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Article : Update on the French and Portuguese Blacklisting of British Dependencies and Overseas Territories

18th December, 2013.

There is a common thread here, which those on the Continent appear to have missed.

The Crown Dependencies in general are European Territories to which the Treaties constituting the European Union and the European Communities apply. They are therefore within the EC and the EU, not outside it. Their status within was regulated to be restricted to the same constitutional position as they have had with the United Kingdom for a longer period than the existence of most European States, including France, a mere social contract infant by comparison.

To take the lazy and blinkered Gallic short cut that the tax provisions do not apply to them is pure intellectual dishonesty, by Continental politicians seeking Boucs émissaires, and pushing their civil servants to oblige.

The list of European States and territories outside the European Communities and the Union is clear from the Council's mandate to the Commission (Brussels, 14 May 2013, 9487/13, PRESSE 193) to negotiate modifications to the Savings Directive with those:

Those States and territories are

1. Switzerland,
2. Liechtenstein,
3. Monaco (financed to the point of economic monopolisation by the French),
4. Andorra (a French co-principality), and last but not least
5. San Marino, within the scope of the less excessively aggressive Italy..

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Do the British Crown Dependencies appear on this list, compiled by the only authorities competent, the Council and the Commission? Note that the Economic and Financial Affairs Council did not publish its decision explaining why the Crown Dependencies were segregated out from other, non-European states and territories on the list. The Crown Dependencies, separated from the other overseas territories by the Council in their mandate of 14th May, 2013, are required to conform to the EC general policy owing to their non-theoretical inclusion, but that this is formalised under the extension of the Constitutional relationship with the UK within a separate third territory parameter and context. Otherwise why respect the EU code of conduct?

Why should Luxemburg and Cyprus get removed when Jersey is not?

Why have the French abstained from blacklisting all five European non-member states and territories, whom they have better reasons for tarring and feathering?

They have concentrated their efforts on British Overseas Territories, perceived as being easy targets.

Switzerland, apparently, is not seen by the French as being such a walkover. That there remained French political money in Switzerland, rather than in Jersey, was evidenced by the recent scandals both at a ministerial level and by the French taking HSBC Switzerland to account. The relationships between Andorra and Monaco within the field of parapharmaceutical internet sales evasion - the stocks for French delivery being managed and administered in France- do merit a little more attention from the French authorities.

Put in a more general context, how else can French and Portuguese nationals benefit from the Protocol 3, Article 4 rights to equivalent treatment with UK citizens to move to and work in the Island? It is a parallel entitlement to the EU freedom of movement of persons which has been in place since 1972, and implemented as an equivalence to the EC regulations and directive as such.

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To say, in contravention of the principle that no EU State or territory can blacklist another, that the Island is outside the EU is a travesty of the real legal position.

Perhaps the Island needs to put a block on the movement of persons from European states which blacklist it, until the Council is obliged to intervene under Protocol 3 to sort both the Portuguese and the French out? Hopefully it will come to that. The French would then need to find another country willing to employ their Breton chômeurs, which they have been regularly sending to Jersey to obtain work under the article 4 mechanism to get them off their books!

The fact that the Treaties are applicable within the Island is confirmed by the domestic legislation European Communities (Jersey) Law 1973¹, and the adaptation of the Island's legislation under the separate European Communities (Jersey) Law 1972², both by the iteration of the applicable treaties at article 1 of the 1973 law and by the adoption of the same wording as that used within the United Kingdom to give effect to Community law directly, at article 2.

That is how the freedom in play take effect in Jersey law under article 4 of Protocol 3.

That legal fact and principle renders both blacklistings unlawful, both under national law and what is more overriding EC law.

Why else was Portugal forced to take Cyprus and Luxembourg off their list in November, 2011?

"... Order in Council no. 292/2011, published on 8 November, updated the list of countries, territories and regions with clearly more favourable privileged tax regimes (known as 'tax havens') appearing in the earlier Order in Council no. 150/2004 of 13 February. It also excluded from the list two countries that are members of the European Union (EU): Cyprus and Luxembourg." Mondaq [Rogério Fernandes Ferreira](#).

¹ see downloads section

² see sownloads section



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If the French blacklisting is removed by 1st January, 2014, those understanding these issues will perhaps now be more aware of why it was illegal in the first place.

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