

# From Blackbirding to Blacklisting: The European Union's Institutionalized Discrimination and Bullying

---

Marla Dukharan  
June 2021

MD

MARLA DUKHARAN

CARIBBEAN ECONOMIST

## ABSTRACT

Vanuatu is the world's single most vulnerable country to natural disasters, and is also one of the poorest. Having gained independence as recently as 1980, Vanuatu has struggled to achieve sustained socio-economic development, largely because of the typical extractive-colony institutional weaknesses that persist for generations post-independence, but also due to the frequent assault of volcanic eruptions and cyclones, which heap damage upon the nation's weak economic, social, and physical infrastructure. Yet, despite all this vulnerability, the world's recognized tax, money laundering and terrorism financing policy authorities and watchdogs, have given their blessing to Vanuatu, for its much-improved frameworks. However, the European Union (EU), with its unilaterally, disproportionately and subjectively-applied, non-transparent, ever-changing, and unfair Blacklist methodology, seems determined to destroy Vanuatu's chances of socio-economic development. This paper presents the evidence of the EU's deeply flawed methodology, its strategically constructed Blacklists, and its determination to continue to bully small, poor countries, the way Europeans had for centuries of colonial rule. The EU's institutionalized racism is also revealed, as its two Blacklists not only omit tax havens, but also does not include even one predominantly-white country, although many are proven tax-havens, terrorism financiers, and money laundering hotspots.

## INTRODUCTION

While slavery was abolished in the British Empire in 1833, it was not until 1904 that the heinous practice of Blackbirding - enslaving (often by force and deception) South Pacific islanders on the cotton and sugar plantations in other colonies - was brought to an end. And it is difficult not to draw the conclusion that Blackbirding was encouraged to continue in the South Pacific, well beyond the abolition of slavery, due to the remoteness and isolation from Europe and the New World. And the brutality continues even today.

The European Union (EU) published its first tax Blacklist of 17 “non-cooperative jurisdictions for tax purposes” in December 2017 (General Secretariat of the Council of the European Union, 2017). Vanuatu was placed on the EU’s tax ‘Greylist’ in January 2018 (European Commission, 2021), and Blacklisted in March 2019, where it has remained since.

The EU also adopted a ‘modernised regulatory framework’ to identify “high-risk third countries having strategic deficiencies in their regime on anti-money laundering and combating the financing of terrorism (AML/CFT) in 2015, and in September 2016 published its first AML/CFT Blacklist (European Commission, 2020) including Vanuatu, where it remains even today.

It is quite the bureaucratic and statistical feat, that the EU was able to concoct and execute a methodology for these Blacklists, so complex, so sophisticated, so precise, and ultimately so effective in achieving their true (unstated but obvious) intent, that it produced not one, but TWO Blacklists, where not one single country is predominantly white.

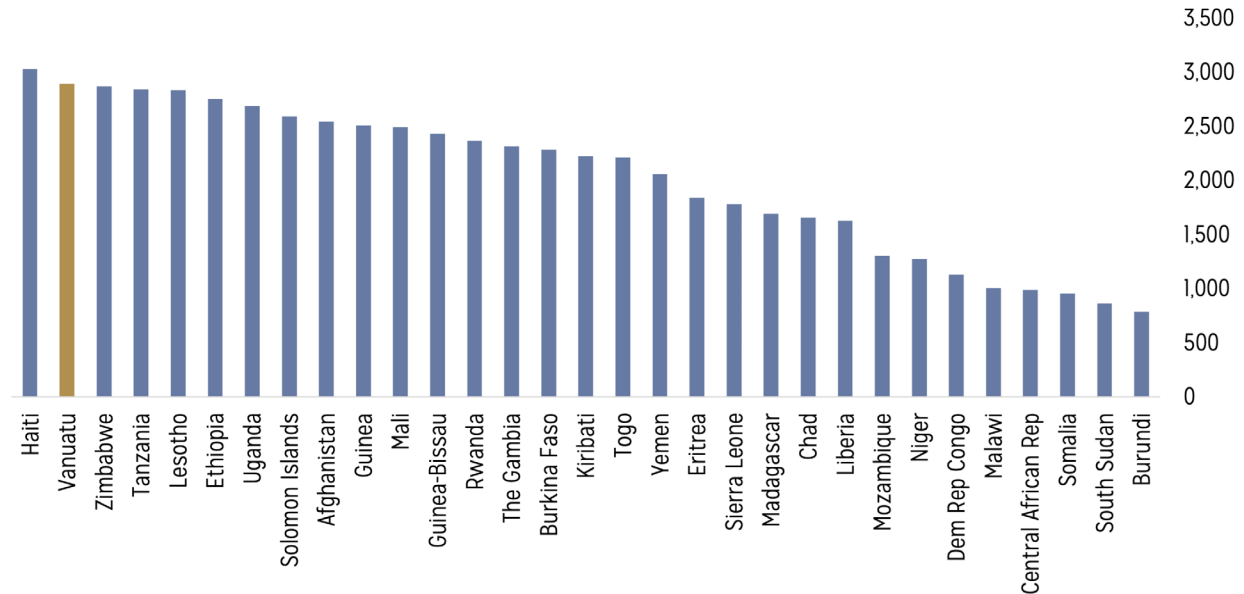
## VANUATU’S SOCIO-ECONOMIC HISTORICAL BACKGROUND, AND CURRENT CONDITIONS

The Republic of Vanuatu is a recently-graduated Least Developed Country (LDC) (UN-OHRLLS, 2020) and small island developing state (SIDS) (United Nations Sustainable Development Goals Knowledge Platform, 2019), with a 2019 GDP per capita estimated by the International Monetary Fund (IMF) on a purchasing-power-parity basis of USD2,889.22 - the 30th lowest globally, right after Haiti’s USD3,028, and only 9% of the GDP per capita of Greece. The Republic of Vanuatu only gained its independence as recently as 1980. Vanuatu’s major economic drivers are fishing, agriculture, tourism, ‘offshore’ financial services, and an Economic Citizenship Program (ECP) (IMF, 2021).

Figure 1: Countries with the Lowest GDP per Capita

### Countries with Lowest GDP per Capita

PPP\$



Source: IMF, Marla Dukharan

Vanuatu consists of roughly 65 inhabited (but 83 in total) volcanic and coral islands (Wikipedia, 2021), forming a Y-shaped archipelago stretching 1,300 km north to south, between Fiji and eastern Australia, in the South Pacific. Vanuatu’s total area is roughly 12,274 square kilometres, of which its land surface is only 4,700 square kilometres - roughly the same as the island of Trinidad. The almost entirely indigenous population of Vanuatu numbers roughly 308,000 persons - less than half the population of Luxembourg, or slightly larger than the island of Barbados - and growing at an average annual pace of about 2%.

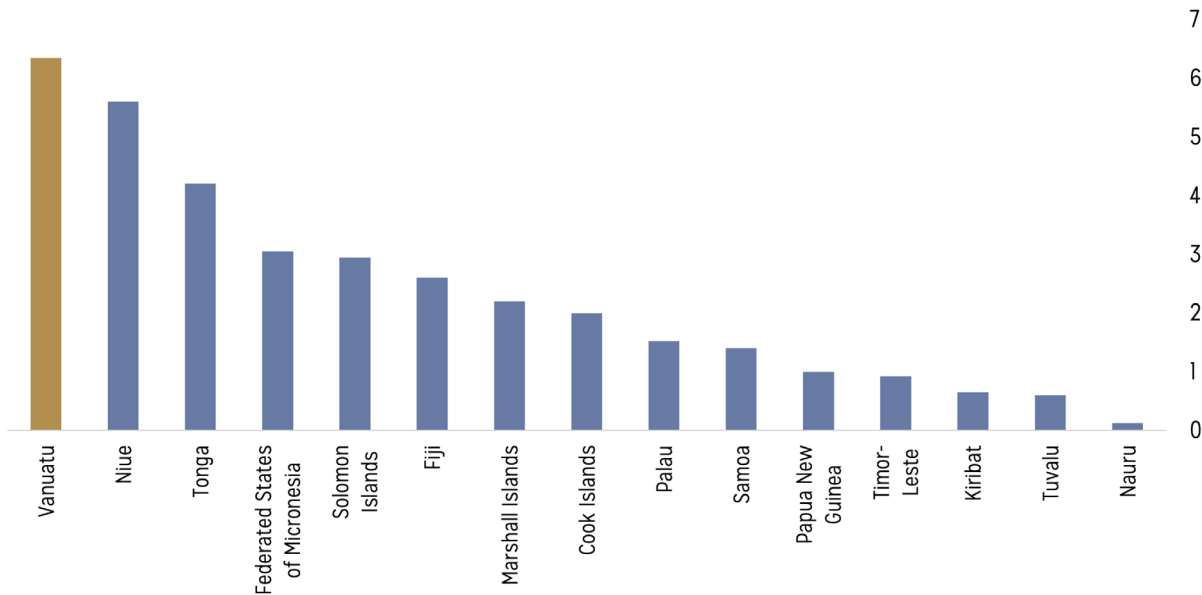
Because Vanuatu is located in the middle of the “Pacific Ring of Fire” and directly in the centre of the Pacific cyclone belt, it is the world’s number one most at-risk country for natural disasters, as measured by the UN World Risk Index (Bündnis Entwicklung Hilft, 2020). The UN World Risk Index measures exposure to natural hazards and the capacity to cope with and adapt to these events. Vanuatu’s average annual economic losses due to natural disasters are the highest in the region, according to the Asian Development Bank.

Basically, Vanuatu has to run faster every day, just to stay in the same place economically.

Figure 2: Estimated Annual Average Loss Due to Natural Disasters

### Estimated Annual Average Loss Due to Natural Disasters

% of GDP



Source: Asian Development Bank: "Building Resilience in the Pacific", Marla Dukharan

Vanuatu's acute vulnerability seems to have been intensifying over the past few years, perhaps based on the effects of climate change. Most recently, in March 2015, Tropical Cyclone Pam struck Vanuatu with 165mph winds, affecting 195,000 people and causing loss and damage equivalent to 64% of GDP. And as if the global pandemic wasn't enough, in April 2020 Category 5 Cyclone Harold hit Vanuatu, affecting more than half its population.

Vanuatu was initially colonized by the Spanish, then the French and British (jointly), and only gained its independence in 1980. Based on its relative infancy as an independent nation, and having suffered the exploitation and underdevelopment inherent in colonization (Acemolu and Robinson, 2017) longer than most, Vanuatu displays many of the typical socio-economic characteristics of a vulnerable, developing, post-colonial nation. These characteristics include (to some degree) weak legal / regulatory, political, economic, and social institutional frameworks, which underpin poor governance, multidimensional poverty, income / wealth and gender inequality, denial of basic human rights and fundamental freedoms, environmental degradation, and political / socio-economic instability, for example.

According to the UN, “the concept of development includes many aspects and has changed over time”. The first paragraph of the Agenda for Development states:

*“Development is one of the main priorities of the United Nations. Development is a multidimensional undertaking to achieve a higher quality of life for all people. Economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development.*

*“Sustained economic growth is essential to the economic and social development of all countries, in particular developing countries. Through such growth, which should be broadly based so as to benefit all people, countries will be able to improve the standards of living of their people through the eradication of poverty, hunger, disease and illiteracy, the provision of adequate shelter and secure employment for all and the preservation of the integrity of the environment.*

*“Democracy, respect for all human rights and fundamental freedoms, including the right to development, transparent and accountable governance and administration in all sectors of society, and effective participation by civil society are also an essential part of the necessary foundations for the realization of social and people-centred sustainable development.*

*“The empowerment of women and their full participation on a basis of equality in all spheres of society is fundamental for development.”*

Until December 2020, Vanuatu was classified by the UN as a LDC, which are the ‘poorest and weakest’ low-income countries with severe structural impediments, vulnerable to economic and environmental shocks.

Vanuatu graduated out of LDC status as planned in December 2020 - 40 years after its independence - despite formidable challenges, and in the middle of a global pandemic. Vanuatu is only the sixth country ever to graduate, leaving 46 countries in that category - mainly post-colonial developing nations. In 2020, Vanuatu was ranked 140th out of 189 countries in the United Nations Development Program’s (UNDP) Human Development Index (HDI).

According to the UN “Since 1971, the United Nations has recognized the LDCs as the “poorest and weakest segment” of the international community. The LDCs host about 40% of the world’s poor but only 13% of the world population. Most are suffering conflict or emerging from one. LDCs account for only about 1.3% of global GDP, and less than 1% of global trade and FDI. Even if on the rise, still barely one-fifth of the population in LDCs has access to the internet. The low level of socio-eco-

conomic development in LDCs is characterized by historically weak development capacity, low and unequally distributed income, and scarcity of domestic financial resources. LDCs typically rely on agrarian economies which subsequently can be affected by a vicious cycle of low productivity and low investment, especially as wealthier countries develop and utilize more productive farming technologies. Generally, LDCs rely on few primary commodities as major sources of exports and fiscal earnings, causing them to be vulnerable to external terms-of-trade shocks.”

Upon graduation, the UN congratulated Vanuatu, stating “Repeated natural disasters, including Cyclones Pam and Harold, and recent volcanic eruptions, have decimated food stocks and forced mass displacement in Vanuatu over the last five years. And while Vanuatu only recorded its first COVID-19 case in November 2020 - much later than the rest of the world - the small island state has still been seriously impacted by the pandemic, especially by the collapse in tourism from nearby countries like Australia and New Zealand. Graduation is a major achievement but also a major challenge. Development and trading partners, and the entire UN system, must commit to providing their full support to ensure a smooth and sustainable transition for Vanuatu. Ensuring smooth graduation requires transitioning away from LDC-specific support measures, including preferential market access for exports and access to some concessional financing instruments”.

The last point made by the UN upon graduation, is of particular relevance to the issue of Blacklisting, since it stresses the importance of transitioning away from LDC-based support systems in a manner that does not cause socio-economic instability. Having access to markets, even if no longer on a preferential basis, is crucial, and Blacklisting effectively closes off such access. Indeed, the IMF cites de-risking (IMF, 2021) as a major downside risk, threatening Vanuatu’s economic recovery - “Potential reduction in correspondent banking relationships could have further adverse impact on the Vanuatu economy” (IMF, 2019).

In summary, Vanuatu is one of the world’s poorest countries, and in fact, is poorer than the poorest country in the Western Hemisphere - Haiti. Vanuatu is the most vulnerable nation on earth to natural disasters, particularly hurricanes and volcanoes. In order to delve more deeply into the possible causes of Vanuatu’s costly de-risking (which include Blacklisting), we need to look more closely at one of the underlying and most fundamental challenges affecting Vanuatu - institutional weakness.

## INSTITUTIONS ARE EVERYTHING

A recent study by the Inter-American Development Bank (Beuermann, Schwartz, and the Inter-American Development Bank, 2021) stated “an ample body of theoretical and applied research has shown that well-designed institutions – broadly defined as the rules that shape human interactions within a society – have a profound and enduring impact on the success of countries. The relevance of in-

stitutions for economic development has been recognized since ancient times...countries that have strengthened the quality of their institutions have outperformed others with weak institutional frameworks, and today there is a widespread understanding that institutional quality plays an important role in shaping the patterns of prosperity and economic development around the world (Acemoglu and Robinson, 2012).”

As discussed earlier, Vanuatu faces the usual challenges of a poor, small-island developing economy, and many of these challenges have their roots in the institutional weakness usually associated with newly-independent, post-colonial states.

In particular, the institutional framework of “extractive” colonies is not designed to support long-term domestic stability or “settlement” by the colonizers (beyond what is necessary for the extraction of value), let alone sustainability and socio-economic progress.

Extractive colonies in the Caribbean, such as Trinidad and Tobago, Guyana, and Suriname for example, saw their indigenous populations largely marginalized if not destroyed completely by their European colonizers. These and other Caribbean colonies were then populated partly by various Europeans, but more so imported slave and indentured labour, mainly from Africa, India, China, and to a lesser extent, Indonesia.

Vanuatu was arguably also an extractive colony, but of a very different variety - apart from the extraction of agricultural output, the people of Vanuatu were also extracted - enslaved and exported to other colonies. Vanuatu lost more than half of its adult-male population on several islands at the height of Blackbirding, and the current population is deemed to be substantially lower than pre-colonial times. This adds a whole different dimension to this particular extractive colony, because Vanuatu lost a significant proportion of its valuable, nation-building, indigenous human capital. The other indication that Vanuatu was a decidedly extractive and not a settler colony, is the fact that the population remained almost entirely indigenous, even today. The European-descended population in Vanuatu is marginal. Again, this is a unique characteristic, much unlike the extractive colonies of the Caribbean, and arguably therefore, much more disadvantaged.

Empirical evidence shows that extractive colonies have the weakest institutional frameworks, which perpetuate conditions supportive of unfettered extraction of value, corruption and other manifestations of lawlessness, ‘short-termism’ or lack of long-term socio-economic planning, and general socio-economic and environmental underperformance, if not deterioration.

The IMF’s most recent assessment of Vanuatu speaks directly to this issue of institutional weakness - “Vanuatu, being a small lower-income state with limited administrative capacity, is vulnerable to corruption from gaps in governance. These gaps leave parts of the economy either without appropriate supervision, or with excess regulation prone to bribery. Vanuatu has been strengthening



its institutions through funding and technical assistance from its development partners, including the IMF and The Pacific Financial Technical Assistance Centre (PFTAC). Recent IMF/PFTAC technical assistance has successfully focused on financial and AML/CFT legislation, tax administration and audit functions. The current focus should continue to be the major public institutions, so that the authorities can provide effective support to the economy. The Staff welcome the authorities' efforts for strengthening tax administration...The authorities also need to reinforce compliance of institutions with the AML/CFT regime, to ensure effective implementation of tax information exchange, and to strengthen governance of the government business enterprises" (IMF, 2019).

While no in-depth diagnostic has yet been undertaken, it would appear that Vanuatu's institutional framework is, by (colonial) design, not fit for its post-independence sustainable socio-economic development purpose, not yet sufficiently developed to embrace the benefits and face the challenges of graduation from LDC status, and therefore not yet equipped to navigate the international pressures to adopt and comply with the "Washington Consensus" (Hurt and Luebering, 2015) and global trade, tax, and financial regulatory norms and requirements. It is incumbent upon the international community and development partners therefore, to continue to support Vanuatu in addressing its institutional deficiencies as a matter of priority if not urgency, especially now in the face of LDC graduation, layered on top of the pandemic's pressures.

The consequences of failing to support Vanuatu's institutional strengthening to address these and other shortcomings in an already vulnerable and highly informal society, as evidenced by Blacklisting and de-risking, is economic and financial isolation - the very opposite of what Vanuatu needs, as the UN stressed upon graduation. Indeed, creating yet another pariah state is in nobody's interest.

Even Haiti, the first independent nation in Latin America and the Caribbean, having gained 'independence' from its European colonizer over 200 years ago, boasts a population of over 10 million yet has a higher GDP per capita than Vanuatu, and is still classified as an LDC. Haiti's peculiar conditions warrant its LDC status, but perhaps so do Vanuatu's, given the latter's acute vulnerability to natural disasters which will only worsen with climate change, its relatively recent independence, and its institutional weakness.

The graduation of LDCs is based on meeting any two of three criteria in two consecutive triennial reviews: 1) GNI per capita of USD1,230 or above; 2) a Human Asset Index rating of 66 or above; and 3) an Economic Vulnerability Index rating of 32 or above. It is not clear what weight each criterion carries, but perhaps the weighting is skewed towards GNI per capita, versus human development and economic vulnerability indicators, and perhaps institutional weakness and vulnerability to natural disasters should be included (and heavily weighted) in the third criterion, going forward.

It is also possible that the first and third criteria were skewed based on Vanuatu's recent fiscal and external performance. The IMF reported in July 2019 "Real GDP growth reached 4.4% in 2017 and stayed strong, if somewhat softer, at 3.2% in 2018. There was a current account surplus in 2018 of 3.5% of GDP, driven by windfall revenues from economic citizenship programs, despite still-strong demand for imports for development-partner-financed projects. Consequently, there was also a fiscal surplus of 4.8% of GDP" (IMF, 2019). This kind of growth, fiscal and external performance is not common in countries of this size and level of development, making Vanuatu an outlier.

And this unusual performance is explained mainly by two factors:

1. "strong support by development partners through grants, concessional lending, and technical assistance" according to the IMF, from Australia, China, New Zealand, the Asian Development Bank (ADB), the IMF, Japan International Cooperation Agency (JICA), the United Nations Development Program (UNDP), and the World Bank Group (WBG). It is difficult to imagine how or why the level of support will persist beyond graduation, especially in light of the pandemic.
2. the Economic Citizenship Program - which is inherently vulnerable; it is a windfall, is transient in nature, and it relies to a significant degree on the opportunities for regulatory (immigration laws) arbitrage.

Indeed, the IMF highlighted in June 2019 "There are downward pressures on the external sector. The current strength of the external position is temporary, driven by strong revenues from the economic citizenship programs. Going forward, it is expected there will be a current account deficit averaging 4.0% of GDP".

Vanuatu's recent macroeconomic performance is unlikely to be sustained over time in the first place, and it is not a reflection of Vanuatu's underlying domestic conditions or productive capacity, its international competitiveness, or any unique resources or other competitive advantage which yields predictable, sustainable returns or performance over the long-term. Arguably therefore, despite its temporary, relatively favorable macroeconomic performance, Vanuatu needs all of the support and continued development assistance that it would have received as an LDC, especially as it relates to institutional building and strengthening.

The IMF's Article IV report of June 2019 highlights four main Policy Recommendations, all of which rely on institutional building / strengthening:

1. Further fiscal reform, including the introduction of a broader tax regime.
2. Analyse excess liquidity and non-performing loans in the banking sector with assistance from development partners, so as to guide the sector in reducing those burdens as needed, and safeguard efforts at financial inclusion.

3. Help ensure that Vanuatu's AML/CFT regime is properly applied to and mitigates ML/TF risks arising from new fintech usage, by adopting a clear mandate with deadlines for reporting and recommending for its Distributed Ledger Technology taskforce.
4. Continue reforms to improve Reserve Bank of Vanuatu (RBV) governance, financial supervision, and fiscal governance, by leveraging technical assistance programs with PFTAC and its development partners, to counteract corruption.

With this better understanding of the role and primacy of institutions, Vanuatu's expected deficiencies in this regard, and the urgency of institutional reform and strengthening, let's take a closer look at Vanuatu's tax and AML/CFT institutional frameworks, how various entities' assessments of Vanuatu differ, and why.

## VANUATU'S TAX FRAMEWORK OVERVIEW AND OUTLOOK

Vanuatu's tax framework includes a value-added tax (VAT) and excise taxes / tariffs, but no corporate tax or personal income tax. Tax administration in Vanuatu is considered to be weak - likely based on the institutional and public administration deficiencies discussed earlier.

The IMF has recommended the introduction of a personal income tax and a corporate tax, in order to widen the tax base and earn more (predictable) fiscal revenue, and to potentially create a more progressive tax structure (VATs are generally considered to be regressive unless exemptions / zero-ratings are effective in safeguarding the lower-income group). Likewise, Vanuatu's 2017 Revenue Review recommended that the government should engage in further fiscal reform, including introducing corporate and personal income taxes while removing inefficient taxes, reducing reliance on ECP revenues, and prioritizing the reduction of future borrowing (Revenue Review Committee on Revenue Reforms in Vanuatu, 2017).

But these recommendations directly contradict a 2008 Organization for Economic Cooperation and Development (OECD) study which found that corporate income taxes are the most harmful form of taxation for economic growth: "Countries with a lower corporate income tax are likely to grow faster and attract more investment and jobs than high-tax countries. Low corporate tax rates in Hungary, Ireland, and Lithuania can have a positive impact on these countries' economic growth" (Johanssoni et al, 2008).

According to taxfoundation.org, corporate tax rates across the EU range from a low of 9% in Hungary to a high of 34.4% in France, with an overall average of 22.5% in the EU, which is higher than the global average of 21.4%. The Atlantic Council has reported the global average corporation tax rate at 24% in 2020. There is a push from the USA and the OECD towards a global minimum tax rate of

15% - “to end the race to the bottom on corporate tax rates and prevent corporations from shifting jobs overseas” (Goldstein, 2021).

And there we have it - one needn't wonder why lower corporate tax rates are suggested and supported in Europe for example, but Vanuatu and other low-tax jurisdictions are being encouraged, if not forced, to implement (higher) corporate taxes, despite empirical evidence from the OECD itself, that corporate tax is the most harmful form of taxation as it relates to growth. In addition, the introduction of a new tax, given Vanuatu's institutional weakness and existing gaps in tax administration, would not achieve much, apart from further tax leakage and susceptibility to corruption.

In summary, Vanuatu's zero corporate tax framework, which it is well within its sovereign right to adopt, is consistent with the OECD's empirical research as growth-supportive, which is exactly what Vanuatu needs. The IMF however, is encouraging Vanuatu to implement a corporate tax and a personal income tax, despite the empirical evidence that this could harm growth prospects, and on top of a weak tax administration system, which would achieve little anyway. Furthermore, the push for a global minimum corporate tax rate of 15% is purely a competitive move to “prevent corporations from shifting jobs overseas” as Janet Yellen stated. But this is precisely the kind of pressure that a poor, recently-graduated LDC with weak institutions and acute climate vulnerability, does not need. Instead, Vanuatu needs the international community to support its growth, allow fair access to markets for its agricultural produce and tourism, provide technical assistance to strengthen its institutions, and assistance to build climate resilience.

Finally, but most importantly, the global tax authorities - the OECD and Tax Justice Network - did not advise or pressure Vanuatu to implement a corporate tax, nor did they suggest that Vanuatu's existing tax structure was harmful or deficient in any way.

## THE GLOBAL TAX AUTHORITIES' VIEW ON VANUATU

The OECD<sup>1</sup> established the Global Forum (OECD, n.d.) on Transparency and Exchange of Information for Tax Purposes, which now has 154 members (OECD, n.d.) and is recognized as the global tax policy authority. The mission of the OECD is to promote policies that will improve the economic and social well-being of people around the world.

Most recently, the OECD sought to address “Base erosion and profit shifting (BEPS) (which) refers to tax planning strategies that exploit gaps in the architecture of the international tax system to

<sup>1</sup> Austria, Australia, Belgium, Canada, Chile, Colombia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States

artificially shift profits to places where there is little or no economic activity or taxation” (also known as ‘tax havens’) (OECD, n.d.). The BEPS framework seeks to ensure that profits are taxed where economic activities generating the profits are performed, and where value is created. A global minimum tax (OECD, 2020) is now one of the two central pillars of the BEPS initiative, alongside a separate proposal to tax technology multinational companies (MNCs) in part based on where their users are located (OECD, 2020).

Importantly, since 2009, “no jurisdiction is currently listed as an uncooperative tax haven by the Committee on Fiscal Affairs” of the OECD (OECD, n.d.).

As of 2019, Vanuatu has been classified as “Partially Compliant” overall, by the Global Forum Peer review - “The Global Forum rated Vanuatu overall Partially Compliant with the international standard on transparency and exchange of information (EOI) on requests handled over the period from 1 January 2015 to 31 December 2017. Availability of accounting information in the offshore sector remains the weak point in this report. While the legal requirement, for companies operating in the offshore sector to keep appropriate accounting records, was significantly improved in 2017, no supervision of the new requirements took place. Beneficial ownership requirements are broadly in line with the standard, although the identification of beneficial owners for trusts and foundations needs improvement. The supervision of these requirements by the relevant authority also needs to be strengthened. On the cooperation side, Vanuatu was always able to provide the information requested, although it received only two requests, which did not include accounting information” (OECD, n.d.).

Furthermore, despite its zero corporate tax status, Vanuatu does not appear on Tax Justice Network’s corporate tax haven index (Tax Justice Network, 2021), because so little corporate tax revenue is “lost” in Vanuatu - estimated at USD5.4 million annually (Tax Justice Network, 2018). Furthermore, only an estimated USD7 million is lost annually by other countries, in Vanuatu. On a global scale, this is a rounding error, of nuisance value at best.

Tax Justice Network’s methodology is as follows - “Jurisdictions are ranked by their Corporate Tax Haven Index (CTHI) value, which is calculated by combining a jurisdiction’s Haven Score and Global Scale Weight. A jurisdiction’s Haven Score is a measure of how much scope for corporate tax abuse the jurisdiction’s tax and financial systems allow and is assessed against 20 indicators. A jurisdiction’s Global Scale Weight is a measure of how much financial activity from multinational corporations the jurisdiction hosts. Combining a jurisdiction’s Haven Score and Global Scale Weight gives a picture of how much of the world’s corporate financial activity is put at risk of corporate tax abuse by the jurisdiction”.

In summary, neither the globally recognized tax policy authority, the OECD, nor the global tax watchdog, the Tax Justice Network, consider Vanuatu’s zero corporate tax structure to be inappropriate or

harmful, and neither has placed Vanuatu on its list of non-cooperative jurisdictions or its tax haven index. Vanuatu's corporate tax policy does not present a challenge internationally, nor is there any evidence to support that it is not fit for purpose domestically.

## THE EU APPOINTS ITSELF THE GOD OF TAXES

Enter the EU<sup>2</sup> whose members are mostly also OECD members. As distinct from the OECD's Mission which is global in nature, the goals of the EU are specific to its Members only (European Union, n.d.). The EU published its first tax Blacklist of 17 countries in December 2017 (General Secretariat of the Council of the European Union, 2017). Vanuatu was placed on the EU's tax 'Greylist' in January 2018, and Blacklisted in March 2019 (European Commission, 2021), where it has remained since.

The obvious question arises: Why should non-EU member countries be obligated to adhere to the EU Code of Conduct and other EU requirements in the first place, but especially when, as in the case of Vanuatu, they are already "Partially Compliant" with the OECD's requirements, and the OECD has not taken any punitive action?

The EU's separate tax-haven Blacklisting assessment methodology considers not only whether the OECD's requirements are met, but goes further to include additional requirements, including: "The country should not... go against the principles of the EU's Code of Conduct." Incidentally, the EU's Code of Conduct Group, which is responsible for conducting much of the work that goes into constructing the Blacklist, was challenged by the Members of the European Parliament as to "whether an informal body such as the Code of Conduct Group is able or suitable to update the blacklist" (European Parliament, 2021).

The EU's Code of Conduct Group Chair, Ms Lyudmila Petkove said "since the group's creation more than 130 preferential tax regimes had been changed or abolished, 27 countries joined the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters and 13 additional countries joined the OECD Inclusive Framework on Base Erosion and Profit Shifting (BEPS). This shows that the positive approach chosen by the Council has led to a constructive engagement with many jurisdictions around the world and that this intergovernmental initiative has made a positive change" (Klein, 2021).

<sup>2</sup> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden

This statement contains possibly contentious, if not misleading aspects we ought not to ignore :

1. Although there are difficulties in ascribing causality or the absence thereof to the EU versus the OECD, this statement shows definitively that the EU considers its tax-haven Blacklisting and other related “positive” action to be effective, and to have led to “positive change”.
2. The EU is therefore expected to persist with its current course of action - Blacklisting and otherwise.
3. The EU considers its Code of Conduct as applicable to all countries globally, not just its member states, and not necessarily by consent. In fact, the EU has no legal or moral authority to apply its Code of Conduct without consent, to any country.
4. That the EU considers its actions are based on “intergovernmental” initiatives, which suggests that there is in the first place consent, cooperation, and mutuality, if not a treaty, and that the countries work together in good faith, on this issue of common interest. This is simply not the case - in most cases, there is nothing “intergovernmental” about the way in which tax-haven Blacklisted countries are treated by the EU.

The OECD’s BEPS framework effectively removes the incentive for any corporate entity to declare tax residency in a jurisdiction where it is unable to prove that its economic substance exists and can be demonstrated. So the likelihood of corporate revenues earned in one jurisdiction, being (not) taxed in another, is low and declining steadily. Which begs the question - what more could the EU justifiably want? Code of Conduct adherence apparently, but what else could possibly prompt the EU to so brazenly adopt such an unfair, opaque, if not illegal stance? Perhaps:

1. The EU (ex-Germany) overall is relatively uncompetitive – Germany ran the world’s biggest current account surplus for a fourth consecutive year in 2019 at EUR258.6 billion, while nine countries recorded current account deficits (down from 11 in 2018) – Hungary with the widest at EUR192 billion, and Romania second at EUR51.8 billion. The EU as a bloc, therefore, is relatively internationally uncompetitive, with 40% of its current account surplus generated from 2015 to 2019 coming from Germany alone, and the bloc may be seeking to address this. But why might the EU be relatively uncompetitive?
2. EU corporate taxes are too high – Ranging from a low of 9% in Hungary to 34.4% in France, average EU corporate tax rates at 22.5% are higher than the global average of 21.4%. This is likely one of the key reasons why the EU (ex-Germany) is relatively internationally uncompetitive, as outlined earlier. But why are EU taxes so high?
3. The EU is fiscally imprudent – by the end of 2019, EU countries in total (Eurostat, 2021) had accumulated over EUR10.8 trillion in Government debt, equal to about 78% of EU GDP. Vanuatu’s current

debt/GDP ratio stands at under 60%, and Vanuatu currently generates fiscal surpluses. Furthermore, Vanuatu has the lowest Government expenditure as a proportion of GDP in the region, and one of the lowest in the world (Revenue Review Committee on Revenue Reforms in Vanuatu 2017). Conversely, General Government total expenditure in 2019 reached 46.1% of GDP in the Euro area. Fiscal overspending inflates domestic prices for labour and other factors of production, leading to an erosion of international price competitiveness, especially when each member state has little or no monetary policy or exchange rate control - as EU monetary policy is largely dictated by the European Central Bank. In the EU case, fiscal policy is everything. But why wouldn't EU member states lower their fiscal expenditure, affording taxpayers lower rates?

4. Might is Right? The EU is a bully – instead of addressing its domestic challenges with appropriate domestic policies, the EU aims to export its problems by Blacklisting non-EU countries which dare to exercise their sovereign right to set their own domestic corporate tax rates 'too low', and this is how they effectively destroy the competition. Furthermore, the EU protects their own by excluding their own low-tax members from any tax-haven Blacklist. Indeed, EU Members of Parliament recently (European Parliament, 2021) complained "if we focus on others, we also need to look ourselves in the mirror. The picture is not pretty. EU countries are responsible for 36% of tax havens." And beyond this, the EU also excludes certain non-EU low-tax jurisdictions (European Parliament, 2021). On what basis? Well, the EU's methodology (European Union, 2016) for 'third country' (non-member) inclusion in their tax-haven Blacklist clearly indicates that although there is a process for collecting data and ranking non-member countries on a Scoreboard, there is absolute subjectivity built-in to this methodology. EU Members of Parliament (MEPs) have highlighted these failures; "MEPs propose changes that would make the process of listing or delisting a country more transparent, consistent and impartial" (European Parliament, 2021). In the first place, there is the inclusion of the criteria "strength of ties with the EU" and "stability", both of which have nothing to do with the "appropriateness" of a country's tax framework. After this Scoreboard is constructed, the EU member states then meet to decide completely subjectively, if and how to use the Scoreboard; "the findings of the Scoreboard are not sufficient to draw conclusions on whether a jurisdiction should be selected for screening or put on the common EU list. This Scoreboard does not represent any judgement of third countries, nor is it a preliminary EU list. It is an objective and robust data source, produced by the Commission, to help Member States in the next steps of the common EU listing process. It is now for Member States in the Code of Conduct Group to decide if and how they use the Scoreboard in deciding on the third country jurisdictions to be screened." In other words, the EU feigns an objective, evidence-based, sophisticated (overcomplicated) methodology, only to include an escape clause, which allows EU members to completely arbitrarily include or exclude any country. Even EU Members of Parliament have "adopted a resolution pushing for the system used to draw up the EU list of tax havens to be changed, as it is currently "confusing and ineffective" (European Parliament,



2021). They stated that “All third countries need to be treated and screened fairly using the same criteria...stressing that the current list indicates that this is not the case. The lack of transparency with which it is drawn up and updated adds to these misgivings.” Furthermore, the EU appears to have adopted a decidedly discriminatory stance against small (and already powerless) countries, whose combined share of global economic activity is insignificant at 1.1%, rendering the EU’s actions grossly disproportionate, in direct contravention of the EU’s own doctrine of proportionality (European Commission, n.d.). Even EU Members of Parliament highlighted the fact that jurisdictions currently on the EU tax haven Blacklist account for less than 2% of worldwide tax revenue losses (European Parliament, 2021). Also, the (purported) essence of the tax-haven Blacklist seems to have been forgotten, as EU Members of Parliament pointed out : “By calling the EU list of tax havens “confusing and inefficient”, the Parliament tells it like it is. While the list can be a good tool, member states forgot something when composing it: actual tax havens” (European Parliament, 2021).

5. The EU is a racist institution – And finally, there is another possible explanation for the EU’s departure from the OECD’s stance in Blacklisting certain countries. The data suggest a particular commonality among the EU Blacklisted countries which is too striking to be dismissed as mere coincidence, or to be ignored. According to a 2017 article in the Politico, “There are close to 50 million people of a racial and ethnic minority background living in the EU – about 10% of the bloc’s population.” This means that the vast majority – about 90% – of the EU is white. Furthermore, “the minority population directly employed by EU institutions (stands) at around 1%. The only major international institution in Brussels with a somewhat ethnically diverse staff is NATO: thanks to Turkey and the United States” (Heath, 2017). This means that at 1% of employees, minorities are under-represented in the governance and decision-making architecture of the EU, despite accounting for 10% of the population. Possibly as a result of this, not all low-tax jurisdictions get Blacklisted by the EU – this classification is reserved only for those with predominantly non-white populations. EU laws exclude predominantly-white EU member-states from appearing on the tax-haven Blacklist (European Union, 2015), despite evidence of non-adherence to their own standards and rules (Dutch News, 2019). The EU consistently omits its own low-tax members Hungary and Ireland (although EU Members of Parliament recently recommended “EU member states should also be screened to see if they display any characteristics of a tax haven, and those falling foul should be regarded as tax havens too”) (European Parliament, 2021), the USA’s states of Delaware (69.2% Caucasian) and Nevada (68.1% Caucasian), and UK Overseas Territory Gibraltar (Gibraltarian 79%, other British 13.2%), among others.

EU members have arguably adopted a certain ideology that supports high levels of Government spending on the provision of public services and benefits, financed by relatively high levels of taxation. EU members are well within their sovereign right to adopt such an ideology and to manage their economies in a manner that they see fit. Similarly, other countries are equally within their

sovereign right to adopt a different ideology, which does not support high levels of Government spending, but which, in keeping with the OECD's 2008 findings (Johanssoni et al., 2008) , supports economic growth via lower corporate taxes in an effort to support private sector led growth and job creation.

The EU is overstepping its bounds by dictating the tax policy if not the ideologies of Governments and countries beyond its membership. The EU's tax-haven Blacklist methodology is farcical at best - it is disposable in the first place, deceitfully over-complicated, not evidence-based, not transparent, and shamefully, absolutely subjective, resulting in a Blacklist of countries that is at once completely arbitrary, yet perfectly reveals its true malicious intent.

## VANUATU'S AML / CFT COMPLIANCE FRAMEWORK OVERVIEW

Vanuatu's Anti-Money Laundering and Counter-Terrorism Financing Act was implemented in June 2014, and is enforced by the Financial Intelligence Unit (FIU) (Financial Intelligence Unit- Govt of Vanuatu, n.d.). Vanuatu also enacted a United Nations Financial Sanctions Act in June 2017, that aims to prevent terrorism and impose prohibitions arising from UN Security Council Resolutions and domestic resolutions. The Act outlines a designation process for which prohibitions are placed on persons designated by either the UN Security Council Resolutions or by the Prime Minister of Vanuatu. The FIU is the sanctions secretariat as provided for by the said Act and supports the functions of the newly appointed National Security Advisory Committee that advises the Prime Minister on designation purposes.

Vanuatu is also a member of the Asia-Pacific Group (APG) on Money Laundering. The mutual evaluation report (MER) of Vanuatu was adopted in July 2015, and in 2018, the follow-up report (Asia/Pacific Group on Money Laundering, n.d.) analysed the progress of Vanuatu in addressing the technical compliance deficiencies identified in its MER<sup>3</sup>.

APG members and observers are committed to the effective implementation and enforcement of internationally accepted standards against money laundering and the financing of terrorism, in particular the Forty Recommendations of the Financial Action Task Force (FATF) (FATF, n.d.).

The FATF is the global inter-governmental money laundering and terrorist financing watchdog, which sets policy and international standards that aim to prevent these illegal activities and the harm they

<sup>3</sup> The Asia/Pacific Group on Money Laundering (APG) is an autonomous and collaborative international organisation founded in 1997 in Bangkok, Thailand consisting of 41 members and a number of international and regional observers. Some of the key international organisations who participate with, and support, the efforts of the APG in the region include the Financial Action Task Force, International Monetary Fund, World Bank, OECD, United Nations Office on Drugs and Crime, Asian Development Bank and the Egmont Group of Financial Intelligence Units.

cause to society in over 200 countries. The FATF monitors countries to ensure they implement the FATF Standards fully and effectively and holds non-compliant countries to account.

As the only recognized global money laundering and terrorist financing watchdog, the FATF does not list Vanuatu as a country under “High Risk” nor “increased monitoring”. In June 2018 “The FATF identified jurisdictions which have strategic AML/CFT deficiencies for which they have developed an action plan with the FATF. The FATF recognised that Iraq and Vanuatu have made significant progress in improving their AML/CFT regime and will therefore no longer be subject to the FATF’s monitoring process” (FATF, 2018).

Furthermore, the IMF Article IV report of June 2019 stated in various sections - “The authorities have made good progress on Vanuatu’s AML/CFT legal framework, although implementation has just begun. Staff commend the authorities’ efforts that led to Vanuatu’s removal in 2018 from the FATF’s “grey list” of jurisdictions with strategic AML/CFT deficiencies. This was achieved through extensive legislative work undertaken in conjunction with several development partners. Ongoing improvements to Vanuatu’s AML/CFT regime are needed to strengthen financial sector stability and ease potential pressures on correspondent banking relationships. While banks have been able to maintain correspondent banking relationships, these remain under pressure and compliance activities have increased costs. A substantial amount of work was needed to prepare and implement new AML/CFT legislation to enable Vanuatu’s removal from the grey list. In this context, the authorities expressed concern that Vanuatu’s recent inclusion on the European Union list of non-cooperative tax jurisdictions could undermine some of the work that has been done to support correspondent banking relationships. Work is underway to ensure that Vanuatu fulfils its international obligations in the area of taxation. The AML/CFT legal framework remains largely untested. Enforcement should be complemented by further requests for technical assistance from Vanuatu’s development partners for risk-based financial supervision and capacity building at the Vanuatu Financial Services Commission (VFSC) and Financial Intelligence Unit (FIU). Improvements to the AML/CFT regime may help alleviate pressures on correspondent banking relationships.”

The assessments of the APG, the FATF, and the IMF, all agree that Vanuatu - despite its many challenges - has managed to implement an AML / CFT framework that is satisfactory and up to international standards and requirements. Of course, there is room for improvement, and in the dynamic world in which we live, where regulation by definition lags innovation, especially as it relates to (financial) crime, there will always be room for improvement, not just for Vanuatu, but for every nation on earth.

Vanuatu is still relatively new to the post-colonial process of socio-economic development, which includes these necessary improvements to the AML/CFT regime, and as the IMF stated repeatedly,

it is incumbent upon (Vanuatu's colonizers in the first place, arguably) the international community and development partners, to support Vanuatu via technical assistance.

## THE EU APPOINTS ITSELF THE GOD OF AML / CFT

Once again, enter the EU, and as distinct from the FATF's Mission which is global in nature, the goals of the EU are specific to its Members (European Union, n.d.) and its Union, as follows, (European Commission, n.d.) "Under the Anti-Money Laundering Directive (AML), the Commission has a legal obligation to identify high-risk third countries having strategic deficiencies in their regime on AML and CFT. The objective of the EU list of high-risk third countries is to protect the Union internal market, through application of enhanced due diligence measures by obliged entities."

The EU adopted a 'modernised regulatory framework' to identify "high-risk third countries having strategic deficiencies in their regime on AML/CFT" in 2015, and in September 2016 published its first AML/CFT Blacklist (European Commission, 2020) including Vanuatu, where it remains even today.

As mentioned earlier, in June 2018, the FATF cleared Vanuatu of any deficiencies related to its AML/CFT regime, stating that Vanuatu will "no longer be subject to the FATF's monitoring process." Furthermore, in March 2021, the UK published its list of "high-risk third countries for the purposes of enhanced customer due diligence requirements" (Legislation.gov.uk., 2021), and did not include Vanuatu.

In March 2020, Vanuatu's Authorities requested an explanation from the EU as follows: "Vanuatu is still listed by the EU, despite the fact that, in June 2018, the FATF praised the significant progress that the country had made in its efforts to counter money laundering and terrorism financing (i.e. its 'AML/CFT regime'), and noted that Vanuatu's legal and regulatory framework was conducive to fulfilment of its action plan commitments to remedy the strategic shortcomings identified in February 2016. It would therefore no longer be monitoring Vanuatu for AML/CFT compliance, but the country would continue to improve its AML/CFT regime in cooperation with the Asia/Pacific group. The EU's delay in updating its list is causing very serious problems in Vanuatu. When will the official documents be updated?" (European Parliament, 2020).

The response received in May 2020 from the EU was as follows : "The EU regards fight against tax avoidance as well as money laundering and terrorist financing as high priority. The EU list of non-cooperative tax jurisdictions and the EU list of high-risk countries for money laundering and terrorism financing (AML/CFT) are two separate processes with different criteria and methodologies. Vanuatu remains on the EU tax list, as it has not fulfilled the commitments it made to address important deficiencies in its tax system. The Commission continues to offer Vanuatu technical assistance

and support to comply with the necessary tax good governance criteria. Under Article 9 of the Anti-Money Laundering Directive (European Parliament, 2015), the Commission has a legal obligation to identify high-risk third countries with strategic deficiencies in their AML/CFT regime. In 2016, the Commission reviewed relevant information, notably from the FATF, and concluded that Vanuatu has strategic AML/CFT deficiencies, which consequently led to its inclusion in the EU AML list of high-risk third countries (EUR-Lex, 2016). The Commission monitors Vanuatu's progress to assess whether it meets the requirements set in the AML Directive. The Commission closely follows the work of the FATF and will take into account, as appropriate, its relevant reports. It includes the 2018 decision to no longer subject Vanuatu to monitoring under its ongoing global AML/CFT compliance process. The Commission also takes into account relevant information from other international organisations, such as the OECD's Global Forum peer review report (OECD, 2019), notably on beneficial ownership information transparency, a criterion defined in Article 9 of the AML Directive. The Commission is currently working on amending Regulation (EU) 2016/1675 and on a refined methodology for identifying high-risk third countries and will adopt a Delegated Regulation updating the EU list of high-risk third countries."

However, in May 2020, the EU updated its list of High Risk Third Countries, and still included Vanuatu, under the same category "High-risk third countries which have provided a written high-level political commitment to address the identified deficiencies and have developed an action plan with FATF" - when in fact the FATF, since 2018, had identified zero deficiencies.

Furthermore, the EU failed in its response to Vanuatu, to specifically identify the deficiencies in Vanuatu's AML/CFT framework, or any other criteria, explaining why Vanuatu remains Blacklisted. This action by the EU is extrajudicial in nature, given that the FATF is the internationally recognized authority on AML/CFT matters – NOT the EU – and the FATF is satisfied with Vanuatu's AML/CFT framework. So, what in the EU's methodology could explain this stance?

In May 2020, the EU published its Revised Methodology for the Identification of High Risk Third Countries (European Commission, 2020). We review and analyse the methodology for clues as to why Vanuatu is Blacklisted by the EU, and find the following:

1. **Scoping phase** - "This step aims at identifying countries which, if they were found to have strategic AML/CFT deficiencies, would have a systemic impact on the integrity of the EU financial system and the proper functioning of the internal market." But, the methodology also states "Considering the high level of integration of the international financial system, the close connection of market operators, the high volume of cross border transactions to or from the Union, as well as the high degree of market opening, the Commission considers in principle that any AML/CFT threat posed to the international financial system also represents a threat to the Union

financial system.” In essence therefore, all countries are relevant, whether directly significant to the EU or not, if there is any AML/CFT threat whatsoever.

2. “The Commission will include in its scope jurisdictions included in the amended list used by the OECD (2019) of International Financial Centres (IFCs) based on the IMF offshore financial centre (OFC) definition”, and Vanuatu is included. The full IMF OFC list is as follows: Andorra; **Anguilla**; Antigua and Barbuda; Aruba; **The Bahamas**; Bahrain; **Barbados**; Belize; Bermuda; British Virgin Islands; Cayman Islands; Cook Islands; Costa Rica; Netherlands Antilles/Curaçao; Cyprus; **Dominica**; Gibraltar; Grenada; Guatemala; Guernsey; Hong Kong, China; Isle of Man; Jersey; Lebanon; Liechtenstein; Luxembourg; Macau, China; Malaysia; Malta; Marshall Islands; **Mauritius**; Monaco; Montserrat; Nauru; Niue; **Palau**; **Panama**; Saint Kitts and Nevis; Saint Lucia; Saint Vincent and the Grenadines; **American Samoa**; San Marino; **Seychelles**; Singapore; Switzerland; Turks and Caicos Islands; United Arab Emirates; Uruguay; and **Vanuatu**. **Countries in bold are those that are Blacklisted by the EU.**

Tax-haven Blacklist	EU AML/CFT Blacklist (high-risk third country)
<p><b>American Samoa, Anguilla, Dominica, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, US Virgin Islands, Vanuatu, Seychelles</b></p> <p><small>Blue indicates Offshore Financial Center according to the IMF.</small></p>	<p>Afghanistan, <b>Bahamas, Barbados</b>, Botswana, Cambodia, Democratic People’s Republic of Korea (DPRK), Ghana, Iran, Iraq, Jamaica, <b>Mauritius</b>, Myanmar, Nicaragua, Pakistan, <b>Panama</b>, Syria, Trinidad and Tobago, Uganda, <b>Vanuatu</b>, Yemen, Zimbabwe</p>

It is worthy of note that none of the significant Offshore Financial Center (OFCs) are Blacklisted by the EU.

3. “Third countries listed by the FATF will, in principle, also be listed by the EU. For countries de-listed by the FATF, the Commission services will assess whether the FATF Action Plans for a delisting are sufficiently comprehensive also in view of an EU delisting. Where necessary, specific EU requirements will “top up” the existing FATF Action Plan, by referring to additional EU specific criteria, for example the level of threat that the third country presents to the EU or requirements on beneficial ownership transparency.” Therefore, for Vanuatu to be de-listed by the EU, it is necessary but not sufficient that they first be de-listed by the FATF, but they must also satisfy additional specific EU requirements, over and above the FATF Action Plan, and there are no limits to the “EU Benchmarks” that Vanuatu will be required to meet. Furthermore, these EU Benchmarks are constantly changing, such that Vanuatu is unlikely to ever be deemed compliant for any length of time. And on the issue of time:
4. “The Commission will seek third countries’ commitment to implementing country-specific “EU

benchmarks” and a deadline of 12 months would be given to third countries to address concerns. A listing would only occur if the country does not implement in full the benchmarks / commitments. In addition, in case countries are not cooperative (i.e. refusing to undertake commitments) or countries fail to implement the agreed benchmarks within the agreed period, the Commission would proceed with a listing.” So in addition to being forced to adhere to changing “EU Benchmarks”, Vanuatu would have had only 12 months within which to comply.

5. “The Commission will use statistical indicators used for the Scoreboard prepared in the context of the Common EU list of non-cooperative jurisdictions for tax purposes” which means that EU tax-haven Blacklisting predisposes a country, as in the case of Vanuatu, to also appear on the AML/CFT Blacklist.
6. “Strength of economic ties with the EU: To see how strong the economic ties are between the third country and the EU, indicators such as trade data, affiliates controlled by EU residents and bilateral FDI stocks are examined.” Over the 5 year period of 2015-2019 Vanuatu’s average annual merchandise trade with the Euro Area was USD16 million and USD17 million with the EU, according to data from the IMF. Between 2015 and 2019, foreign investment inflows to Vanuatu averaged USD30.8 million annually, according to UNCTAD data. This inconsequential amount is 0.006% of the average annual FDI inflows received by the EU, and around 4% of the FDI received by the EU’s lowest FDI recipient countries Latvia and Croatia. Vanuatu is therefore grossly economically insignificant to the EU, but this could be a negative factor, as Blacklisting one of the world’s poorest and most vulnerable microstates will have zero impact whatsoever on the EU economy.
7. “To determine if a jurisdiction had a disproportionately high level of financial services exports, or a disconnection between their financial activity and the real economy, indicators such as total FDI stocks compared to GDP, specific financial income flows (royalties, dividends, interests) compared to GDP and statistics on foreign EU affiliates are used”. UNCTAD reports Vanuatu’s inward FDI stock in 2019 at USD611 million, 0.005% that of the EU, and approximately 66% of Vanuatu’s GDP. This compares to Luxembourg’s inward FDI stock of 6004.5% of GDP, Malta’s 1524% of GDP, Cyprus’ 990% of GDP and The Netherlands’ 566% of GDP. This proves that Vanuatu’s (offshore) financial services sector is microscopic, and does not therefore represent a material money-laundering threat.
8. “The least developed countries (LDC) identified by the United Nations are not selected in recognition of the particular constraints they face unless those LDC are identified as presenting a threat for the EU financial system...or are identified as an offshore financial centre.” Vanuatu graduated out of LDC status in December 2020, so they would not be able to benefit from this exemption on that basis, but in any event, Vanuatu is also listed as an OFC as mentioned earlier.

9. There are glaring EU Blacklist omissions of predominantly-white, non-EU jurisdictions, well known as money laundering hotspots, presumably for political and/or economic reasons (Rettman, 2020)— Gibraltar (Reyes, 2020), London (Persaud, 2017), Russia and the USA, for example. Furthermore, there is evidence of large / powerful non-white countries (allies) well known for financing terrorism and/or money laundering, being excluded from the EU's Blacklist, again perhaps for political and/or economic reasons (Rettman, 2020)— Saudi Arabia, China (O'Donnell, 2019), and Venezuela for example. Hence the suggestion from within Europe itself (Rettman, 2020) that the EU's list of "high-risk third countries" is less significant in terms of its inclusions than its glaring omissions.

In summary, based on the evidence and the EU's methodology, Vanuatu remains Blacklisted by the EU for AML/CFT, because of any or all of the following:

1. Vanuatu is tax-haven Blacklisted by the EU (which is a completely subjective and arbitrary list as discussed earlier),
2. Vanuatu is listed as an Offshore Financial Centre by the IMF (regardless of the size / insignificance of these flows),
3. Vanuatu is economically insignificant to the EU (and otherwise actually),
4. Vanuatu has recently graduated from LDC status, and is perhaps now deemed to be strong enough to withstand the pressure of EU Blacklisting,
5. Vanuatu has not complied within the 12-month timeframe with the EU's Benchmarks,
6. Vanuatu is a small, powerless, non-white former European colony.

## THE EFFECTS OF THE EU'S BLACKLISTING OF VANUATU

There is no body or international treaty that gives the EU the legal or even moral authority to unilaterally impose separate requirements over and above the OECD and FATF, or to impose sanctions of any kind - Blacklisting or otherwise - on any EU non-member country. The EU's action should therefore be considered extrajudicial in nature, given that the FATF and the OECD are the internationally recognized authorities on AML/CFT and Tax policy respectively – not the EU.

The extent of the EU's overreach into Vanuatu's sovereignty and the OECD's and FATF's territory, its grossly disproportionate treatment of one of the world's smallest, poorest, and most vulnerable countries on earth, its discriminatory stance based on size and ethnicity, and ultimately, its unapologetic immorality and de facto subjugation of the people of Vanuatu, is totally unacceptable.

The consequences of being placed on the EU's Blacklists should not be underestimated, as they are of a socio-economic existential magnitude for Vanuatu. Beyond the almost irreversible reputation-



al damage caused by Blacklisting, the more tangible consequences include EU directives such as “banks and other gatekeepers are required to apply enhanced vigilance in business relationships and transactions involving high-risk third countries”. Banks in Europe and North America are in effect compelled to “de-risk” banks from Vanuatu and all Blacklisted jurisdictions by withdrawing or reducing correspondent banking services, and in many cases even physically exiting these jurisdictions.

The withdrawal of correspondent banking services from Vanuatu is, in effect, to place a knee on the carotid artery of its economy, with socio-economic consequences that no small, poor, and highly vulnerable country can survive, especially in this pandemic.

Blacklisting - especially in a country where institutions are already weak, where there is a high level of informality in the economy, and where cash usage is high - is counterproductive (assuming the goal of Blacklisting is to reduce money laundering, terrorism financing, and tax evasion), because it leads to de-risking, which drives higher levels of informality and cash usage, even for cross border transactions. No other form of payment and settlement is more conducive to money laundering and tax evasion, than cash-based transactions. They are completely anonymous and unrecorded. So in addition to the damaging effects of Blacklisting - reputationally, economically, and ultimately socially - it also increases the risk of money being laundered and taxes being evaded.

Furthermore, Blacklisted countries are subject to sanctions by the EU. This is precisely what the world's most vulnerable country to natural disasters, a recently-graduated LDC, and one of the world's poorest countries does NOT need. In the context of the pandemic which has thrown Vanuatu into a recession, the EU's behaviour is nothing short of brutal.

## CONCLUSION

For centuries, thriving European economies were built and sustained on the backs of the very colonies which are now desperate to survive and compete in whatever limited way we can, yet the EU is seeking to destroy the ability of these weaker states to compete by weaponizing its unilaterally, disproportionately, and unfairly applied rules on tax and AML/CFT. By design therefore, it is impossible for Vanuatu to satisfy the EU's ever-changing requirements.

Evidently, we, the former European colonies, are being held to a higher standard than our former colonizers, by our former colonizers. We are still denied the sovereignty to manage our domestic affairs – even in a manner similar to that of our former colonizers. There is no precedent for this in history. It would appear that enjoying low taxes and laundering money are privileges reserved only for predominantly-white countries and their powerful allies. Non-white former colonies are meant to remain poor and subjugated, if not exploited and enslaved.

The EU's policies in this context represent indisputable examples of institutional racism and bullying. The EU's action against Vanuatu is brutally disproportionate relative to its insignificant level of economic activity (including tax evasion and money laundering) versus that of EU member states and other omitted countries. There is no known effective legal or other recourse for Vanuatu to pursue, to appeal for justice. And finally, the penalties being imposed on Vanuatu have the potential to damage its economy irreparably. This is nothing short of economic warfare.

In the context of a global pandemic in the first place, and #BlackLivesMatter - when it is finally politically incorrect to behave in such a brutal, neo-colonial manner - the EU must cease its economic warfare, dressed up as its (totally unjustified) Blacklisting of Vanuatu.

## BIBLIOGRAPHY

Acemoglu, Daron, and James Robinson. 2017. "The economic impact of colonialism." <https://voxeu.org/>. <https://voxeu.org/article/economic-impact-colonialism>.

Asia/Pacific Group on Money Laundering. n.d. "Members & Observers - Documents." Asia / Pacific Group on Money Laundering. <http://www.apgml.org/members-and-observers/members/member-documents.aspx?m=c1870a1f-0875-4c35-a49e-930df0f339b5>.

Beuermann, Diether, and Moises Schwartz. 2021. "Economic institutions for a resilient Caribbean." <https://www.iadb.org/>. [https://downloadapi.paperflite.com/api/2.0/shared\\_url/602edf1c53c65210d4cd946c/asset/602edf1c53c65210d4cd946b/download](https://downloadapi.paperflite.com/api/2.0/shared_url/602edf1c53c65210d4cd946c/asset/602edf1c53c65210d4cd946b/download).

Bündnis Entwicklung Hilft. 2020. "World Risk Report." [weltrisikobericht.de](http://weltrisikobericht.de). <https://weltrisikobericht.de/english/>.

Dutch News. 2019. "Criminals launder €13bn a year in the Netherlands, most crime cash is Dutch." November 13, 2019. <https://www.dutchnews.nl/news/2019/11/criminals-launders-13bn-a-year-in-the-netherlands-most-crime-cash-is-dutch/>.

EUR-Lex. 2016. "COMMISSION DELEGATED REGULATION (EU) 2016/1675." [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2016.254.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2016.254.01.0001.01.ENG).

European Commission. 2020. "EU policy on high-risk third countries." <https://ec.europa.eu>. [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/anti-money-laundering-and-counter-terrorist-financing/eu-policy-high-risk-third-countries\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/anti-money-laundering-and-counter-terrorist-financing/eu-policy-high-risk-third-countries_en).

European Commission. 2020. "Revised EU methodology for the identification of high-risk third countries." [https://ec.europa.eu/info/files/200507-anti-money-laundering-terrorism-financing-action-plan-methodology\\_en](https://ec.europa.eu/info/files/200507-anti-money-laundering-terrorism-financing-action-plan-methodology_en).

European Commission. 2021. "Evolution of the EU list of tax havens." [ec.europa.eu](https://ec.europa.eu). [https://ec.europa.eu/taxation\\_customs/sites/default/files/eu\\_list\\_update\\_22\\_02\\_2021\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/default/files/eu_list_update_22_02_2021_en.pdf).

European Commission. n.d. "Methodology for identifying high-risk third countries under Directive (EU) 2015/849." [ec.europa.eu](https://ec.europa.eu). [https://ec.europa.eu/info/sites/default/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/200507-anti-money-laundering-terrorism-financing-action-plan-methodology\\_en.pdf](https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/200507-anti-money-laundering-terrorism-financing-action-plan-methodology_en.pdf).

European Commission. n.d. "Glossary- What is Regional Policy > Proportionality." [ec.europa.eu](https://ec.europa.eu). [https://ec.europa.eu/regional\\_policy/en/policy/what/glossary/p/proportionality](https://ec.europa.eu/regional_policy/en/policy/what/glossary/p/proportionality).

European Parliament. 2015. "Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015." <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02015L0849-20180709&from=EN>.

European Parliament. 2020. "Parliamentary Questions - Vanuatu's Listing by the FATF." [https://www.europarl.europa.eu/doceo/document/E-9-2020-001251\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2020-001251_EN.html).

European Parliament. 2021. "EU tax haven blacklist is not catching the worst offenders." [www.europarl.europa.eu](http://www.europarl.europa.eu). <https://www.europarl.europa.eu/news/en/press-room/20210114IPR95631/eu-tax-haven-blacklist-is-not-catching-the-worst-offenders>.

European Union. 2015. "DIRECTIVE (EU) 2015/849 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 2015." [eur-lex.europa.eu](http://eur-lex.europa.eu). <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L0849&from=EN>.

European Union. 2016. "First step towards a new EU list of third country jurisdictions: Scoreboard." [ec.europa.eu](http://ec.europa.eu). [https://ec.europa.eu/taxation\\_customs/sites/default/files/2016-09-15\\_scoreboard-indicators.pdf](https://ec.europa.eu/taxation_customs/sites/default/files/2016-09-15_scoreboard-indicators.pdf).

European Union. n.d. "The EU in brief." [europa.eu](http://europa.eu). [https://europa.eu/european-union/about-eu/eu-in-brief\\_en](https://europa.eu/european-union/about-eu/eu-in-brief_en).

Eurostat. 2021. "General government gross debt." Eurostat Data Browser. [https://ec.europa.eu/eurostat/databrowser/view/sdg\\_17\\_40/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/sdg_17_40/default/table?lang=en).

FATF. n.d. "FATF- Who we are." Financial Action Task Force. <https://www.fatf-gafi.org/about/>.

FATF. n.d. "Vanuatu." Countries- FATF. <https://www.fatf-gafi.org/countries/#Vanuatu>.

Financial Intelligence Unit- Govt of Vanuatu. n.d. "AML&CTF ACT." Financial Intelligence Unit - Government of Vanuatu. <https://fiu.gov.vu/amlctf-acts>.

General Secretariat of the Council of the European Union. 2017. "The EU list of non-cooperative jurisdictions for tax purposes: Council Conclusions (adopted 5/12/2017)." [www.consilium.europa.eu](http://www.consilium.europa.eu). <https://www.consilium.europa.eu/media/31945/st15429en17.pdf>.

Goldstein, Jeff. 2021. "The case for a global minimum corporate tax." <https://www.atlanticcouncil.org/>. <https://www.atlanticcouncil.org/blogs/new-atlanticist/the-case-for-a-global-minimum-corporate-tax/>.

Heath, Ryan. 2017. "Brussels is blind to diversity." Politico, December 11, 2017.

Hurt, Stephen, and J.E. Luebering. 2015. "Washington Consensus." [www.britannica.com](http://www.britannica.com). <https://www.britannica.com/topic/Washington-consensus>.

IMF. 2019. "IMF Executive Board Concludes 2019 Article IV Consultation with Vanuatu." 19/216 ed. www.imf.org. <https://www.imf.org/en/News/Articles/2019/06/13/pr19216-vanuatu-imf-executive-board-concludes-2019-article-iv-consultation-with-vanuatu>.

IMF. 2021. "IMF staff concludes virtual staff to visit Vanuatu." 21/66 ed. www.imf.org. <https://www.imf.org/en/News/Articles/2021/03/12/pr2166-vanuatu-imf-staff-concludes-virtual-staff-visit>.

Johanssoni, Åsa, Christopher Headyi, Jens Matthias Arnoldi, Bert Brysi, and Laura Vartiai. 2008. "Taxation and Economic Growth." www.oecd-ilibrary.org. [https://www.oecd-ilibrary.org/economics/taxation-and-economic-growth\\_241216205486](https://www.oecd-ilibrary.org/economics/taxation-and-economic-growth_241216205486).

Klein, Michael. 2021. "Code of Conduct Group chair: EU tax list 'not a tax haven list.'" Cayman Compass, April 27, 2021. <https://www.caymancompass.com/2021/04/27/code-of-conduct-group-chair-eu-tax-list-not-a-tax-haven-list/>.

Legislation.gov.uk. 2021. "The Money Laundering and Terrorist Financing (Amendment) (High-Risk Countries) Regulations 2021." <https://www.legislation.gov.uk/uksi/2021/392/made>.

O'Donnell, John. 2019. "Europol highlights Russian money as biggest laundering threat." Reuters, June 13, 2019. <https://www.reuters.com/article/us-europe-moneylaundering-europol/europol-highlights-russian-money-as-biggest-laundering-threat-idUSKCNITE2K6>.

OECD. 2019. "Global Forum on Transparency and Exchange of Information for Tax Purposes: Vanuatu 2019 (Second Round)," Peer Review Report on the Exchange of Information on Request. <https://www.oecd.org/countries/vanuatu/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-vanuatu-2019-second-round-dd70b774-en.htm>.

OECD. 2020. "Tax Challenges Arising from Digitalisation – Report on Pillar Two Blueprint." <https://www.oecd.org/>. <https://www.oecd.org/tax/beps/tax-challenges-arising-from-digitalisation-report-on-pillar-two-blueprint-abb4c3d1-en.htm>.

OECD. n.d. www.oecd.org. <https://www.oecd.org/tax/transparency/>.

OECD. n.d. www.oecd.org. <http://www.oecd.org/tax/transparency/about-the-global-forum/members/>.

OECD. n.d. "Aggressive tax planning." www.oecd.org. <https://www.oecd.org/tax/aggressive/>.

OECD. n.d. "Compliance ratings following peer reviews against the standard of EOIR." <https://www.oecd.org/>. <https://www.oecd.org/tax/transparency/documents/exchange-of-information-on-request-ratings.htm>.

OECD. n.d. "List of Unco-operative Tax Havens." <https://www.oecd.org>. <https://www.oecd.org/countries/monaco/list-of-unco-operative-tax-havens.htm>.