European Parliament

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European Commission
President Ursula von der Leyen
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EU-UK financial services deal

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Dear President von der Leyen,
Dear Chief Negotiator Barnier,

It is with great relief that we have welcomed the successful conclusion of the negotiations of the draft trade and cooperation agreement between the EU and the UK. While a thorough legal analysis from our side is still in progress, we would already like to raise our serious questions when it comes to the issue of tax evasion and avoidance as well as money laundering in the draft agreement.

In its resolution of the 14th of March 2020 the European Parliament has made it clear that it *"will endorse a framework for the future EU-UK relationship only if this framework is in strict concordance with the following principles: … - a level playing field, in particular in relation to the United Kingdom's continued adherence to the standards laid down by international obligations and the Union's legislation and policies in the fields of fair and rules-based competition, including state aid, social and workers' rights, and especially equivalent levels of social protection and safeguards against social dumping, the environment, climate change, consumer protection, public health, sanitary and phytosanitary measures, animal health and welfare, taxation, including the fight against tax evasion and avoidance, money laundering, and data protection and privacy, together with a clear enforcement mechanism to ensure compliance."*

Nevertheless, the draft treaty looks rather weak when it comes to corporate tax avoidance and money laundering issues. While preliminary analysis suggests that the rules concerning the cooperation between tax authorities are robust, the rules concerning corporate tax avoidance, tax havens and money laundering are far weaker, and this gives us serious cause for concern. In a nutshell, our main concerns are the following:

1. First, the rules on corporate tax avoidance are limited to the global rules of the OECD. Where EU rules go further than the OECD standards, they are not included in the draft agreement, for example the EU's tax haven list and the Code of Conduct on business taxation including its governance regime. Equally, some important clarifications in the respective ATAD I and ATAD II rules are not included in the draft agreement. There is only one major positive exemption which is public country by country reporting for banks and large investment firms which has been copied from EU law into the draft agreement. However, all in all, there are no effective non-

regression provisions when it comes to taxation.

2. Second, the limited rules on taxation are explicitly excluded from the dispute settlement process (part VI).

3. Third, the draft agreement does not foresee any rules when it comes to the dependent territories of the UK although the Parliament explicitly called for such provisions in its March 2018 resolution (No. 19). This is highly worrying as the UK related tax havens are responsible for about a third of the total fiscal damage done by tax havens globally and are the primary sites of the UK's tax avoidance activity.

4. Fourth, and most importantly, taxation is excluded from the rebalancing provisions which are intended to deal with regulatory differences in the future that may impact trade or investment between the Parties in a significant manner. This is worrying as a whole number of tax rules, which have been proposed by the European Commission and supported by the European Parliament, are waiting for approval by the Council. As soon as these new European tax laws will come into force, they will by no means be covered by the deal. The same applies to the still outstanding common rules on minimum taxation of corporate profits and common rules for the transfer of profits out of the Union. Therefore, the draft agreement does not ensure any alignment in the case of a deepening of tax cooperation in the common market. This is unfortunate as the European Parliament stressed exactly that: *"5. Strongly believes that the UK should adhere to the evolving standards on taxation and anti-money laundering legislation within the Union acquis, including tax transparency, the exchange of information on tax matters and anti-tax avoidance measures, and should address the situation of its dependent territories and their non-compliance with EU good governance criteria and transparency requirements"*

5. Fifth, the rules governing subsidies do not protect against a potentially aggressive stance of the UK in the area of corporate taxation. If the UK were to lower its corporation tax rate or the general provisions for defining the tax base, the advantages to companies would not be specific and would therefore be allowed under the draft agreement. The UK could enjoy the advantages of open market access for goods even if it had abolished corporate income taxation completely as many of its overseas territories have done. Furthermore, regional policy may be used as a public policy objective to justify the creation of free zones with tax privileges geared towards the production of goods for export without violating the draft agreement.

6. Sixth, the rules in the draft agreement on money laundering and terrorist financing repeat and freeze some of the major shortcomings of the EU's current anti-money laundering rules. In particular, the requirements for public reporting of beneficial ownership fall well short of what is needed and open up significant loopholes. There are similar concerns about the rules that allow for registering strawmen - so-called senior managers - rather than beneficial owners in the respective transparency registers. Because we recognize that our own rules against money laundering and terrorist financing are inadequate the EU has far-reaching plans to strengthen them in 2021. Hence, it is highly worrying that the anti-money laundering rules are not covered

by the rebalancing rules which allow for the alignment of evolving standards. With a view to the sensitivity of dirty money for more effective countermeasures this lack of future regulatory alignment is deeply concerning and may well influence investment decisions significantly.

In summary, nothing in the draft agreement would hinder the UK from converting itself into a “Singapore on Thames”, at least in terms of taxation and anti-money laundering policies. Politically this is an undeserved gift for those Brexiteers who hoped for this future for the UK. We note with particular concern that Boris Johnson, when presenting the draft agreement in a press conference on the 24th of December, announced plans to open “free zones” in the UK which could well mean low-tax areas specializing in industrial production for exports. Is this red meat for his Eurosceptic MPs or a hint of the direction of UK tax policy? Any aggressive policy to reduce tax standards resulting in significant impact on trade or investment between the Parties could not be addressed effectively within the provisions in the draft agreement.

Having analysed these shortcomings it is fair to say that the benefits for the UK from this draft agreement are limited as well. In particular, there is very little on financial services in the agreement. Market access for financial firms operating from London will have to go through the equivalence regime. Up to now this process has been a technical procedure based on the effective alignment of standards for the respective financial sector. The UK and its overseas territories can be characterized as a tax haven and a safe operating zone for dirty money, as demonstrated in its rating in the leading Financial Secrecy Index. Being faced with the threat of a much more uneven level playing field when it comes to tax cooperation and money laundering, the European Union must take a more holistic and political view on the market access for the financial firms of the City of London. To be clear: we strongly recommend that the leverage we still hold over the United Kingdom in granting it access to the single market for financial services or not should be used to the maximum extent in order to gain robust commitments against tax dumping and in favour of financial transparency.

Therefore, before any equivalence decisions are taken, the European Parliament and the Council should discuss their strategy regarding the lack of strong provisions in the draft agreement concerning tax cooperation and the fight against money laundering. The Commission should propose a communication on the matter before any equivalence decisions are taken in connection with the UK. It is high time for the UK and its overseas territories to come clean concerning financial crime and aggressive tax avoidance. While it was as a member of the EU, the UK’s tax rules were a costly burden for the other member states. We cannot accept this burden being imposed by a third country, especially in the context of the Covid related stress on public budgets.

We will raise this matter in the European Parliament. We also stand ready and would be very pleased to discuss these concerns personally with you at your best convenience.

Best European regards

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Co-President of the Greens/EFA group

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