably within the framework of the early warning exercise to be provided by the IMF and the FSF.

- Increasing transparency requirements for financial institutions choosing to operate in non cooperative jurisdictions

Proposal n°7: Disclosure of operations in uncooper ative jurisdictions undertaken by financial institutions should be mandatory and be done in their annual report

Proposal n°8: The G20 should call for exemplarity of international financial institutions as regards their activities located in uncooperative jurisdictions, with the aim of unwinding their financial activities in such locations.

Financial institutions, be they private or public should promote transparency as regards their activities in non cooperative jurisdictions or in jurisdiction that provide opacity and might therefore threaten collective efforts to promote financial stability.

- Strengthening of the third-party tax obligations for financial institutions

Proposal n°9: Each G20 member should strengthen the third-party obligations by requiring:

- its financial institutions to report bank accounts of their customers located in tax havens and the related capital flows;
- the non-resident financial institutions to systematically provide information on the income derived by their customers who are resident of this G20 Member State.

A strengthening of the reporting requirements bearing on financial institutions is needed in order to avoid the circumvention of our tax laws.

The G20 members should require banks to declare any opening of a bank account by its customers in a non-cooperative jurisdiction they are aware of (especially when one of their branches, subsidiaries, associated or holding companies is involved). The related capital flows should also be reported.

Each G20 member should ensure the non-resident financial institutions to provide its tax administration with information related to all income derived by their customers who are resident of this G20 Member State. As a counterpart, the non-resident financial institution could be agreed as a paying agent by the tax administration (“qualified intermediaries” system).

### **3- Defining a toolbox of sanctions against uncooperative jurisdictions**

International pressure should be maintained to bring toward compliance remaining uncooperative jurisdictions through the adoption of defensive measures and a co-ordination of some of our actions.

- Regarding tax related sanctions:

Proposal n°10: The G20 members should consider terminating some of their existing tax treaties, in case those could not be amended according to the most recent OECD and UN standards.

Proposal n°11: The G20 members should take measures aimed at protecting their tax bases from the secretive jurisdictions, such as the taxation of income located in those jurisdictions, the non-deductibility of expense payments made to entities and individuals in those jurisdictions, the imposing or increasing of withholding tax on income paid to a resident of a non-cooperative jurisdiction and – subject to a co-ordinated implementation – the non-application of the participation exemption regime where dividends are distributed by a subsidiary which is established in such a jurisdiction.

- Regarding other type of sanctions :

Proposal n°12: In cases of serious breaches of internationally agreed standards, gradual countermeasures should be implemented, from enhanced due diligence to a restriction or prohibition of flows of capital to and from uncooperative jurisdictions.