Council of the
European Union

Brussels, 20 November 2018
(OR. en)

14364/18

FISC 481
ECOFIN 1059

REPORT

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Code of Conduct Group (Business Taxation) – Report to the Council = Endorsement

I. BACKGROUND

1. On 1 December 1997, the Council and the Representatives of the Governments of the Member States, meeting within the Council, adopted a resolution on a Code of Conduct for business taxation. This resolution provides for the establishment of a Group within the framework of the Council to assess tax measures that may fall within the Code, which was established on 9 March 1998 (doc. 6619/98). It also provides that the Group "*will report regularly on the measures assessed*" and that "*these reports will be forwarded to the Council for deliberation and, if the Council so decides, published*" (paragraph H).

2. In its conclusions of 8 December 2015 (doc. 15148/15), the Council expressed the wish to improve the visibility of the work of the Code of Conduct Group (hereafter "COCG" or "Group") and agreed "*that its results, in particular its 6-monthly reports, are systematically made available to the public*" (paragraph 16).

3. In its conclusions of 8 March 2016 (doc. 6900/16), the Council furthermore called " *for having more substantial 6-monthly Group reports to ECOFIN, reflecting the main elements and views, which were discussed under specific items and reporting also on the monitoring concerning (non-) compliance with agreed guidance*" (paragraph 16).

4. This report from the Code of Conduct Group encompasses the work of the Group in the second half of 2018 under the Austrian Presidency of the Council.

II. GENERAL ASPECTS

5. The Code of Conduct Group met four times under the Austrian Presidency, on 24 July, 21 September, 12 October and 15 November 2018.

6. Its subgroup on third countries met on 10 July, 20 September and 14 November 2018.

7. The Group started working on the basis of the new multiannual work package approved by the Council (ECOFIN) on 22 June 2018 (doc. 10420/18).

1. Chair and Vice-Chairs

8. Katharina Hafner (Austria) and Ioana-Roxana Ionescu (Romania) were confirmed in July 2018 as respectively the first and the second Vice-Chairs for the period up to the end of the Austrian Presidency.

9. On 24 October 2018, Fabrizia Lapecorella furthermore announced that she will no longer be able to serve as the Chair of the Code of Conduct Group upon the expiration of her current two-year mandate on 4 February 2019. A call for candidates was launched after the COCG meeting of 15 November 2018.

2. Organisation of work

10. At its meeting on 24 July 2018, in line with its new work package, the Group approved a work programme until the end of the Austrian Presidency: see doc. 11462/18.

3. Update and revision of the mandate of the Code of Conduct

11. In line with the Council conclusions of 8 December 2015 and 8 March 2016, ongoing discussions on this matter are conducted at the level of the High Level Working Party on Tax Questions (HLWP). However, the COCG was invited at its meeting of 24 July 2018 to provide an input on a possible revision/update of its December 1997 mandate.

4. Transparency

12. The Group at its meeting of 21 September 2018 discussed modalities for increasing transparency of the COCG work. At this occasion, the following actions, complementing existing ones, were agreed:

    a) make public the final regimes/laws as enacted (informal English translations received) and assessments of jurisdictions' individual measures under criteria 2.1[1] and 2.2 of the EU listing exercise after a decision has been reached by the Group and endorsed by the ECOFIN Council;

    b) agree in principle to disclose the descriptions and assessments of EU Member States' individual measures agreed prior to the June 2018 ECOFIN Council (i.e. since the creation of the COCG in 1998), under reservation of individual assessment to the contrary, in line with the approach agreed in January 2016 (doc. 5643/16).

13. In respect of point a) above, the Group already started implementing this decision as from the 2 October 2018 ECOFIN Council for Armenia, Liechtenstein and Vietnam in relation to criterion 2.1: see docs. 12771, 12772, 12773, 12774 and 12775/18.

14. With regard to modalities for increasing transparency on discussions held among Member States in the Group, it was agreed to ensure transparency through the 6-monthly reports by ensuring that all aspects and explanations in relation to the proceedings are described in a comprehensive and understandable manner.

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[1] When the regime is under COCG monitoring. For regimes under FHTP monitoring, the COCG takes stock of its conclusions.

15. On 10 October 2018 the COCG Chair furthermore participated in an exchange of views with the members of the European Parliament's TAX 3 Committee and shared information on key topics of COCG work with the TAX 3 Committee members.

16. Following individual requests under EU Regulation 1049/2001, a number of past meeting documents were furthermore (in some cases partially) released to the public by the Council and, where appropriate, declassified.

III. STANDSTILL AND ROLLBACK REVIEW PROCESSES

17. A call for standstill and rollback notifications of new preferential tax measures enacted by end 2018 was launched mid November 2018.

1. Standstill review process

18. The following decisions were reached:

- Belgium's notional interest deduction regime (BE018) is not harmful: see agreed description and final assessment in ADD 1 to the present report;

- Croatia's Investment Promotion Act (HR011) does not need to be assessed as it falls out of scope after replacing the tax incentives under Article 15 of the previous regime (HR009) with non-tax incentives in the form of leasing of State owned assets: see description in ADD 2 to the present report;

- Croatia's Ordinance on the procedure of concluding advance pricing agreement (HR012) does not need to be assessed as it falls out of scope: see description in ADD 3 to the present report;

- Italy's notional interest deduction regime / allowance for economic growth (IT019) is not harmful: see agreed description and final assessment in ADD 4 to the present report;

- Lithuania's Extension of the corporate income taxation regime to special tax zones (LT006) does not need to be assessed but its potential adverse economic effects should be monitored by the COCG: see agreed description in ADD 5 to the present report;

- Malta's notional interest deduction regime (MT014) is not harmful: see agreed description and final assessment in ADD 6 to the present report;

- Poland's 15% corporate income tax rate for small taxpayers (PL006) is not harmful: see agreed description and final assessment in ADD 7 to the present report;

- Portugal's notional interest deduction regime (PT018) is out of scope but its economic effects should be monitored: see agreed description and final assessment in ADD 8 to the present report;

- Slovakia's patent box (SK007) is not harmful: see agreed description and final assessment in ADD 9 to the present report;

- Slovakia's exemption of capital gains (SK008) meets the gateway criterion but does not need to be assessed since it has sufficient substance requirements and anti-abuse measures: see description in ADD 10 to the present report.

19. With respect to notional interest deduction regimes and with a view to other countries that would wish to implement a similar regime, the COCG agreed at its meeting on 15 November 2018 to mandate the Commission services to put forward a proposal for a draft guidance. In this context, the COCG furthermore agreed to analyse the possible risks of abuses arising from the combined cross-border use of existing national notional interest deduction regimes.

20. As a follow-up to the rollback of Gibraltar's tax treatment of asset holding companies (UK020), the COCG discussed Gibraltar's tax treatment of trading rents at its meeting of 15 November 2018 and considered the clarifications provided by the UK as sufficient.

21. It was not yet possible to agree on the description of Lithuania's patent box (LT007) and Romania's tax exemption for R&D activities (RO008) considering that legislative changes to these regimes are ongoing.

22. Further discussions will also be needed on the assessment of Cyprus' notional interest deduction regime (CY020).

2. Rollback review process

23. The following decisions were reached:

- The rollback of Spain's national patent box regime (ES021) and Basque country's patent box (ES023) were approved by the COCG on 21 September 2018: see ADDs 11 and 12;

- The rollback of Gibraltar's treatment of asset holding companies (UK020) was approved by the COCG on 12 October 2018: see ADD 13;

- The rollback of Navarra's patent box (ES022) was approved by the COCG on 15 November 2018: see ADD 14;

24. France informed the Group on 12 April 2018 that a reform of its patent box regime (FR053) was ongoing, with the objective to make it compliant with the modified nexus approach by the end of 2018. The Group was regularly updated on progress made. France agreed to send the final legislation without delay to the COCG once adopted for review early 2019.

25. The COCG also discussed at its meeting of 24 July 2018 Hungary's Interest from affiliated companies regime (HU007) for which there was no broad consensus in 2005 on whether the measure is harmful (doc. 15434/05). Hungary in this respect informed that the measure was abolished.

26. Furthermore, the Group reviewed the phasing out of Spain's national and regional patent box regimes at its meeting on 15 November 2018. The Group noted in this respect that Spain deviated from the modified nexus approach agreed by the COCG in 2014 considering that the benefits have been granted and new entrants allowed for longer periods than provided for under the agreement.

27. The COCG agreed on 15 November 2018 that, while the Spanish national and regional transitional rules are inconsistent with the nexus agreement for the particular aspects mentioned above, the extensions granted are rather limited in time and therefore not harmful.

3. Monitoring of the implementation of agreed guidance

28. The Group started monitoring the implementation of the 2000 Guidance on Rollback and Standstill in respect of: 1) finance branches; 2) holding companies; 3) headquarter companies (see compilation of COCG agreed guidance in doc. 5814/2/18, pages 4-10).

29. A questionnaire was agreed by the COCG on 24 July 2018 and was used to collect Member States' responses until the end of October 2018.

30. A preliminary discussion of the results took place at the COCG meeting of 15 November 2018. The Commission services will table a draft assessment of Member States' compliance with this guidance at the beginning of 2019 after further bilateral interactions with delegations to clarify responses to the above-mentioned questionnaire.

IV. THE EU LIST OF NON COOPERATIVE JURISDICTIONS FOR TAX PURPOSES

31. On 5 December 2017, the ECOFIN Council adopted Council conclusions (doc. 15429/17), which comprised a number of annexes including the EU list of non-cooperative jurisdictions for tax purposes (Annex I), and a state of play of the cooperation with the EU with respect to commitments taken to implement tax good governance principles (Annex II).

32. Follow-up was undertaken by the Group in several respects: listing, de-listing and scoping issues (1), further coordination of defensive measures in the tax area (2), monitoring the implementation of commitments taken by jurisdictions (3).

1. Listing, de-listing and scoping issues

De-listing of certain jurisdictions

33. The Council conclusions of 5 December 2017 deemed it appropriate for the Code of Conduct Group to "*engage in discussions with the listed jurisdictions, with a view to agreeing and monitoring the steps that jurisdictions are expected to take in order to be removed from the list*" (paragraph 10), noted that the Code of Conduct Group "*should recommend at any time to update the list of non-cooperative jurisdictions for tax purposes based on any new commitment taken*" (paragraph 11), and confirmed that "*a decision on modification of the list will be taken by the Council, on the basis of the relevant factual information made available to the Council by the Code of Conduct Group*" (paragraph 24).

34. Annex IV of the Council conclusions of 5 December 2017 also indicated that the EU list of non-cooperative jurisdictions for tax purposes "*shall be revised by the Council at least once a year and endorsed on the basis of a report from the Code of Conduct Group on Business Taxation to the Council, indicating the starting date of application of that modification*".

35. Since June 2018, new commitment letters signed at high political level by jurisdictions included in Annex I have been received by the Code of Conduct Group. These letters were assessed, and delegations agreed that based on the specific commitments made through these letters the following jurisdictions should be moved from Annex I to Annex II of the Council conclusions:

    i) Palau (de-listed in October 2018);

    ii) Namibia (de-listed in November 2018).

36. In respect of Palau, this followed clarifications demonstrating its compliance with criterion 2.2: see ADD 15. Its commitment letter of 1 December 2017 (doc. 6972/18 ADD 47) was already deemed sufficient with a view to the other criteria for which Palau remained non-compliant, i.e. criteria 1.1, 1.2, 1.3 and 3.1.

37. As for Namibia, Namibia's Minister of Finance sent a commitment letter to the Code of Conduct Group on 3 October 2018 which commits to:

- implement the necessary reforms in respect of criterion 2.1 (two harmful preferential regimes: 'Export Processing Zones' – NA001 and 'Exporters regime' – NA002) within 12 months after the publication of the de-listing decision in the Official Journal of the EU, with a grandfathering period until maximum 31 December 2021;

- comply with criteria 1.2, 1.3 and 3.1 by 31 December 2019.

Considering the particular situation of Namibia, which is a developing country without a financial center and has been listed as non-cooperative since December 2017, as well as the lack of effective time to implement reforms on criterion 2.1 by the end 2018 deadline, and as a pragmatic solution at this point of the year, the COCG agreed at its meeting of 12 October 2018 that Namibia's commitment letter should be considered as sufficient.

38. As of the end of December 2018, 5 jurisdictions therefore remain on the EU list of non-cooperative jurisdictions for tax purposes: American Samoa, Guam, Samoa, Trinidad and Tobago, and the US Virgin Islands.

39. Some of these jurisdictions have, however, made sufficient commitments in respect of some criteria and Trinidad and Tobago has already fulfilled its commitment in respect of criterion 3.1.

40. In respect of the commitment letters received from jurisdictions, 48 jurisdictions have, as of today, provided their consent to the publication of the letters on the Council's website (see doc. 6972/18 ADDs 1 to 48), whilst this consent was refused by 11 jurisdictions. A response is still missing from 8 jurisdictions.[2]

[2] Anguilla, Fiji, Namibia, Niue, Swaziland, Taiwan, U.A.E. and Vietnam.

End of the general "two out of three" exception for criteria 1.1, 1.2 and 1.3

41. The Council conclusions of 8 November 2016 provided jurisdictions would be compliant with the tax transparency criterion if compliant with only two out of the three tax transparency sub-criteria (1.1, 1.2 and 1.3). However, these conclusions also provided that this exception would only apply until 30 June 2019. Several jurisdictions are affected by the expiration of this exception, including some currently not in Annex II.

42. This situation only concerns criteria 1.1 and 1.3, since the COCG has already taken action in the first semester of 2018 regarding criterion 1.2 in relation to those jurisdictions that had an insufficient rating on Exchange of Information on Request (EOIR) due to the expiration of the specific “two out of three“ exception - in relation to that criterion 1.2 - on 30 June 2018.

43. In respect of criterion 1.1, the COCG agreed at its meeting of 15 November 2018 that a letter will be sent to Israel, Niue and Vanuatu, which have no activated AEOI exchange relationship with any EU Member States.

44. Discussions on this issue will continue at the beginning of 2019.

Future criterion 1.4 (beneficial ownership)

45. The EU listing criteria approved by the ECOFIN Council of 8 November 2016 (doc. 14166/16) included the following reference: "*1.4 Future criterion: in view of the initiative for future global exchange of beneficial ownership information, the aspect of beneficial ownership will be incorporated at a later stage as a fourth transparency criterion for screening*". The COCG meeting of 14 February 2018 therefore mandated the subgroup on third countries to prepare a proposal for endorsement by the Group prior to submission to ECOFIN. This mandate was reiterated at the COCG meeting of 12 April 2018.

46. A proposal for a draft amendment to the Council conclusions of 8 November 2016 and accompanying draft guidance was discussed by the subgroup on third countries at its meetings of 10 July, 20 September and 14 November 2018. Discussions on this issue will continue at the beginning of 2019.

Identification of new preferential regimes under criterion 2.1

47. The following 28 new preferential regimes were identified by the COCG since July 2018:

- Antigua and Barbuda - AG002: Merchant Shipping Act (under COCG monitoring);
- Antigua and Barbuda - AG003: Free Trade Zones (Paradise Found Act, Yida Act, Free Trade Zone Act, Special Economic Zone Act) (under COCG monitoring);
- Australia - AU001: 2003 offshore banking unit (under FHTP monitoring: potentially harmful but not actually harmful);
- Canada - CA001: 2014 Life insurance business (under FHTP monitoring: potentially harmful but not actually harmful);
- Curaçao - CW004: Innovation box (under FHTP monitoring);
- Curaçao - CW005: manufacturing activities under the e-zone companies regime (under COCG monitoring);
- Jordan - JO002: Development Zones (under FHTP monitoring);
- Jordan - JO003: Least Developed Zones;
- Jordan - JO004: Aqaba Special Economic Zone (under FHTP monitoring);
- Saint Kitts and Nevis - KN002: Fiscal Incentives Act (under COCG monitoring);
- Saint Lucia - LC004: International Partnership Act (under FHTP monitoring);
- Morocco - MA006: Regional or international Headquarters / Casablanca Finance City (under COCG monitoring);
- Mongolia - MN001: Free Trade zone regime (under FHTP monitoring);
- Mongolia - MN002: 90% tax credit regime for companies residing in isolated provinces (under COCG monitoring);

- Mauritius - MU010: Partial exemption system (under FHTP monitoring);
- Mauritius - MU011: banks holding a banking licence under the Banking Act 2004 (new regime replacing regime MU006) (under FHTP monitoring);
- Mauritius - MU012: manufacturing activities under the Freeport zone regime (under COCG monitoring):
- Malaysia - MY014: International currency business units (under FHTP monitoring);
- San Marino - SM005: IP regime (under FHTP monitoring);
- Seychelles - SC010: manufacturing activities under the Free Trade Zone regime (under COCG monitoring)
- Thailand - TH005: International banking facilities (under FHTP monitoring);
- USA - US003: Foreign Derived Intangible Income (under FHTP monitoring);
- Uruguay - UY007: Benefits under law 16.906 for biotechnology (under FHTP monitoring);
- Vietnam - VN002: Industrial Parks/Zones (under COCG monitoring);
- Vietnam - VN003: IP benefits (under FHTP monitoring);
- Vietnam - VN004: Economic Zones (under FHTP monitoring);
- Vietnam - VN005: Disadvantaged areas (under FHTP monitoring);
- South Africa - ZA002: 2015 headquarters companies (under FHTP monitoring: potentially harmful but not actually harmful).

48. The following assessments were furthermore agreed by the COCG in respect of the newly identified regimes that fall under its monitoring:

- Antigua and Barbuda's AG003 regime is harmful;
- Jordan's JO003 regime is out of scope;
- Saint Kitts and Nevis' KN002 regime is harmful;
- Morocco's MA006 regime is harmful;
- Mongolia's MN002 regime does not need to be assessed as the regime is due to be abolished by the end of 2018;
- Mauritius' MU012 regime is harmful;
- Seychelles' SC010 regime is harmful;
- Vietnam's VN002 regime is not harmful.

The COCG agreed at its meeting of 15 November 2018 that the letters seeking commitment to amend/abolish the above harmful regimes by the end of 2019 will be sent to all concerned jurisdictions before the end of 2018.

Future criterion 3.2 (implementation of anti-BEPS minimum standards)

49. The EU listing criteria approved by the ECOFIN Council of 8 November 2016 (doc. 14166/16) included the following reference: "*3.2 Future criterion that a jurisdiction should fulfil in order to be considered compliant as regards the implementation of anti-BEPS measures (to be applied once the reviews by the inclusive Framework of the agreed minimum standards are completed): the jurisdictions should receive a positive assessment for the effective implementation of the agreed OECD anti-BEPS minimum standards*".

50. The COCG meeting of 14 February 2018 mandated the subgroup on third countries to prepare a proposal for draft guidance, with a view to starting to apply as soon as possible this new criterion 3.2 to jurisdictions that have been reviewed and rated by the Inclusive Framework for their implementation of agreed anti-BEPS minimum standards. This mandate was reiterated at the COCG meeting of 12 April 2018.

51. A proposal for draft guidance was discussed by the subgroup on third countries at its meetings of 10 July, 20 September and 14 November 2018. An agreement was reached on this matter at the COCG meeting of 15 November 2018: see final text set out in Annex 3.

Extension of the geographical scope

52. The Council conclusions of 5 December 2017 (paragraph 2.7 of Annex IV) mentioned that "*Where relevant, if decided by the Code of Conduct Group on the basis of criteria agreed by the Council, monitoring could extend to jurisdictions that were outside the scope of the 2017 screening exercise*".

53. At its meeting of 31 May 2018, the Group agreed to:

- ask the Commission services to make a proposal at the next meeting of the subgroup on third countries that would take into account the need to wait until the moment when the assessment of the commitments taken is completed, would focus on the jurisdictions in tables III or IV of the Scoreboard that have closer economic ties with the EU and/or which are within the scope of the list of third countries presenting strategic deficiencies in their regime on anti-money laundering and countering terrorist financing (hereafter "AML/CFT") (but without automatic listing of these jurisdictions); and in the meantime:

- screen, starting from 2019, the G20 countries that have not yet been covered by the EU listing exercise, considering their economic importance.

54. At its meeting of 21 September 2018, the COCG subsequently endorsed an agreement reached at subgroup level on the following extension of the geographical scope:

- screen, starting from 2020, all jurisdictions that rank high (indicator below 15%) in at least one of the first two categories (economic ties with the EU and importance of their financial sector), excluding those jurisdictions that rank extremely low (indicator higher than 90%) in terms of institutional stability;

- request the Commission services to re-evaluate the case of one particular jurisdiction on the basis of existing economic data and, should it meet the new selection indicators, screen it starting from 2020.

55. In respect of the consistency with the AML/CFT list, the COCG also agreed on 21 September 2018 that it is not necessary to screen additional jurisdictions from this list for the purposes of the EU listing process but requested the Commission services to inform the COCG of possible future changes to it.

2. Further coordination of defensive measures in the tax area against listed jurisdictions

56. A proposal for a draft guidance on further coordination of defensive measures in the tax area against listed jurisdictions was discussed at the subgroup meeting of 10 July, the COCG meeting of 24 July and the subgroup meeting of 21 September 2018, and support on the compromise proposal was expressed by a majority of delegations.

57. Further political discussions will be necessary on this file under the incoming Presidency.

3. Monitoring the implementation of commitments taken by jurisdictions

General overview

58. As of 15 November 2018, and including the updates submitted by the COCG for approval by the ECOFIN Council on 4 December 2018, the implementation of a total of 116 commitments[3] taken at high political level by 65 jurisdictions (2 in Annex I, 63 in Annex II), as well as by Costa Rica and Montserrat, remain to be monitored by the Group:

Criterion	Number of jurisdictions committed
1.1	12
1.2	11
1.3	24
2.1	34[4]
2.2	13
3.1	22

59. 58 jurisdictions (representing a total of 83 commitments) are still affected by the end of 2018 deadline, whilst the remaining 9 jurisdictions are not affected by this deadline because they are developing countries without a financial centre and are already compliant with criteria 2.1 and 2.2. These are: Albania, Bosnia and Herzgovina, Eswatini, FYROM, Jamaica, Mongolia, Montenegro, Serbia and Vietnam.

[3] This figure adds up the number of jurisdictions committed under each criterion (see table).
[4] Including Costa Rica and Montserrat

60. As of 15 November 2018, a total of 99 harmful tax regimes[5] remain to be rolled back under criterion 2.1, 49 of which are under monitoring by the COCG and 40 by the OECD FHTP[6]. A detailed overview may be found in the updated compilation of preferential regimes examined by the COCG since its creation in March 1998 (see doc. 9639/2/18 REV 2).

61. The COCG furthermore agreed on 15 November 2018 to add Montserrat to the COCG monitoring process despite this jurisdiction not having been included in Annex II in December 2017. Its International Business Companies regime (MS005), which is under FHTP monitoring, was indeed considered as overall harmful but no commitment was sought by the COCG considering that the regime would anyway be abolished by end 2017. However, the regime was not repealed within the agreed deadline. The draft legislation meant to abolish the regime was approved by the Cabinet and passed, in 2017, one out of three readings at the Legislative Assembly without changes. The Legislative Assembly then however deferred the second and third reading, resulting in the present delay. The draft legislation passed again on 16 October 2018 a first reading and was examined in November as second and third readings. As a result, the COCG mandated the Commission services on 15 November 2018 to closely monitor the situation in order to ensure that the MS005 regime will be repealed by the end of 2018.

62. Several jurisdictions with harmful tax regimes under the COCG monitoring process have recently joined the Inclusive Framework on BEPS (IF), and, as a result, their regimes are or may be reviewed by the FHTP[7]. The COCG agreed at its meeting of 12 October 2018 that, in these cases, the main point of contact for the monitoring process should remain the COCG (and the Commission services in respect of technical interactions). With regard to newly identified regimes, the FHTP would take the lead and the COCG could continue to take stock of its conclusions.

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5 These figures don't include the harmful tax regimes of the US Virgin Islands (3), Samoa (1) and Trinidad and Tobago (1), for which no sufficient high-level commitment to be monitored has been received yet.

6 This figure includes the commitments made to the OECD FHTP by Costa Rica (1 regime: CR001) and Montserrat (1 regime: MS001) though these jurisdictions are [so far] not in Annex II.

7 As of 12 October 2018, this concerned: Aruba (2 regimes), Maldives (1 regime), Saint Kitts and Nevis (1 regime), Saint Lucia (1 regime), and Tunisia (2 regimes).

63. A table summarizing the state of play in relation to the 92 jurisdictions screened in 2017 is furthermore set out in Annex 1.

Monitoring process: technical, procedural and political aspects

64. This process of monitoring commitments is ongoing in line with the procedural guidelines approved in February 2018 (doc. 6213/18). In particular:

- many jurisdictions have provided to the Group an English translation of their draft legislations as presented or before presentation to their Parliaments so as to enable an early analysis and feedback by the COCG, whilst some other jurisdictions have already fully implemented some of their commitments;

- day-to-day interactions with jurisdictions on technical aspects of the monitoring process have continued with the Commission services, in order to prepare the relevant assessments and decisions by the COCG, and delegations received regular reports of all the activities and exchanges undertaken;

- interactions and dialogues on procedural and/or political aspects (e.g. requests by jurisdictions to discuss horizontal or political aspects, further process in the Council) were conducted by the Chair's team. Once again, delegations received regular reports of these interactions, including all relevant emails, letters and documents;

- the Chair continued to liaise with the Chairs of the OECD Committee on Fiscal Affairs, Inclusive Framework on BEPS (IF), Global Forum (GF), and Forum on Harmful Tax Practices (FHTP), in order to ensure that the monitoring process is well coordinated with the activities of the IF, GF and FHTP in terms of scope and timing consistency.

65. A number of procedural issues had to be resolved during this process, notably:

- the COCG agreed at its meeting of 24 July 2018 that, unless the general discussion on the relevance of the manufacturing regimes for purposes of the listing exercise will lead to different decisions, the part of regimes under FHTP monitoring dealing with manufacturing and other non-highly mobile activities falling out of the FHTP scope should be identified as new regimes and fall under COCG monitoring: this new procedure was applied since July 2018 to regimes in Seychelles (SC010), Mauritius (MU012) and Curaçao (CW005).

- the broader issue of the consequences of the above difference of scope between the COCG and FHTP in respect of manufacturing and other non-highly mobile activities was discussed at the COCG meeting of 15 November 2018. Member States agreed on a methodology to evaluate the progress made by jurisdictions for amending their manufacturing regimes. Discussions on this issue will continue at the beginning of 2019;

- the COCG meeting of 24 July 2018 agreed a set of practical benchmarks to review the implementation of each standard, most urgently for 2018 and more generally for subsequent years in respect of jurisdictions that decided to implement anti-BEPS minimum standards without joining the IF: see Annex 2;

- the COCG meetings of 24 July, 21 September and 12 October 2018 followed up on questions raised by jurisdictions on criterion 2.2 at the occasion of a meeting organised in Brussels by the Commission services with the concerned jurisdictions to present the scoping paper agreed in June 2018 (doc. 10421/18) and following discussions with the OECD/GF Voluntary Group on criterion 2.2;

- the COCG meeting of 24 July and 15 November 2018 also discussed the situation of Taiwan, which cannot - because of its condition - enter into a multilateral agreement or participate to multilateral fora and therefore needs to engage bilaterally with the Member States in order to fulfil criteria 1.1 and 1.3.

66. Some jurisdictions have furthermore raised a number of political issues:

- Some smaller jurisdictions have indicated problems of administrative capacity either to prepare or to implement the requested reforms;
- Some jurisdictions sought a longer grandfathering period under criterion 2.1 for constitutional or legal reasons (risks of litigation by existing beneficiaries);
- Several jurisdictions have indicated that the requested reforms will have a significant economic impact and sought adjustments or transitional measures;
- One jurisdiction has indicated the risk of a referendum on parts of its tax reform, whilst another jurisdiction flagged a similar risk but which in the end did not materialise.

First results of the monitoring process

67. A number of updates to Annex II of the Council conclusions of 5 December 2017 were already agreed by the ECOFIN Council. As of 15 November 2018:

- Bahamas, Bahrain, Hong Kong SAR, and the United Arab Emirates were removed from section 1.1 of Annex II;
- Bosnia and Herzegovina, Cabo Verde and Eswatini were removed from section 1.2 of Annex II;
- Bahamas, Bahrain, Grenada, Hong Kong SAR, Macao SAR, Peru, Turkey and the United Arab Emirates were removed from section 1.3 of Annex II;
- Armenia, Liechtenstein and Vietnam were removed from section 2.1 of Annex II.
- Aruba, Bahrain, Former Yugoslav Republic of Macedonia, Saint Kitts and Nevis, Saint Lucia and the United Arab Emirates were removed from section 3.1 of Annex II.

68. On 15 November 2018, the COCG has also agreed to recommend the ECOFIN Council to approve the following updates to Annex II at its next meeting on 4 December 2018:

- removal of Macao SAR from section 1.1;
- removal of Oman from section 1.2;
- removal of Andorra and San Marino from section 2.1;
- removal of Antigua and Barbuda, Dominica, Grenada and Saint Vincent and the Grenadines from section 3.1.

69. As a result of these updates, Liechtenstein and Peru were removed, whilst Andorra and San Marino are recommended for removal, from Annex II of the 5 December 2017 Council conclusions.

70. Furthermore, the Group agreed on the rollback of the following harmful regimes, without these having a direct impact on Annex II at this stage:

- Curaçao: E-zone companies (CW001) and Export companies (CW002).
- Hong Kong: Corporate treasury centres (HK001), Offshore reinsurance (HK004), and Offshore captive insurance (HK005).
- Labuan Island: Financing/Leasing regime (MY002);
- Mauritius: Freeport zone regime (MU003) and Captive insurance (MU005).
- Uruguay: Shared service centre regime (UY002);
- Turkey: Technology Development Zones (TR001).

ANNEX 1

State of play in relation to the 92 jurisdictions screened in 2017:

Summary table (as of 15 November 2018[8])

Jurisdiction	CATEGORY 1: listed (annex I) 2: under monitoring (annex II) 3: compliant with EU criteria	Deadline for compliance Developing country category	Commitments (accepted as sufficient) under monitoring on criterion:						Harmful tax regimes (criterion 2.1)	
			1.1	1.2	1.3	2.1	2.2	3.1	Number of harmful regimes under monitoring	COCG or FHTP lead?
Albania	Category 2	2019 UMI						1		
American Samoa	Category 1	2018								
Andorra	Category 3	2018								
Anguilla	Category 2	2018		1			1			
Antigua and Barbuda	Category 2	2018 UMI (FC)	1		1	1			1	COCG
Armenia	Category 2	2019 LMI			1			1		
Aruba	Category 2	2018				1			2	COCG
Australia	Category 3	N/A								
Bahamas	Category 2	2018					1			
Bahrain	Category 2	2018					1			
Barbados	Category 2	2018				1			7 1	FHTP COCG
Belize	Category 2	2019* UMI (FC)				1			1 1	FHTP COCG
Bermuda	Category 2	2018					1			
Bosnia and Herzegovina	Category 2	2019 UMI			1			1		

[8] Including the updates of Annex II of the Council conclusions of 05/12/2017 submitted for approval to the ECOFIN Council meeting of 04/12/2018.

Botswana	Category 2	2019* UMI			1	1			1	FHTP
Brazil	Category 3	N/A UMI								
British Virgin Islands	Category 2	2018					1			
Cabo Verde	Category 2	2019* LMI			1	1		1	1	COCG
Canada	Category 3	N/A								
Cayman Islands	Category 2	2018					1			
Chile	Category 3	N/A UMI								
China	Category 3	N/A UMI								
China, Hong Kong SAR	Category 2	2018				1			2	COCG
China, Macao SAR	Category 2	2018				1			1	FHTP
Colombia	Category 3	N/A UMI								
Cook Islands	Category 2	2018 UMI (FC)				1		1	4	COCG
Costa Rica	Category 2	2018 UMI (FC)				1			1	FHTP
Curaçao	Category 2	2018	1	1		1			1	FHTP
Dominica	Category 2	2018 UMI (FC)	1		1	1			3	COCG
Eswatini	Category 2	2019 LMI			1			1		
Faroe Islands	Category 2	2018						1		
Fiji	Category 2	2019* UMI		1	1	1		1	3	COCG
Former Yugoslav Republic of Macedonia	Category 2	2019 UMI			1					
Georgia	Category 3	N/A LMI								
Greenland	Category 2	2018						1		

Grenada	Category 2	2018 UMI (FC)	1			1			6	COCG
Guam	Category 1	2018								
Guernsey	Category 2	2018					1			
Iceland	Category 3	N/A								
India	Category 3	N/A LMI								
Indonesia	Category 3	N/A LMI								
Isle of Man	Category 2	2018					1			
Israel	Category 3	N/A								
Jamaica	Category 2	2019* UMI			1					
Japan	Category 3	N/A								
Jersey	Category 2	2018					1			
Jordan	Category 2	2019* UMI		1	1	1		1	1	FHTP
Korea, Republic of	Category 2	2018				1			2	COCG
Labuan Island	Category 2	2018 UMI (FC)				1			1	FHTP
Liechtenstein	Category 3	2018								
Malaysia	Category 2	2018 UMI				1			6	FHTP
Maldives	Category 2	2019* UMI			1	1			1	COCG
Marshall Islands	Category 2	2018 UMI (FC)	1	1			1	1		
Mauritius	Category 2	2018 UMI (FC)				1			3	FHTP
Monaco	Category 3	N/A								
Mongolia	Category 2	2019 LMI			1					
Montenegro	Category 2	2019 UMI			1			1		
Montserrat	Category 2	N/A UMI (FC)				1			1	FHTP
Morocco	Category 2	2019* LMI			1	1		1	4	COCG
Namibia	Category 2	2019* UMI		1	1	1		1	2	COCG
Nauru	Category 2	N/A UMI (FC)						1		

New Caledonia	Category 2	2018	1	1	1			1		
Niue	Category 2	N/A UMI (FC)						1		
Norway	Category 3	N/A								
Oman	Category 2	2018	1		1					
Palau	Category 2	2018 UMI (FC)	1	1	1			1		
Panama	Category 2	2018 UMI (FC)				1			3 1	FHTP COCG
Peru	Category 3	2019 UMI								
Qatar	Category 2	2018	1		1					
Saint Kitts and Nevis	Category 2	2018				1			1	COCG
Saint Lucia	Category 2	2018 UMI (FC)				1			3	COCG
Saint Vincent and the Grenadines	Category 2	2018 UMI (FC)				1			2	COCG
Samoa	Category 1	2018 LMI (FC)						1		
San Marino	Category 3	2018								
Saudi Arabia	Category 3	N/A								
Serbia	Category 2	2019 UMI			1					
Seychelles	Category 2	2018 UMI (FC)				1			7	FHTP
Singapore	Category 3	N/A								
South Africa	Category 3	N/A UMI								
Switzerland	Category 2	2018				1			5	COCG
Taiwan	Category 2	2018	1		1	1		1	1	COCG
Thailand	Category 2	2019* UMI			1	1			4	FHTP
Trinidad and Tobago	Category 1	2018	1	1				1		
Tunisia	Category 2	2019* UMI				1			2	COCG

Turkey	Category 2	2019* UMI	1	1		1			1	COCG
Turks and Caicos Islands	Category 2	2018					1			
United Arab Emirates	Category 2	2018					1			
United States	Category 3	N/A								
Uruguay	Category 2	2018 UMI				1			2	FHTP
US Virgin Islands	Category 1	2018								
Vanuatu	Category 2	2018 LDC (FC)					1	1		
Viet Nam	Category 2	2019 LMI		1	1					
		TOTAL	**12**	**11**	**24**	**34**	**13**	**22**	**40 49**	FHTP COCG

(*) Developing Countries that have harmful regimes (criterion 2.1) for which the deadline for commitment is end 2018.

Abbreviations:

- *COCG: Code of Conduct Group (business taxation)*
- *FC: Financial Centre (based on a 2008 IMF report)*
- *FHTP: OECD Forum on Harmful Tax Practices*
- *LDC: Least Developed Country*
- *LMI: Low Middle Income country*
- *UMI: Upper Middle Income country*

ANNEX 2

BEPS Minimum Standards implementation: agreed benchmarks

A **Minimum Standard**	B **Summary**	C **Benchmarks for implementation**	D **Steps in the review process by the Code of Conduct**
Action 5 (exchange of rulings)	Requires, in relation to the work on harmful tax practices with a focus on improving transparency: i. compulsory spontaneous exchange on rulings within the scope of Action 5, and ii. requiring substantial activity for preferential regimes, such as IP regimes Jurisdictions should exchange rulings pursuant to tax treaties, tax information exchange agreements and the multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC).	2018: provide information on: - tax rulings within the scope of Action 5 in relation to Member States - other jurisdictions for which these rulings are relevant, Should the minimum standard be relevant for the jurisdiction, provide information on: - legal framework (domestic and international instruments) in place for the spontaneous exchange of information. If applicable, in 2019 and later: - amend legislation as needed to implement the minimum standard - ensure that the appropriate administrative practices are in place - actual exchanges according to the template in the Action 5 Report	2018: determine if the standard is relevant to the jurisdiction If applicable, jurisdictions to identify the areas in their existing legal framework that need to be amended in order to be compliant with Action 5 2019 and later: - review draft legislative proposals - monitor the application of the standard in relation to Member States

Action 6 (treaty abuse)	Requires countries to include in their tax treaties an express statement that their common intention is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including treaty-shopping arrangements, as well as one of the following provisions i. the Principal Purposes Test (PPT) rule included in paragraph 26 of the Action 6 Report together with either the simplified or the detailed version of the Limitation-on-benefits (LOB) rule that appears in paragraph 25 of the Action 6 Report, as subsequently modified, or ii. the Principal Purposes Test (PPT) rule included in paragraph 26 of the Report, or iii. the detailed version of the Limitation-on-benefits (LOB) rule that appears in paragraph 25 of the Report, as subsequently modified, together with a mechanism (such as a treaty rule that might take the form of a PPT rule restricted to conduit	2018: provide relevant information on all existing tax treaties/agreements with Member States Should the minimum standard be relevant for the jurisdiction, the following elements would need to be assessed in 2019 and later: - amend treaty provisions in treaties/agreements with all Member States as necessary by following one of the options prescribed by the minimum standard - ensure that any newly negotiated treaties/agreements with Member States are compliant with the standard	2018: determine if the standard is relevant to the jurisdiction If applicable, jurisdictions to identify the areas in their treaties that might need an update in order to be compliant with Action 6. 2019 and later: - Monitoring as jurisdictions start implementing the minimum standard in relation to existing treaties/agreements with Member States (i.e. negotiate the amendments) - Monitoring as jurisdictions include the minimum standard in relation to future treaties/agreements with Member States as from 2019 Concerned Member States should confirm that they have been approached by these jurisdictions with the aim to negotiate these amendments or new treaties in line with the standards

	arrangements, or domestic anti-abuse rules or judicial doctrines that would achieve a similar result) that would deal with conduit arrangements not already dealt with in tax treaties.		
Action 13 (CbCR)	Requires country-by country reporting for large MNEs (MNEs with total annual consolidated group revenue of EUR 750 million) according to the standard, in particular: CbC report is to be filed in the jurisdiction where the ultimate parent of the MNE is located containing information relating to the global allocation, by jurisdiction where the MNE group operates, of certain key indicators of economic activity such as income, profit, taxes paid, accumulated earnings, stated capital, number of employees, activities and tangible assets. The CbC report is intended to be automatically exchanged with the tax administrators in each jurisdiction in which the MNE group conducts business. The Action 13 Final Report included an implementation package containing model legislation relating to CbC reporting, three model competent authority agreements to facilitate the exchange of CbC reports and a common template for	2018: Mapping of companies to verify the relevance of the standard. Should the standard be relevant, the timeline as envisaged for the new criterion 3.2 (ST 10823 2018 INIT) will apply: - End-2019: have in place the domestic legal and administrative framework - End-2020: tax administration actually automatically exchanges CbC reports in full compliance with all relevant Member States	2018: identify the number of concerned MNEs to determine the relevance of the standard If applicable, jurisdictions to identify the areas in their existing legal framework that need to be amended in order to be compliant with Action 13 2019 and later: - review of the domestic and administrative framework - monitor the application of the minimum standard in relation to Member States

	the CbC report. The Final Report on Action 13 also recommended that domestic legislation require the master file and the local file to be filed directly with the local tax administrators and the ultimate parent of the MNE group be required to file the CbC report in its jurisdiction of residence.		
Action 14 (DRM)	Requires jurisdictions to develop solutions to address obstacles that prevent countries from solving treaty-related disputes under MAP (arbitration as a voluntary option). In particular, treaties should provide for: • Preventing Disputes • Availability and access to MAP • Resolution of MAP cases • Implementation of MAP agreements	2018: - provide relevant information on all existing tax treaties/agreements with Member States Should the minimum standard be relevant for the jurisdiction, the following elements would need to be assessed in 2019 and later: - amend treaty provisions in treaties/agreements with all Member States as necessary - provide annual MAP statistics in relation to all MS according to the OECD format starting in 2019.	2018: determine if the standard is relevant to the jurisdiction If applicable, jurisdictions to identify the areas in their existing treaties that need to be amended in order to be compliant with Action 14 2019 and later: - Monitoring as jurisdictions start implementing the standard in relation to existing treaties/agreements with MS (i.e. negotiate the amendments) - Monitoring as jurisdictions include the standard in relation to future treaties/agreements with Member States as from 2019

ANNEX 3

Guidance on criterion 3.2 of the EU listing exercise

"With respect to the Country-by-country reporting BEPS Action 13 minimum standard (the 'CbCR minimum standard'), the jurisdiction should have arrangements in place to be able to exchange with all Member States when this is relevant either by signing the CbCR MCAA, or through bilateral agreements with those Member States. The domestic legal and administrative frameworks should be in place beforehand and should correspond to the CbCR minimum standard as detailed in the Terms of Reference.

Deadline for implementing the CbCR minimum standard:

a) Jurisdictions that joined the Inclusive Framework on BEPS (IF) in the last years, should have effectively implemented the CbCR minimum standard by the end of 2019;

b) Jurisdictions that committed to the CbCR minimum standard by the end of 2018 (2019) should have effectively implemented it by the end of 2020 (2021).

Furthermore, in the context of reviews by the IF:

a) The absence of recommendations will be considered as a positive assessment.

b) If a jurisdiction receives recommendations or if it has items being monitored, which do not consist in a material shortcoming, this will also be considered as a positive assessment.

c) A material shortcoming concerning the implementation of the CbCR minimum standard is defined as a significant non-compliance relating to the confidentiality, the data safeguards and the appropriate use, or as a failure to provide timely or adequate information as requested by the CbCR minimum standard. In this case the jurisdiction cannot be considered as compliant with criterion 3.2.

d) Where a jurisdiction receives a recommendation which constitutes a material shortcoming, the Code of Conduct Group will seek a commitment to address this shortcoming within 12 months.

For those jurisdictions which are not members of the IF and not part of the peer review process, the Commission services will monitor (in close consultation with the relevant OECD groups and bodies) the implementation of the CbCR minimum standard and submit draft assessments to the Code of Conduct Group."