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NOTE

From: General Secretariat of the Council

To: Delegations

Subject: Code of Conduct Group report to the Council on the update of the EU list

Code of Conduct Group report to the Council on the update of the EU list**I. INTRODUCTION**

1. On 14 February 2023, the Council updated the EU list of non-cooperative jurisdictions for tax purposes (Annex I) and the state of play with respect to commitments taken by cooperative jurisdictions to implement tax good governance principles (Annex II)¹ initially endorsed by the Ecofin Council on 5 December 2017² and subsequently revised by the Council on 23 January 2018,³ 13 March 2018,⁴ 25 May 2018⁵, 2 October 2018,⁶ 6 November 2018,⁷ 4 December 2018,⁸ 12 March 2019,⁹ 22 May 2019,¹⁰ 14 June 2019,¹¹ 17 October 2019,¹² 8 November 2019¹³, 5 December 2019¹⁴, 18 February 2020¹⁵, 6 October 2020¹⁶, 22 February 2021¹⁷, 5 October 2021¹⁸, 24 February 2022¹⁹ and 4 October 2022²⁰.
2. As agreed by the Ecofin Council in its conclusions of 12 March 2019, as from 2020 onwards, updates of the EU list should be done no more than twice a year.

¹ OJ C 64, 21.2.2023, p. 17-22.

² OJ C 438 2017, p. 5-24.

³ OJ C 29 2018, p. 2.

⁴ OJ C 100 2018, p. 4-5.

⁵ OJ C 191 2018, p. 1-3.

⁶ OJ C 359 2018, p. 3-5.

⁷ OJ C 403 2018, p. 4-6.

⁸ OJ C 441 2018, p. 3-4.

⁹ OJ C 114 2019, p. 2-8.

¹⁰ OJ C 176, 22.5.2019, p.2.

¹¹ OJ C 210, 21.6.2019, p.8.

¹² OJ C 351, 17.10.2019, p. 7.

¹³ OJ C 386, 14.11.2019, p.2.

¹⁴ OJ C 416, 11.12.2019, p.10.

¹⁵ OJ C 64 2020, p. 8-14.

¹⁶ OJ C 331 2020, p. 3-5.

¹⁷ OJ C 66, 26.2.2021, p. 40-45.

¹⁸ OJ C 413I, 12.10.2021, p. 1-4.

¹⁹ OJ C 103, 3.3.2022, p. 1-4.

²⁰ OJ C 391, 12.10.2022, p. 2-5.

3. In its conclusions of 14 February 2023²¹ the Ecofin Council underlined the importance of promoting and strengthening tax good governance standards, including in the area of fair taxation and tax transparency and of fighting tax fraud, evasion and avoidance, both at the EU level and globally, and appreciated the continuous productive cooperation on tax matters between the EU Code of Conduct Group on Business Taxation and most jurisdictions around the world.
4. In its conclusions of 16 June 2023²², the Ecofin Council welcomed the positive effect of the Code of Conduct and the work of the Group on reducing harmful tax practices and the decrease of preferential tax regimes both at the EU level and globally, and invited the Code of Conduct Group (further referred to as "the Group") to continue an effective dialogue with jurisdictions and monitoring, so that jurisdictions continue to fulfil their respective commitments and comply with the EU listing criteria in accordance with the agreed deadlines. The Council also welcomed the progress made by jurisdictions that completed the reform of their foreign-source income exemption (FSIE) regimes within the suggested deadline and the ongoing dialogue with some other jurisdictions that were in the process of reforming their FSIE regime with a view to include foreign-source capital gains in the scope of the reform, as well as the progress made with no or only nominal tax jurisdictions in the context of monitoring the implementation of economic substance requirements under criterion 2.2 and with relevant jurisdictions regarding the implementation of the country-by-country reporting (CbCR) anti-BEPS minimum standard (criterion 3.2) and regarding the implementation of automatic exchange of information (AEOI) (criterion 1.1) and exchange of information on request (criterion 1.2).
5. In that spirit, the Group continued interactions and dialogues with the relevant jurisdictions through its elected Chair (Ms María José Garde Garde), supported by the General Secretariat of the Council and with technical assistance of the Commission services. The Group met on 3 July and 3 October 2023 to prepare the planned revision of the list.

²¹ OJ C 64, 21.2.2023, p. 17-22.

²² Doc. 9875/23.

6. In the light of the above, and based on an objective assessment of the most recent developments, the October 2023 update of the EU list should, as appropriate, allow the Council to:

- take the necessary decisions in the context of the upcoming listing;
- remove from Annex I jurisdictions that took sufficient steps to address the identified issues, and move them to Annex II where relevant;
- list in Annex I jurisdictions which do not comply with the EU listing criteria for jurisdictions which are under screening;
- include in Annex II jurisdictions which have undertaken commitments to cooperate with the EU and to take the necessary steps towards complying with one or more EU listing criteria that their tax systems have been found to be inconsistent with; and
- remove jurisdictions that completed their commitments from Annex II.

II. UPDATES OF ANNEX I

Listing

7. In 2020, the Global Forum on Transparency and Exchange of Information for Tax Purposes (“Global Forum”) rated Anguilla “non-compliant” with the OECD standard on exchange of information on request (EOIR), resulting in its inclusion in Annex I in October 2020. In 2021, the Global Forum granted Anguilla a supplementary review, after which this jurisdiction was included in Annex II. In October 2022, Anguilla was included in Annex I on account of its deficiencies with regard to the effective implementation of substance requirements under criterion 2.2, with a reference to its pending supplementary review.

On 19 July 2023, the Global Forum published the outcome of this supplementary peer review, granting Anguilla an improved rating of "partially compliant" in the supplementary second round review²³, which is however still insufficient to be considered compliant with criterion 1.2 of the EU list. The Group therefore recommends adding the failure to comply with criterion 1.2 on EOIR to the entry on Anguilla in Annex I.

8. On 19 July 2023, the Global Forum published the outcome of its peer review process to assess Antigua and Barbuda’s compliance with international standards for EOIR. In that context, Antigua and Barbuda was downgraded to "partially compliant" in the second round review²⁴. The Group therefore recommends including Antigua and Barbuda in Annex I with regard to criterion 1.2.

²³ [Global Forum on Transparency and Exchange of Information for Tax Purposes: Anguilla 2023 \(Second Round, Supplementary Report\)](#).

²⁴ [Global Forum on Transparency and Exchange of Information for Tax Purposes: Antigua and Barbuda 2023 \(Second Round\)](#).

9. On 19 July 2023, the Global Forum published the outcome of its peer review process to assess Belize's compliance with international standards for EOIR. In that context, Belize was downgraded to "partially compliant" in the second round review²⁵. The Group therefore recommends including Belize in Annex I with regard to criterion 1.2.

The relevant entry should also reflect Belize's commitments with regard to criterion 1.1 on automatic exchange of information. Belize's commitment under criterion 3.2 on country-by-country reporting was deemed fulfilled (see the relevant section under part III of this report).

10. On 4 January 2022, Panama made a high-level commitment to the COCG Chair to address the recommendations received from the Inclusive Framework on country-by-country reporting in the Autumn of 2021 in a timely manner²⁶. The Council therefore included a reference to this commitment to the entry on Panama in Annex I.

In its Autumn 2023 peer review, the Inclusive Framework no longer made general recommendations to Panama. The COCG therefore recommends to consider Panama's commitment fulfilled and to delete the reference to this commitment from the relevant entry.

11. In 2020, the Global Forum rated Seychelles "partially compliant" with the EOIR standard, resulting in its inclusion in Annex I in February 2020. In August 2021, the Global Forum granted Seychelles a supplementary review, after which this jurisdiction was included in Annex II. On 19 July 2023, the Global Forum published the outcome of this supplementary peer review, maintaining the rating of "partially compliant" in the second round review²⁷. The Group therefore recommends including Seychelles in Annex I with regard to criterion 1.2.

²⁵ [Global Forum on Transparency and Exchange of Information for Tax Purposes: Belize 2023 \(Second Round\)](#).

²⁶ See also part III, section c).

²⁷ [Global Forum on Transparency and Exchange of Information for Tax Purposes: Seychelles 2023 \(Second Round, Supplementary Report\)](#).

12. In January 2022, Trinidad and Tobago made a high-level commitment to the COCG Chair to addressing the general recommendations by the BEPS Inclusive Framework and to activating country-by-country exchanges with all EU Member States within the required timeframe. The Council therefore included a reference to this commitment to the entry on Trinidad and Tobago in Annex I²⁸.

In its Autumn 2023 peer review, the Inclusive Framework made general recommendations to Trinidad and Tobago. The COCG therefore recommends to consider that this jurisdiction has failed to fulfil its commitment, and to amend the entry on Trinidad and Tobago accordingly.

Delisting

13. On 9 November 2022, the Global Forum published the outcome of its peer review process to assess the British Virgin Islands' compliance with international EOIR standards. In that context, British Virgin Islands was downgraded to "Partially Compliant" in the second round review²⁹. In February 2023, the Council therefore included British Virgin Islands in Annex I with regard to criterion 1.2.

In August 2023, the Global Forum decided to grant the British Virgin Islands a supplementary review. The Group therefore concluded that this jurisdiction can be removed from Annex I of the EU list for criterion 1.2 and should be included in Annex II pending the outcome of the supplementary review by the Global Forum.

²⁸ See also part III, section c).

²⁹ [Global Forum on Transparency and Exchange of Information for Tax Purposes: British Virgin Islands 2022 \(Second Round\)](#).

14. Costa Rica was listed in Annex I by the Council in February 2023 after failing to fulfil its commitment to amend or abolish its foreign source income exemption (FSIE) regime by the end of 2022 with effect from 1 January 2023. Following an amendment of its corporate taxation legislation on 26 September 2023, Costa Rica has amended its FSIE regime in line with the COCG guidance with effect from 2 October 2023. The Group therefore recommends to remove Costa Rica from Annex I with regard to criterion 2.1.

Costa Rica's commitment under criterion 1.1 to address its "non-compliant" rating as regards the effectiveness of its framework for the automatic exchange of information in time so as to be reflected in the autumn 2024 peer review report of the Global Forum should be included in Annex II.

15. In February 2023, the Republic of Marshall Islands, which is not a member of the BEPS Inclusive Framework, and is being monitored by the Group with regard to the enforcement of substantial activities independently from the FHTP, was listed by the Council in Annex I following the recommendation of the Group. The Group considered that the jurisdiction did not comply with the relevant standard for no or only nominal corporate tax jurisdictions. Based on the supplemental information provided by the Marshall Islands in August 2023, the Group concludes that the Marshall Islands' enforcement of the economic substance requirements for the 2022 monitoring has improved sufficiently for the Group to recommend the removal of the Republic of Marshall Islands from Annex I with regard to criterion 2.2.

III. UPDATES OF ANNEX II

a) Automatic exchange of information (criterion 1.1)

– Commitment to implement the automatic exchange of information, either by signing the Multilateral Competent Authority agreement or through bilateral agreements

16. In accordance with the Council conclusions agreed by Ecofin on 18 February 2020, Türkiye was given a deadline until 31 December 2020 to comply with the requirements for effective exchanges of information under the OECD Common Reporting Standard (which corresponds to criterion 1.1 under the EU list).

17. This deadline extension followed the engagement of Türkiye with the Code of Conduct Group for business taxation in 2019 and their reassurances that progress would be made by end of 2020. In its Conclusions of 22 February 2021, the Council took note of the state of play and regretted that Türkiye had not made material progress in the effective implementation of the automatic exchange of information with all EU Member States. The Council reiterated that the effective exchange of information with all Member States is a condition for Türkiye to comply with criterion 1.1 of the EU list in accordance with the Council conclusions of February 2020. In its conclusions of February 2021, the Council called on Türkiye to fully commit at a high political level by 31 May 2021 to effectively activate automatic information exchange relationships with the 6 remaining Member States by 30 June 2021. The Council also called on Türkiye to send to all Member States information for fiscal year 2019 no later than by 1 September 2021. Finally, the Council conclusions called on Türkiye to send such information for fiscal years 2020 and 2021 in accordance with the OECD calendar for the automatic exchange of information with all Member States and no later than by, respectively, 30 September 2021 and 30 September 2022.
18. In its conclusions of 5 October 2021, the Council took note of the commitment that Türkiye undertook on 19 May 2021 to effectively activate automatic information exchange relationships by 30 June 2021 with all Member States with which Türkiye has diplomatic relations and underlined that further engagement and technical work on effective exchange of data from Türkiye towards all Member States will be required to meet the agreed international standard and fully comply with the conclusions of the Ecofin Council of 22 February 2021.

19. In its conclusions of 24 February 2022, the Council considered that the progress made by Türkiye is still not fully in line with the Conclusions of the Ecofin Councils of 22 February 2021 and 5 October 2021 and called on Türkiye to begin or continue the technical work on the effective exchange of data from Türkiye with all Member States to meet the agreed international standards and fully comply with the requirements set in the above mentioned conclusions of the Ecofin Councils. The Council reiterated that the effective automatic exchange of information with all Member States according to the OECD calendar and standard is a condition to fulfil criterion 1.1 of the EU list and to fully comply with the requirements set out in the above mentioned Council conclusions.
20. In its conclusions of 4 October 2022, the Council took note of the effective automatic information exchange relationships between Türkiye and the Member States, regretted that Türkiye has not made any progress with one Member State, reiterated its call on Türkiye to begin or continue the effective exchange with all Member States and to fully comply with the requirements set in the Conclusions of the Ecofin Council of 22 February 2021, 5 October 2021 and 24 February 2022. The Council reiterated that the effective automatic exchange of information with all Member States in accordance with the OECD calendar and international standards and as set in the relevant Ecofin Council conclusions is a condition for Türkiye to fulfil criterion 1.1 of the EU list.
21. In its conclusions of 14 February 2023, the Council regretted that Türkiye has not made any progress with one Member State on the effective exchange of information, reiterated its call on Türkiye to begin the outstanding automatic information exchange relationships with one Member State and to fully comply with the requirements set in the conclusions of the Ecofin Council of 22 February 2021, 5 October 2021, 24 February 2022 and 4 October 2022. The Council reiterated that the effective automatic exchange of information with all Member States is a condition for Türkiye to fulfil criterion 1.1 of the EU list.
22. The Group notes that Türkiye is still not in line with the commitments required under the above mentioned Council conclusions with regard to the exchange of information with all Member States. Therefore, the reference to Türkiye should be maintained in section 1.1 of Annex II.

b) Existence of harmful tax regimes (criterion 2.1)

– *Harmful tax regimes in the scope of the FHTP*

23. On 15 July 2021, Jordan committed to address the harmful features of its Aqaba Special Economic Zone regime, a preferential tax regime in the scope of the FHTP. In April 2023, the FHTP concluded that the regime was not harmful (amended), considering Jordan's commitment fulfilled. The Group therefore recommends removing the reference to Jordan from the relevant section of Annex II.

– *Foreign source income exemption (FSIE) regimes*

24. On 26 April 2023, the Group deemed Singapore's FSIE regime not in line with the Guidance on FSIE regimes as approved by the Council in December 2022. On 27 April 2023, the Chair of the COCG therefore sent a letter to request Singapore to amend the regime in line with the FSIE guidance by 30 June 2024. On 26 June 2023, Singapore sent a letter to the COCG Chair³⁰ with a commitment to amending its tax system in line with the guidance by the agreed deadline. Singapore has shared its draft legislation with the Group, and the Group considered the draft amendments to be in line with the COCG Guidance on FSIE regimes. The legislation was adopted on 3 October 2023. The Group therefore recommends to consider Singapore's commitment fulfilled.

25. On 7 July 2021, Qatar made a commitment to the Group to implement the necessary reforms to address the issues identified by the Group. On 23 January 2023, Qatar affirmed³¹ that the ratification of primary legislation had been concluded in January 2023 with provisions into effect from 1 January 2023. On 2 February 2023, Qatar committed to completing the reform by means of secondary legislation to specify the economic substance requirements and anti-abuse rules, with effect from 1 January 2023. In July 2023, Qatar completed the reform as agreed with the Group. The Group therefore considers that Qatar has fulfilled its commitment on this reform and recommends removing the reference to this jurisdiction from the relevant section of Annex II.

³⁰ WK-R 8839/23.

³¹ WK-R 918/23.

c) *Implementation of country-by-country reporting (criterion 3.2)*

26. On the basis of the October 2021 Action 13 peer reviews by the OECD BEPS Inclusive Framework (IF) on country-by-country reporting (CbCR) and additional assessments of bilateral exchange relations for CbCR with EU Member States, eleven jurisdictions with identified deficiencies on CbCR³² were asked to undertake commitments to address these deficiencies in time to be reflected in the 2023 IF peer review report on CbCR. These commitments were recorded at the update of the EU list in February 2022.
27. The Bahamas, Barbados, British Virgin Islands and Tunisia subsequently fulfilled their commitments by addressing the identified deficiencies already in 2022. Accordingly, the references to these commitments were removed by the Council from Annexes I and II in October 2022 and February 2023.
28. On 25 September 2023, the IF published its 2023 peer reviews on CbCR. At its meeting on 3 October 2023, the Code of Conduct Group assessed the results of the IF peer reviews on CbCR for the remaining seven jurisdictions with pending commitments on criterion 3.2.
29. In 2023, the IF no longer addresses relevant general recommendations to the following jurisdictions: Belize, Israel, Montserrat, and Thailand. Accordingly, the Group deems their commitments on criterion 3.2 fulfilled and recommends to remove the relevant references to these jurisdictions with regard to criterion 3.2 from Annex II.
30. Vietnam's commitment on CbCR involves the effective implementation of the international standard following a step-by-step approach, including the activation of CbCR relationships with all EU Member States, by 31 August 2024.

³² Bahamas, Barbados, Belize, British Virgin Islands, Israel, Montserrat, Panama, Thailand, Tunisia, Vietnam, Trinidad and Tobago.