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'I/A' ITEM NOTE

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 first half of 2018 under the Bulgarian Presidency of the Council.

II. <u>GENERAL ASPECTS</u>

5. The Code of Conduct Group met three times under the Bulgarian Presidency, on 14 February, 12 April and 31 May 2018.

6. Its subgroup on third countries met on 2 February, 16 March and 4 May 2018, whilst its subgroup on the clarification of the third and fourth criteria met on 2 February 2018.

7. The Group continued the work on the basis of the Work Package approved by the Council (ECOFIN) on 8 December 2015 (doc. 14302/15).

1. Appointment of Vice-Chairs

8. Lyudmila Petkova (Bulgaria) and Katharina Hafner (Austria) were confirmed as respectively the first and the second Vice-Chairs for the period up to the end of the Bulgarian Presidency.

2. Organisation of work

9. At its meeting on 14 February, in line with its current work package, the Group approved a work programme until the end of the Bulgarian Presidency (doc. 6212/18).

10. The Group furthermore opened at this occasion discussions on a new multiannual work package which it concluded at its meeting of 31 May 2018. The new work package proposed for endorsement by the Council is set out in annex 2.

11. The Group has paid particular attention to increased transparency (cf. items 14 onwards below), while ensuring confidentiality where necessary. In this context, the Netherlands delegation tabled a room document suggesting to further increase the transparency of the Group, through the elaboration of meeting reports and the release of more documents to the public. At the meeting of 31 May 2018, delegations agreed to consider possible concrete ways to ensure further transparency of the Group's work, in particular concerning the EU list of non-cooperative jurisdictions for tax purposes. This will include the release of more documents to the public, for instance initial Commission services' proposals for guidance notes or documents on Member States' individual measures after a decision has been reached by the Group and agreed by the Council. The Group will also continue to ensure that its 6-month reports to the Council contain substantial information on the progress made and to work on the modalities for increasing transparency of the discussions held among Member States, taking into account the relevant guidance provided for in past ECOFIN Council conclusions.

12. The Group agreed in parallel on a priority list of agreed guidance for which implementation by Member States should be monitored (doc. 6603/18). It agreed in this respect that no further work is needed for now in respect of the 2010 guidance on inbound profits and started to monitor the implementation of the 2000 guidance on standstill and rollback for finance branches, holding companies and headquarters, which was next on its priority list.

13. The Group took note of the various invitations to hearings and requests for access to documents sent by the Chair of TAX3 Committee to the Chair of the Group. The Group furthermore agreed that the Chair should appear before the TAX3 committee at a future date in the spirit of cooperation and transparency. It was recalled in this regard that the Group, its mandate and work are intergovernmental in nature and as such not subject to the scrutiny or supervision of the European Parliament. The Group will come back at a forthcoming meeting to the questions received and the request for access to documents.

3. Transparency

14. The Group has undertaken a number of initiatives since the beginning of the year to increase the visibility of its work to the public. In particular:

- upload of new contents on the Code of Conduct Group's dedicated webpage on the Council's website[1];
- creation of a new webpage on the Council's website for the EU list of non cooperative jurisdictions for tax purposes[2];
- publication of the Procedural Guidelines for carrying out the process of monitoring commitments concerning the EU list of non-cooperative jurisdictions for tax purposes (doc. 6213/18);
- publication of a compilation of all the agreed guidance since the creation of the Group in 1998 (doc. 5814/18 REV1),
- publication of a compilation of all the letters signed by the COCG Chair seeking commitments by jurisdictions (doc. 6671/18),
- publication of a compilation of the commitment letters received in return, when a consent was given by the jurisdiction concerned (doc. 6972/18 and addenda): as of 31 May 2018, 41 jurisdictions have already provided their consent, whilst this consent was refused by 7 jurisdictions;
- publication of an overview of the individual measures assessed by the Group since 1998 (doc. 9639/18).

[1] http://www.consilium.europa.eu/en/council-eu/preparatory-bodies/code-conduct-group/
[2] http://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/

15. In line with the above, the Group furthermore agreed at its meeting of 31 May 2018 to make public the agreed descriptions and assessments of Member States' individual measures after a decision has been reached by the Group and agreed by the Council, as from the June 2018 ECOFIN Council meeting.

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

III. STANDSTILL AND ROLLBACK REVIEW PROCESSES

1. Standstill review process

17. 13 Member States have notified 19 new measures on standstill for the year 2017:

- Belgium: notional interest deduction regime (BE018);
- Estonia: new Investment Funds Act (EE001);
- Croatia: amendments to the Investment Promotion Act (HR011);
- Croatia: ordinance on the procedure of concluding advance pricing agreement (HR012);
- Cyprus: notional interest deduction regime (CY020);
- Greece: patent tax incentive (EL015);
- Italy: notional interest deduction regime (IT019);
- Lithuania: review of the corporate income tax regime for special tax zones (LT006);
- Lithuania: new special corporate income tax regime for patented assets and copyrighted software (patent box) (LT007);
- Luxembourg: draft law relating to the tax regime for intellectual property (patent box) (LU017);

- Malta: notional interest deduction Rules (MT014);
- Poland: 15% corporate income tax rate for small taxpayers (PL006);
- Poland: one-time depreciation of factory new fixed assets (PL007);
- Poland: increased tax incentives for R&D activities (with relevance also for companies operating in SEZ) (PL008);
- Poland: increase of the one-time depreciation limit for fixed assets and intangible assets (both for companies and natural persons) (PL009);
- Portugal: notional interest deduction regime (PT018);
- Romania: profit tax exemption for companies with innovation and research & development activities (RO008);
- Slovakia: patent box regime (SK007);
- Slovakia: exemption of gains from the sale of shares and business shares (SK008).

18. The Group agreed that the EE001, PL008 regimes should be considered as out of scope as they did not meet the gateway criterion.

19. The Group furthermore agreed that the PL007 and PL009 regimes did not need to be assessed because of their minor importance as they do not affect business location.

20. The descriptions of 4 of the 5 notional interest deduction regimes (CY020, IT019, MT014, PT018) were agreed at the Group's meeting of 12 April 2018 after that the DK delegation requested at the 14 February 2018 meeting to add new questions, in particular on anti-abuse measures. The Commission services are now preparing the draft assessments. The description of Belgium's notional interest deduction regime (BE018) will need to be recirculated to the Group when specific anti-abuse measures will have been adopted.

21. The description of the Slovak patent box (SK007) was also agreed at the COCG meeting of 12 April 2018. The Commission services are now preparing the draft assessment.

22. The description of the EL015 and PL006 regimes were also agreed at the COCG meeting of 31 May 2018. The Commission services will table a draft assessment of the PL006 regime at a forthcoming meeting. As regards the EL015 regime, the Group agreed that the regime should be monitored in the future and that Greece should notify the Group on an annual basis of any developments relating to the use of the regime

23. After agreeing the description of Luxembourg's draft law relating to the tax regime for intellectual property (LU017) on 14 February 2018, the Group agreed on 12 April 2018 that the regime is not harmful.

24. It was not yet possible to agree a description of the regimes HR011, HR012, LT006, LT007, RO008 and SK008: further work will be conducted on these regimes in the coming months.

2. Rollback review process

25. Italy notified the adoption of an inter-ministerial decree that provides inter alia for implementing rules on grandfathering, thereby completing the rollback of its former patent box regime (IT017). The actual effects of the implementing rules on grandfathering will be further monitored in particular with regard to the cut off date for new entrants.

26. Portugal notified the rollback of its old IP regime (PT016).

27. With regard to the Basque country patent box regimes (ES023), Spain informed the Group on 12 April 2018 that the patent box regime of Alava and Vizcaya have been amended (publication in the official journal at the end of March 2018) and that the remaining regime of Guipúzcoa should be amended by the end of May 2018.

28. As for its national patent box regime (ES021), Spain informed the Group on 12 April that a draft bill had been submitted to parliament the previous week and that the legislative process may take two or three months. Regarding Navarra's patent box regime (ES022), its amendment would follow that of the national regime.

29. France informed the Group on 12 April 2018 that a reform of its patent box regime (FR053) is ongoing, with the objective to make it compliant with the modified nexus approach by the end of 2018.

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

30. On 5 December 2017, the ECOFIN Council adopted Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes[3], which comprised:

- The EU list of non-cooperative jurisdictions for tax purposes (Annex I), initially composed of 17 jurisdictions, as well as recommendations to the concerned jurisdictions on steps to take in order to get de-listed;
- A state of play of the cooperation with the EU with respect to commitments taken to implement tax good governance principles (Annex II);
- Defensive measures (Annex III);
- Guidelines specifying further process concerning the EU list of non-cooperative jurisdictions for tax purposes (Annex IV);
- Criteria on tax transparency, fair taxation and implementation of anti-BEPS measures that EU Member States undertake to promote (Annex V);
- Criterion 1.3: the duration of the reasonable timeframe (Annex VI);
- Scope of criterion 2.2 and Terms of reference for the application of the Code test by analogy (Annex VII).

[3] Doc. 15429/17 FISC 345 ECOFIN 1088.

31. Follow-up was undertaken by the Group in several respects: listing and de-listing of jurisdictions, defensive measures, monitoring the implementation of commitments taken by jurisdictions, update and further development of EU listing criteria, and revision of the geographical scope.

1. Listing and de-listing issues

Jurisdictions affected by hurricanes in September 2017

32. The Council conclusions of 5 December 2017 provided:

    i) to "*put on hold*" the screening process for eight jurisdictions in the Caribbean region that were severely struck by devastating hurricanes in September 2017: Anguilla, Antigua and Barbuda, Bahamas, British Virgin Islands, Dominica, Saint Kitts and Nevis, Turks and Caicos Islands, and the US Virgin Islands.

    ii) that the Code of Conduct Group (business taxation) "*should, by February 2018, pursue further contacts with these jurisdictions, with the view to resolving these concerns by the end of 2018*".

33. In this context, delegations agreed by way of silence procedure at the end of January and beginning of February 2018 that letters are sent out to Anguilla, Antigua and Barbuda, Bahamas, British Virgin Islands, Dominica, Saint Kitts and Nevis and the US Virgin Islands to seek, by 28 February 2018, commitments at high political level to address the deficiencies identified by the Code of Conduct Group (see doc. 6671/18).

34. In agreement with the COCG, a Fiscal Attachés meeting was thereafter convened on 1st March 2018 to discuss the responses from the above-mentioned jurisdictions. At this occasion it was agreed to seek, by Monday 5 March 2018 14:00 Brussels time, a number of clarifications and/or missing commitments from Anguilla, Antigua and Barbuda, Bahamas, British Virgin Islands, Dominica, Saint Kitts and Nevis, and the US Virgin Islands.

35. Fiscal Attachés met again on the afternoon of Monday 5 March 2018 to discuss the follow-up commitment letters, all signed at high political level, received from these jurisdictions.

36. On 7 March 2018, the Permanent Representatives Committee discussed the state of play and mandated Fiscal Attachés to review a new letter received from the British Virgin Islands on 6 March 2018 and update the recommended changes to the 5 December 2017 Council conclusions accordingly.

37. Bahamas sent to the COCG three commitment letters on 8 February, 2 March and 9 March 2018. Saint Kitts and Nevis also sent three commitment letters to the COCG on 26 January, 3 March and 9 March 2018. The letters sent by both jurisdictions on 9 March 2018 were not assessed in time for the 13 March 2018 ECOFIN meeting.

38. On this basis, the ECOFIN Council agreed on 13 March 2018 that the following jurisdictions should be included in Annex I of the Council conclusions:

    i) Bahamas;

    ii) Saint Kitts and Nevis;

    iii) US Virgin Islands.

39. It was furthermore agreed that, based on the specific commitments made, the following jurisdictions should be included in Annex II of the Council conclusions:

    i) Anguilla;

    ii) Antigua and Barbuda;

    iii) British Virgin Islands;

    iv) Dominica.

40. In respect of the Turks and Caicos Islands, it responded to a Code of Conduct Group questionnaire on criterion 2.2 by the same above deadline of 28 February 2018 and Fiscal Attachés agreed on 1 March 2018 to seek, by 31 March 2018, commitment at high political level by the Turks and Caicos Islands to address the deficiencies identified by the Code of Conduct Group by 31 December 2018 (see doc. 6671/18). Following the COCG meeting of 12 April 2018, the Turks and Caicos Islands was requested to provide additional commitments in respect of criteria 1 and 2 of the Code of Conduct (to be applied by analogy), i.e. ring-fencing aspects. Following the receipt of a new commitment letter by the deadline set on 20 April 2018, the meeting of the subgroup on third countries of 4 May 2018 deemed that Turks and Caicos Islands' commitment on criterion 2.2 was sufficient. It was subsequently included in Annex II of the Council conclusions following the ECOFIN Council meeting of 25 May 2018.

41. On 12 April the commitment letters by Bahamas and Saint Kitts and Nevis received a positive assessment by the COCG that recommended to the Council to move these jurisdictions from Annex I to Annex II of the Council conclusions.

<u>Tax transparency: end of the "two out of three" exception</u>

42. Anguilla, Indonesia and Trinidad and Tobago (jurisdictions that do not have at least a "largely compliant" rating on criterion 1.2) were invited to commit to address their situation regarding the transparency criteria following the end of the "two out of three" exception in June 2018.

43. As a result Anguilla was added in section 1.2 of Annex II of the Council conclusions of 5 December 2017 following the ECOFIN Council of 25 May 2018, whilst Trinidad and Tobago's commitment was accepted but this jurisdiction remained in the EU list of non cooperative jurisdictions for tax purposes. As for Indonesia, it is compliant with all screening criteria until 30 June 2018 and should have a new rating in sufficient time: it was therefore not included in Annex II.

44. Curaçao, Marshall Islands and Turkey had already provided sufficient commitments on this point in their previous commitment letters.

De-listing of certain jurisdictions

45. The Council conclusions of 5 December 2017 furthermore 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).

46. 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*".

47. Since December 2017, several new commitment letters signed at high political level by jurisdictions included in Annex I were 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 13 jurisdictions should be moved from Annex I to Annex II of the Council conclusions:

i) Bahamas (de-listed in May 2018);

ii) Bahrain (de-listed in March 2018);

iii) Barbados (de-listed in January 2018);

iv) Grenada (de-listed in January 2018);

v) Korea (de-listed in January 2018);

vi) Macao SAR (de-listed in January 2018);

vii) Marshall Islands (de-listed in March 2018);

viii) Mongolia (de-listed in January 2018);

ix) Panama (de-listed in January 2018);

x) Saint Kitts and Nevis (de-listed in May 2018);

xi) Saint Lucia (de-listed in March 2018);

xii) Tunisia (de-listed in January 2018);

xiii) the United Arab Emirates (de-listed in January 2018).

48. As of the end of May 2018, 7 jurisdictions therefore remain on the EU list of non cooperative jurisdictions for tax purposes: American Samoa, Guam, Namibia, Palau, Samoa, Trinidad and Tobago, and the US Virgin Islands. Contacts are ongoing with all these jurisdictions (through the US treasury concerning American Samoa, Guam and the US Virgin Islands). Samoa's commitment on criterion 3 was in this respect accepted and will be monitored.

49. On 14 February 2018, the Code of Conduct Group requested, for transparency reasons, the General Secretariat of the Council (GSC) to publish on its website a consolidated version of the 'EU list of non-cooperative jurisdictions for tax purposes', as amended by the Council. This consolidated version of the 'EU list of non-cooperative jurisdictions for tax purposes' is set out in doc. 6237/18 REV 2.

2. Defensive measures against listed jurisdictions

50. In its 5 December 2017 conclusions, ECOFIN Council stressed the importance of providing efficient protection mechanisms to tackle the erosion of Member States' tax base through tax fraud, tax evasion and avoidance (paragraph 8). To this aim, a number of defensive measures, in both non-tax and tax areas, have been agreed and set out in Annex III of these conclusions.

51. Member States agreed at this occasion to choose from a list of defensive measures in the tax area which could be the most compatible with their national tax systems. This approach allows Member States to retain flexibility in the implementation of tax related defensive measures, both those of administrative nature (at least one of which Member States should apply) and those of a legislative nature (which Member States could apply).

52. The Council having invited the Member States "*to inform the Code of Conduct Group on whether and how they apply defensive measures vis-à-vis the non-cooperative jurisdictions, as long as they are part of such list*" (paragraph 18), all 28 EU Member States completed a questionnaire on the defensive measures they have implemented at national level following these Council conclusions. This questionnaire was prepared by the Commission services and agreed through a silence procedure (completed on 22 February 2018). The responses from Member States were compiled into a single document (doc. 7113/8 REV3 EU RESTRICTED), a summary of which was prepared by the Commission services (doc. 7232/18) and released to the public by the Council.

53. Furthermore, the Council having invited the COCG "*to continue the work on analysis of defensive measures that could be further defined and applied to non-cooperative jurisdictions in a coordinated manner, without prejudice to Member States' obligations under EU and international law*" (paragraph 26), the Group, at its meeting of 14 February 2018, asked the subgroup on third countries to continue exploring and analysing defensive measures with a view to identifying defensive measures in the tax area that could possibly be applied jointly by the 28 Member States to the listed jurisdictions.

54. At the subgroup meeting of 16 March 2018, a general discussion was held on the coordination of defensive measures, also based on the replies to the above-mentioned questionnaire prepared by the Commission services. At this occasion:

- A number of delegations supported the need to have further coordination and minimum standards for legislative defensive measures. They outlined that the credibility of the EU list and the progress achieved so far is directly linked to the existence of such defensive measures. Many of these delegations however noted that the dynamic nature of the EU list creates difficulties for applying legislative measures.

- Another group of delegations noted that the Group should wait before deciding on further coordinated defensive measures of a legislative type. They outlined that the EU list has already proven to be effective and called for flexibility in applying defensive measures of a legislative type as long as the list is dynamic.

55. At the subgroup meeting of 4 May 2018, the Bulgarian Presidency proposed to agree on a concrete guidance note in respect of the type of coordinated defensive measures that could be applied by Member States and possible timing thereof. Further work will however be needed on this matter.

56. With regard to defensive measures in the non-tax area, the Group took note of the Commission's communication of 21 March 2018 on new requirements against tax avoidance in EU legislation governing in particular financing and investment operations (C(2018) 1756 final) at its meeting of 12 April 2018.

3. Monitoring the implementation of commitments taken by jurisdictions

57. In line with Annex IV of the Council conclusions of 5 December 2017, all commitments officially taken by jurisdictions, as well as the implementation of the recommendations made by the Council in order to address open issues, are carefully monitored by the Code of Conduct Group, supported by the General Secretariat of the Council, with technical assistance of the European Commission, in order to evaluate their effective implementation.

58. As of 31 May 2018, a total of 142 commitments taken at high political level by 67 jurisdictions (3 in Annex I and 64 in Annex II) will need to be monitored by the Group:

Criterion	Number of jurisdictions committed
1.1	17 jurisdictions
1.2	14 jurisdictions
1.3	31 jurisdictions
2.1	37 jurisdictions
2.2	13 jurisdictions
3.1	31 jurisdictions

59. Commitments on criterion 2.1 cover a total of 108 harmful tax regimes[4], 51 of which were deemed harmful by the Group and 57 by the OECD FHTP. This also includes the *de facto* monitoring of a commitment made by Costa Rica on its "Free Zones" regime to the OECD FHTP, as agreed by the Group at its meeting of 12 April 2018.

60. New preferential regimes having been identified in the jurisdictions screened in 2017, the Group agreed on the following procedure at its 31 May 2018 meeting:

- once a new preferential tax regime has been identified, the COCG should be promptly informed;

- in case the jurisdiction concerned is member of the Inclusive Framework on BEPS and the new regime is deemed by the COCG to be within the scope of the FHTP, the FHTP will be asked to examine the regime. The COCG will then take stock of the results;

[4] These figures don't include the harmful tax regimes of the US Virgin Islands (3), Namibia (2), Samoa (1) and Trinidad and Tobago (1), on which no sufficient commitment to be monitored has been received yet.

- in case the jurisdiction concerned is not member of the Inclusive Framework on BEPS and/or the new regime is out the scope of the FHTP scope, the COCG will mandate the Commission services to ask the concerned jurisdiction further information (possibly through a questionnaire) and prepare an assessment of the regime to be presented to the COCG;

- in case the regime is assessed as harmful by the COCG, a letter will be sent to the concerned jurisdiction in order to seek its commitment to amend or abolish the regime at stake;

- the deadline for fulfilling the commitment should be the end of the year following that in which the commitment letter has been sent;

- as for the grandfathering provision, applying by analogy the approach proposed by FHTP for IP regimes, the grandfathering period cannot extend beyond the fourth calendar year after the year in which the jurisdiction took the commitment with the COCG.

61. Following a brainstorming session at the meeting of the subgroup on third countries of 2 February 2018, the Group agreed Procedural guidelines for carrying out the process of monitoring commitments concerning the EU list of non-cooperative jurisdictions for tax purposes (doc. 6213/18).

62. This process of monitoring commitments is ongoing in line with the above guidelines. In particular:

    - Almost all jurisdictions (only 3 missing) have provided a timeline and description of the steps for the implementation of their commitments by the agreed deadline (phase 1 of the monitoring process);

    - some jurisdictions have already provided to the Group an English translation of their draft legislations as presented 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 are ongoing with the Commission services, in order to prepare the relevant assessments and decisions by the COCG, and delegations receive regular reports of all the activities and exchanges undertaken;

- the 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) are conducted by the Chair's team, supported by the GSC, with the technical assistance of the Commission services, liaising with the Presidency and EEAS (e.g. through bilateral meetings or telephone conferences). Once again, delegations receive regular reports of these interactions, including all relevant emails, letters and documents;

- the Chair, with the technical assistance of the Commission services, liaised 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;

- The GSC serves as a "focal point" for the monitoring process as set out above. It also operates a functional mailbox dedicated to that process.

63. As a result, a number of updates to Annex II of the Council conclusions of 5 December 2017 were already agreed by the Council. As of the end of May 2018:

    - Mongolia, Montenegro and Serbia were removed from section 1.2;

    - Maldives and Serbia were removed from section 3.1.

64. On 14 February 2018, the Code of Conduct Group requested, for transparency reasons, the GSC to publish on its website a consolidated version of this state of play. This consolidated version of the 'State of play of the cooperation with the EU with respect to commitments taken to implement tax good governance principles' is set out in doc. 6236/18 REV 3.

65. A table summarizing the state of play in relation to the 92 jurisdictions screened in 2017 is furthermore set out in Annex 3.

4. Update and further development of EU listing criteria

Existing criterion 2.2

66. Annex VII of the 5 December 2017 Council conclusions featured the "Scope of criterion 2.2 and Terms of reference for the application of the Code test by analogy", which have been used as a cornerstone for jurisdictions concerned by this criterion to formulate their high level political commitment to address the related deficiencies.

67. These jurisdictions have however requested more concrete technical guidance on how to design their national legislation so as to comply with this criterion. For this reason, the Group in consultation with the Global Forum and the OECD has therefore discussed additional guidance to be presented by the Commission services to the concerned jurisdictions.

68. Following discussions at the Subgroup meeting of 4 May 2018 and COCG meetings of 12 April and 31 May 2018, delegations agreed in this respect the scoping paper on criterion 2.2 set out in Annex 4 at the HLWP meeting of 6 June 2018.

Future criterion 1.4 (beneficial ownership)

69. 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.

70. At the subgroup meeting of 16 March 2018, delegations expressed a preference for the new criterion 1.4 to be built upon the relevant assessments made according to the 2016 Global Forum's Terms of Reference (ToR). In this sense and following the comments from some delegations, the relevant provisions of the ToR identified by the Commission services were those covered by points A1, A3 and B1, including their sub-sections.

71. At the subgroup meeting of 4 May 2018, delegations supported the way forward proposed by the Commission services but two comments were raised:

- one delegation expressed the view that obtaining a minimum rating for point A3 of the ToR and its sub-sections may not be as relevant;
- several delegations underlined that it would not be fair to list a jurisdiction only because it would be first to be reviewed by the GF and proposed instead to start to apply this new criterion from mid or end 2020.

72. At the COCG meeting of 31 May 2018, the Bulgarian Presidency tabled a proposal of text for criterion 1.4 based on discussions at the subgroup. Further work will be necessary on this issue.

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

73. 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*".

74. The COCG meeting of 14 February 2018 mandated the subgroup on third countries to prepare a proposal, 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.

75. At the subgroup meeting of 16 March, delegations agreed that, at this stage, only the assessment of the implementation of the BEPS minimum standard on Country-by-country reporting (CBCR – BEPS action 13) is sufficiently advanced to deserve a parallel consideration by the EU within its listing exercise: the IF has indeed already agreed the first peer review reports on BEPS Action 13 for 95 jurisdictions.

76. At the subgroup meeting of 4 May 2018, the Commission services presented a preliminary analysis of the outcome of these reports and proposed terms for implementing this future criterion 3.2. Delegations supported the proposed way forward but raised notably the following comments:

- One delegation suggested to underline that the jurisdiction should have arrangements in place to be able to exchange with all interested MS;

- Some delegations noted that EU Member States should comply with the requirements before that the new criterion 3.2 is imposed to jurisdictions in the context of the EU listing exercise: 5 MS have indeed received one recommendation, 6 MS have received two recommendations;

- Some delegations queried how recommendations by the IF on the implementation of the requirements would be taken into account in the screening.

77. At the COCG meeting of 31 May 2018, the Bulgarian Presidency tabled a proposal of guidance note on criterion 3.2 based on discussions at the subgroup. Further work will be required on this issue.

5. Revision of the geographical scope

78. 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*".

79. The COCG meeting of 12 April 2018 mandated the subgroup on third countries to hold discussions on a possible revision of the geographical scope of the EU listing exercise and to report back at the next COCG meeting.

80. This discussion was held at the subgroup meeting of 4 May 2018 on the basis of a document prepared by the Commission services.

81. Most delegations expressed various reservations to extending the geographical scope at this early stage of the EU listing process:

- some delegations underlined the existing COCG workload in the context of the monitoring process and suggested that such an extension would be more appropriate when the existing EU list stabilises;

- some delegations furthermore questioned which selection factors to use for such possible geographical extension;

- one delegation considered that the jurisdictions bearing most risks are already covered.

82. At the COCG meeting of 31 May 2018, the Bulgarian Presidency tabled a proposal based on discussions at the subgroup. 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 AMLD list's scope (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.

V. PROCEDURAL ISSUES

1. Clarification of the third and fourth criteria of the Code of Conduct

83. The Council conclusions of December 2015 on the future of the Code of Conduct (doc. 15148/15, paragraphs 12-13) invited the Group to "*clarify the third criterion by developing guidance on the basis of OECD BEPS conclusions on Action 5*" and "*the fourth criterion by developing guidance in the light of the OECD Transfer Pricing Guidelines, as amended by OECD BEPS conclusions on Actions 8-9-10*".

84. The Work Package 2015 underlined that "*the Group will develop guidelines covering (...) the interpretation of criterion 3, focussing on the application of a nexus approach to preferential regimes other than patent boxes (...) [and] the interpretation of criterion 4, focussing on which internationally agreed standards are relevant and the role of the arm's length principle in identifying potentially harmful measures*".

85. The Council conclusions of March 2016 (doc. 6900/16, paragraph 10) supported the creation of the new subgroup to deal with the clarification of the interpretation of Code's criteria 3 and 4: "*The Council (...) DECIDES that a subgroup will deal with the clarification of the third and the fourth criteria of the Code*". At the meeting on 20 July 2016 the Group confirmed this mandate and requested the new Subgroup to prepare Council conclusions on this issue.

86. Guidance notes on tax privileges related to special economic zones (doc. 10487/17) and on the interpretation of the fourth criterion (doc. 15447/17) were already endorsed by the ECOFIN Council respectively on 16 June and 5 December 2017.

87. The application of the principles of the modified nexus approach to non-IP regimes was discussed during the Maltese Presidency, but views of delegations were split on whether to postpone the development of COCG guidance on all types of regimes until the availability of similar guidance by the OECD FHTP.

88. Another element of discussion was the clarification of the distinction between the real economic activity test and the substantial economic presence test within the existing drafting of the third criterion. It was agreed to clarify this distinction and against this background, a proposal for a guidance on the interpretation of the third criterion was tabled by the Commission services at the subgroup meeting of 19 July 2017.

89. The OECD FHTP meeting of 3-11 July 2017 having agreed a note on "Substantial activities in regimes other than IP regimes", the subgroup subsequently decided to adjust the above-mentioned guidance on the interpretation of the third criterion accordingly. A revised guidance proposal was in this respect tabled by the Commission services at the subgroup meeting of 30 October 2017, and a first Presidency compromise text at the subgroup meeting of 16 November 2017, on which no consensus could be found during the Estonian Presidency.

90. The Bulgarian Presidency took over the work on this file and tabled a second Presidency compromise text at the subgroup meeting of 2 February 2018. Two silence procedures were then held in order to reach a final agreement at subgroup level on the draft guidance on 25 April 2018. This agreement was confirmed by the COCG on 31 May 2018 and the guidance set out in Annex 1 is therefore submitted for endorsement by the ECOFIN Council.

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

91. The Group held a preliminary exchange of views on this topic, on the basis of a presentation by the Chair, at its meeting of 12 April 2018. Some of the ideas raised in this context included:

- a revision of the gateway criterion to cover low level of taxation;
- an update of paragraph M of the 1997 resolution, e.g. by integrating criterion 2.2;
- further work on scope and criteria, e.g. looking at the treatment of general tax systems;
- further coordination on anti-abuse measures, building on paragraphs K and L of the 1997 resolution and to the extent that they are not covered by EU legislation.

92. All delegations expressed either interest or readiness to reopen discussions, though a number of them opposed any reference to tax rates.

93. This discussion provided an input to discussions in the High Level Working Party on Tax Questions (HLWP). In line with the Council conclusions of 8 December 2015 and 8 March 2016, the HLWP held a strategic debate on the issue on 16 May 2018. The Group was informed with a view to further discussions on this issue.

ANNEX 1

Guidance on the interpretation of the third criterion of the Code of Conduct for business taxation

1. Purpose of the Guidance

The guidance set out below is based on past decisions of the Code of Conduct Group and is intended to improve the transparency of the Code of Conduct Group's work. It is also intended to help Member States as well as third countries identify more easily potentially harmful tax measures.

The guidance neither replaces the principles and criteria of the Code of Conduct nor prejudges the harmfulness of any particular regime. The guidance presents a non-exhaustive list of elements and characteristics which indicate that a tax measure may be harmful when fully assessed against the criteria in the Code of Conduct. Every assessment will continue to be based on the five criteria of the Code of Conduct on a case-by-case approach.

The purpose of the text is to provide guidance on the application of the criteria in the Code of Conduct but it does not go beyond those criteria nor does it limit them. The guidance can never provide a safe harbour for a particular regime. A tax measure that is the object of particular scrutiny or that requires particular attention under the guidance may be found non-harmful by the Code of Conduct Group; likewise a measure that is not the object of particular scrutiny or that does not require particular attention under the guidance may be found to be harmful when assessed by the Group.

The purpose of the guidance is not to confine the Group to applying pre-determined general criteria; rather it should continue to subject each particular regime to a case-by-case examination against the Code of Conduct criteria in the light of the Group's guiding principles set out in document 16410/08 FISC 174.

2. Relationship with past assessments

Past assessments, and regimes for which the Group has agreed in the past that there was no need to assess, will not be affected by the guidance. Regimes that have not been considered by the Group can be reviewed on the basis of this guidance. The current procedure for reopening past assessments remains in place.

3. Review of the Guidance

The countering of harmful tax measures is an ongoing process; therefore the guidance notes could be periodically reviewed by the Code Group to ensure that they reflect future developments.

4. Guidance

1. Real economic activity

When

- a regime grants tax benefits to activities such as manufacturing or production,
- the qualifying activities necessary to benefit from the regime do not include any highly mobile activities, or
- the benefits of the regime are directly linked to investment in tangible assets[5],

the regime does a priori not raise concerns under criterion 3 of the Code of Conduct. It would not need to be assessed regarding a substantial economic presence. It would however still need to be subject to an analysis under the nexus requirement.

When

- a regime does not specify a requirement that activities need to be considered as real economic activities in order to qualify for tax benefits,
- there is an express obligation in a regime that business should be conducted outside the state or territory or there is a de jure or de facto obstacle to conduct such business inside,
- a regime can be considered to be designed to attract highly mobile capital, or
- a regime allows an activity that may under certain circumstances be considered not to constitute a real economic activity

the regime may a priori not be regarded as requiring real economic activity and needs to be further analysed concerning the requirements of the regime for substantial economic presence which should be relevant to the regime type.

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[5] The investments qualifying for the incentive are long-term investments in the fixed assets (buildings, constructions, technical equipment and facilities) that are used for the performance of economic activities of the company.

In particular, certain types of activities are likely to need such further analysis. These activities could for instance be the following:

- Certain financial services, including intra-group financial services[6];
- Intra-group captive insurance[7];
- Intra-group holding activities[8] [9], excluding pure equity holding companies[10] which only hold equity participations and earn only dividends and capital gains or incidental income; or
- Co-ordination centres[11].

This list is neither absolute nor exhaustive. Every assessment against the third criterion of the Code of Conduct will continue to be based on a case-by-case approach, taking into account the specific nature of the regime.

2. Substantial economic presence

If the analysis under 1 raises doubts as to whether the activities that are covered by a regime constitute real economic activities, an analysis of the requirements for substantial economic presence should be performed.

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6 The income generating activity could cover agreeing on funding terms, monitoring and revising agreements and managing risks.

7 The income generating activity could cover predicting and calculating risk, insuring or re-insuring against risk and providing client service.

8 The income generating activity could be such that is associated with income from for instance interest, rents and royalties

9 In the 1999 "Code of Conduct Group report" the following is stated in paragraph 48: "*The Group noted that there can be commercial reasons why a multi-national enterprise may have a particular holding company within its corporate structure. But the Group also noted that many holding companies are set up wholly or mainly for tax planning reasons. In particular, holding companies may be used as a tax efficient holding point for profits or as a tax efficient conduit. Holding companies that are tax-driven normally have little or no economic substance, and may be no more than brass plate companies. They are therefore potentially highly mobile, and business taxation measures can have a significant effect on their location in the Community.*"

10 Pure equity holding companies must respect all applicable corporate law filing requirements in order to meet the substantial activities requirement and it is suggested that they should have the people and the premises for holding and managing equity participations. Since such regimes are provided to avoid double taxation, there should be no expectation of a correlation between income-generating activities and benefits.

11 The income generating activity could cover taking relevant management decisions, incurring expenditure on behalf of group entities and co-ordinating group activities.

The main elements of this analysis to be carried out by the Code of Conduct Group are requirements for an adequate number of employees with necessary qualifications and an adequate amount of operating expenditure with regard to the core income generating activities (see for example footnotes 2-4 and 6-7).

The analysis of the two above-mentioned requirements can where appropriate take into account one or more of the following factors that may be present in the national regime:

- a statistical analysis of the average number of employees, where account would also need to be taken of the nature of the activities, e.g. whether it is a capital or labour-intensive industry;

- an analysis of whether the requirement of the regime is for full-time or part time jobs;

- an analysis of whether the regime requires that the qualifications of employees are related or adapted to the nature of the activity benefiting from the regime;

- an analysis of quantitative and qualitative aspects of the management and the administration of the entity;

- an analysis of the character of premises for the activity at issue and whether they are adequate for such activity (for instance investments made to carry out the activity concerned, the organizational structure including a management of resources consistent with the nature of the activity).

The list of factors above should not be seen as exhaustive.

Since every regime has different features, consideration of how the economic presence requirement applies must take place in the context of the regime being considered. As such, the degree of substantial economic presence that may be appropriate for one regime will not necessarily be adequate in the context of another regime. Due consideration could also be given to assessments carried out by the FHTP of the regime in question, where appropriate.

3. Nexus requirement

There should be an adequate de jure and de facto link between real economic activity carried on by entities covered by the tax privilege at issue and the profits for which that benefit is granted.

5. Audit requirements

Taking into account the potential risks, there should be tax audits verifying that the activities of the entities benefitting from the regime at issue meet the requirements of this Guidance.

These audits should be carried out regularly on a similar basis as that generally applied in the Member State in question.

6. Monitoring of regimes

Regimes that have been subject to an assessment based on this guidance will be monitored on their substance requirements. Regimes for which the Group has agreed before this guidance enters into force that there was no need to assess them or that have been assessed not harmful, will not be affected by the monitoring.

Such monitoring will consist for Member States as well as third countries of providing each year to the Code of Conduct Group data that shows how in practice regimes are implemented and that the core income generating activities are undertaken by the taxpayer. On the basis of the data provided, or its absence, the Code of Conduct Group may decide whether it is appropriate to reopen a review of the regime concerned.

The following data should be provided[12]:

- the number of taxpayers applying for the regime,
- the number of taxpayers benefiting from the regime,
- the type of core activities undertaken by taxpayers benefiting from the regime,
- the quantity of core activities undertaken by taxpayers benefiting from the regime (as measured by the number of full-time employees[13] with necessary qualifications and the amount of operating expenditures associated with these activities),
- the aggregate amount of net income benefiting from the regime (as discussed above, for regimes which do not have income reporting because they implement a non-income based tax in place of income tax or where such data is not collected as part of the tax return or is not otherwise easily obtainable, accounting profits or other similar statistics can be reported instead), and
- the number of taxpayers, if any, that no longer qualify for benefits in whole or in part under the regime.

As a case-by-case approach is the basis of the Code of Conduct Group's work, the data that needs to be provided each year shall be adapted to the individual regimes concerned. The Code of Conduct Group may specify the type of data to be communicated before the end of the assessment of the regime concerned. Such data requirements may also be modified on request by the Code of Conduct Group at any time during the monitoring procedure.

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12 The monitoring provided in the following bullet points would be carried out for fiscal years commencing in 2019. For earlier years, countries would be asked to report data points that they have available, which would be collected together with other data points on monitoring.

13 The number of full-time employees could include the part-time employees, whose aggregated working hours is divided by full-time work hours.

In order to reduce administrative burden and avoid double work, monitoring should be coordinated with the parallel monitoring by the OECD Forum on Harmful Tax Practices to the extent that is relevant.

In order to reduce the administrative burden of collecting the required information, monitoring would be required only with respect to taxpayers that are members of multinational enterprise groups with annual revenues in the preceding year of EUR 750 million or more, unless decided otherwise by the Code of Conduct Group with a view to particular risks. Moreover, monitoring will not be required if the small number of taxpayers benefitting from a regime means that provision of the above information would have the effect of disclosing the identity of the taxpayer, and jurisdictions could establish de minimis exceptions to the monitoring requirement to prevent such disclosure. Finally, pure equity holding companies would not be subject to this type of monitoring for the reasons discussed above.

ANNEX 2

New multiannual work package

Following the Work Package agreed by the ECOFIN Council in December 2015 (doc. 14302/15) and the Council conclusions on the EU list of non cooperative jurisdictions for tax purposes of 5 December 2017 (doc. 15429/17), the Code of Conduct Group proposes, on the occasion of its 20 years of existence (1998-2018), to take forward the multiannual work package within the existing mandate as set out below.

1. Transparency of the Code of Conduct Group work

In its conclusions on the future of the Code of Conduct in March 2016, the Ecofin Council underlined "*the necessity to increase the transparency of the Group on past and ongoing work whilst stressing the importance to ensure that result-oriented cooperation within the Code of Conduct Group can continue in a confidential manner*". The Council also asked the Group to "*explore initiatives to further inform the public on the results of its meetings and to report back to Ecofin on this issue by June 2017*".

In the context of the EU listing process, some delegations expressed the view that the Code of Conduct Group should grant a higher level of transparency on its work. In line with recent initiatives[14], the Group will therefore consider possible concrete ways to ensure further transparency of its work, in particular concerning the EU list of non-cooperative jurisdictions for tax purposes. This will include the release of more documents to the public, for instance initial Commission services' proposals for guidance notes or documents on Member States' individual measures (agreed description and draft assessment) after a decision has been reached by the Group and agreed by the Council. The Group will also continue to ensure that its 6-month reports to the Council contain substantial information on the progress made and to work on the modalities for increasing transparency of the discussions held among Member States, taking into account the relevant guidance provided for in past ECOFIN Council conclusions.

2. Monitoring of standstill and the implementation of rollback

The Group will continue to monitor standstill and the implementation of rollback, with a particular focus on patent boxes and notional interest deduction (NID) regimes.

Once the assessment of the five notified NID regimes will have been closed, the Group will consider developing a guidance for other Member States wishing to implement a similar regime.

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[14] Notably: creation of new pages on the Council's website, and publications of a compilation of agreed Group guidance, a compilation of the letters seeking commitments by jurisdictions, a compilation of the commitment letters received in return (when a consent was given by the jurisdiction concerned) and an overview of the individual measures assessed by the Group since 1998.

3. Links with third countries

In line with paragraph M of the Code of Conduct, the Group will continue its efforts in promoting the adoption of its principles by third countries and in territories to which the Treaty does not apply. These principles include the standstill and rollback of harmful tax practices (paragraph B), but also action to combat tax avoidance and evasion (paragraphs K and L), and more broadly any measure which affects, or may affect, in a significant way-the location of business activity (paragraph A).

This dialogue with third countries currently covers 92 jurisdictions and a broad range of topics (tax transparency, fair taxation, and anti-BEPS measures) in the context of the EU list of non-cooperative jurisdictions for tax purposes but the Group could consider reviewing the geographical scope of this listing exercise once the assessment of the commitments taken is completed.

Beyond monitoring the implementation of their commitments by jurisdictions and updating the EU list based on any new commitments taken and on the implementation of these commitments, the Group will continuously monitor the implementation of potentially new harmful tax practices (criterion 2.1) in jurisdictions covered by the 2017 screening exercise, along the standstill principle, and regularly update the EU's listing criteria, taking into account international developments and having regard to the evolution of international standards. In this respect, the Group will continue to work in particular on the implementation of the “future criteria” on tax transparency and anti-BEPS.

Furthermore, the Group will ensure that its work in relation to third countries will continue to be coherent and consistent with what is being done by the Global Forum, OECD Inclusive Framework on BEPS, and FHTP so as to maximise synergies. To this aim, the COCG will consider in particular revising the scope of Criterion 2.1 (fair taxation) in relation to manufacturing regimes taking into account its relevance for jurisdictions that are linked to the internal market.

4. Anti-abuse issues and defensive measures

The Group will consider the question of outbound payments following the Commission services' assessment of the effectiveness of existing EU anti abuse measures (COCG guidance on inbound payments, PSD, ATAD 1 and ATAD 2) and in the light of relevant international developments.

The Group will also continue exploring further defensive measures of legislative nature in the tax area that could be applied to non-cooperative jurisdictions in a coordinated manner, once the assessment of the commitments taken is completed and without prejudice to Member States' obligations under EU and international law.

Since these defensive measures of legislative nature in the tax area are mostly of anti-abuse type, the Group will explore synergies with past work by the Code of Conduct Group in this area.

5. Transfer pricing issues

The Group will investigate the need to revise past EU guidelines on transfer pricing issues[15] in the light of the OECD BEPS report on Actions 8-9-10 on the basis of a proposal by the Commission services[16], expected by the end of 2019, and report to the Council accordingly.

6. Monitoring the implementation of agreed guidance

The Group will monitor the implementation of agreed guidance in accordance with its new *guidelines on setting working methods for an effective monitoring of Member States' compliance with agreed guidance* (doc. 15449/17), endorsed by the ECOFIN Council on 5 December 2017.

The agreed priority list of guidance notes to be monitored is as follows:

a) 2014 Guidance on nexus approach for IP regimes (ongoing).

b) 2010 Guidance on inbound profits (ongoing):

   1. Member States should report on how they implemented the 2010 guidelines; and
   2. The Group agreed to return to the issue of the dependant and associated territories after the end of the screening of third country jurisdictions under the external strategy.

c) 2000 Guidance on Rollback and Standstill.

   1. finance branches;
   2. holding companies;
   3. headquarter companies;

d) 2013 Guidance on intermediate (financing, licensing) companies.

e) 2016 Guidance on the conditions and rules for the issuance of tax rulings – standard requirements for good practice by Member States.

f) 2017 Guidance on tax privileges related to special economic zones (SEZ).

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15 Notably the EU Code of Conduct on transfer pricing documentation for associated enterprises in the EU (EU-TPD) adopted by the Council in June 2016 (doc. 9738/106), the guidelines on low-value adding intra-group services endorsed by the Council in May 2011 (doc. 9904/07), and the Reports on Cost Contribution Arrangements (CCAs) on Services not creating Intangible Property and on SMEs and Transfer Pricing endorsed by the Council in December 2012 (doc. 16380/12).

16 See Council conclusions of 6 December 2016 (paragraph 5) and 5 December 2017 (paragraph 8) on the 6-month reports by the COCG to the ECOFIN Council.

7. Update/Revision of the 1997 mandate

As in the case of the past exercise in July 2015, the Group will hold a discussion with the aim to provide an input to the HLWP on a possible revision/update of its December 1997 mandate, including with reference to the gateway criterion, taking into account international developments.

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

Summary table (as of 31 May 2018)

Jurisdictions	CATEGORY 1: listed (annex I) 2: under monitoring (annex II) 3: comfort letter	Deadline for compliance Developing country category	Commitments (accepted as sufficient) to be monitored in the monitoring phase on criterion:						Harmful tax regimes (criterion 2.1)	
			1.1	**1.2**	**1.3**	**2.1**	**2.2**	**3**	**Number of harmful regimes**	**COCG or FHTP lead?**
Albania	Category 2	2019 UMI						1		
American Samoa	Category 1	2018								
Andorra	Category 2	2018				1			4	FHTP
Anguilla	Category 2	2018		1			1			
Antigua and Barbuda	Category 2	2018 UMI (FC)	1		1	1		1	1	COCG
Armenia	Category 2	2019* LMI			1	1		1	2	COCG
Aruba	Category 2	2018				1		1	2	COCG
Australia	Category 3	N/A								
Bahamas	Category 2	2018	1		1		1			
Bahrain	Category 2	2018	1	1	1		1	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			1		
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	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		1	1			3 2	FHTP COCG
China, Macao SAR	Category 2	2018	1		1	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
Curacao	Category 2	2018	1	1		1			3	FHTP
Dominica	Category 2	2018 UMI (FC)	1		1	1		1	3	COCG
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			1		

Georgia	Category 3	N/A LMI								
Greenland	Category 2	2018						1		
Grenada	Category 2	2018 UMI (FC)	1		1	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

Liechtenstein	Category 2	2018				1			2	COCG
Malaysia	Category 2	2018 UMI				1			7	FHTP
Malaysia/Labuan Island	Category 2	2018 UMI (FC)				1			2	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			5	FHTP
Monaco	Category 3	N/A								
Mongolia	Category 2	2019 LMI			1					
Montenegro	Category 2	2019 UMI			1			1		
Montserrat	Category 3	N/A UMI (FC)								
Morocco	Category 2	2019* LMI			1	1		1	4	COCG

Namibia	Category 1	2019* UMI								
Nauru	Category 2	2018 UMI (FC)						1		
New Caledonia	Category 2	2018	1	1	1			1		
Niue	Category 2	2018 UMI (FC)						1		
Norway	Category 3	N/A								
Oman	Category 2	2018	1	1	1					
Palau	Category 1	2018 UMI (FC)	1	1	1			1		
Panama	Category 2	2018 UMI (FC)				1			3 1	FHTP COCG
Peru	Category 2	2019 UMI			1					
Qatar	Category 2	2018	1		1					
Saint Kitts and Nevis	Category 2	2018				1		1	1	COCG
Saint Lucia	Category 2	2018 UMI (FC)				1		1	3	COCG

Saint Vincent and the Grenadines	Category 2	2018 UMI (FC)				1		1	2	COCG
Samoa	Category 1	2018 LMI (FC)						1		
San Marino	Category 2	2018				1			2	FHTP
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								
Swaziland	Category 2	2019 LMI		1	1			1		
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			1 1	FHTP COCG
Turks and Caicos Islands	Category 2	2018					1			
United Arab Emirates	Category 2	2018	1		1		1	1		
United States	Category 3	N/A								
Uruguay	Category 2	2018 UMI				1			3	FHTP
US Virgin Islands	Category 1	2018								
Vanuatu	Category 2	2018 LDC (FC)					1	1		
Viet Nam	Category 2	2019* LMI		1	1	1			1	COCG
TOTAL (number of jurisdictions/commitments)			**17**	**14**	**31**	**37**	**13**	**31**	**57** **51**	FHTP COCG

* Developing Countries that have harmful tax regimes for which the deadline for commitment remains 2018.

Abbreviations:

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

ANNEX 4

Scoping paper on criterion 2.2 of the EU listing exercise

I/ Technical elements of commitments to be fulfilled by the jurisdictions

Issue of lack of substance (Criterion 3 of the Code of Conduct test)

To address the issues that arise in connection with entities operating without any substance, the 2.2 jurisdictions have already been requested by the COCG to:

1) *give reassurances to EU Member States on this issue, in line with the Terms of Reference attached to this letter;* and

2) *discuss with the Code what further steps could better ensure that businesses have sufficient economic substance.*

The letters to these jurisdictions clarified that

"*a way to achieve this could be through the imposition of substance requirements, where appropriate. Moreover, this may require that you introduce additional accounting and tax reporting obligations such that an appropriate notification regime for entities that give rise to the risks and concerns underlying criterion 2.2 can ensure the collection and subsequent exchange of relevant information with Member States*."

In line with the Criterion 2.2 ToR and further discussions held in the context of the COCG, the dialogue with the jurisdictions has started on the basis of the below points:

1) The jurisdiction has provided concrete elements on the steps (including their timeline) envisaged to align their legal system with the ToR on criterion 2.2;

2) The jurisdiction shall guarantee that legal substance requirements will be introduced in the legislation for the incorporation and operation of entities making sure that in practice tax advantages (i.e. no or very low taxation) are not granted to entities without any real economic activity and substantial economic presence in the jurisdiction.

3) Taking into account the features of each specific industry or sector, the jurisdiction should be asked to introduce requirements concerning an adequate level of (qualified) employees, adequate level of annual expenditure to be incurred, physical offices and premises, investments or relevant types of activities to be undertaken.

4) The jurisdiction shall also ensure that the activities are actually directed and managed in the jurisdiction and that core income-generating activities are performed in the jurisdiction. The jurisdiction shall in addition provide a guarantee that appropriate resources are deployed by governmental authorities, including tax authorities, to check the application of these requirements and that sanctions are envisaged in case of non-compliance.

5) The jurisdiction shall introduce appropriate notification regimes whereby all information needed to assess the actual amount of profits booked in the jurisdictions could be made available to the relevant jurisdictions having in place CIT system for the purpose of calculating the tax liability of their taxpayers. The jurisdiction has to ensure that information are collected, accessed and automatically exchanged with relevant EU Member States.

II/ The core income generating activities in 2.2 jurisdictions

According to Criterion 2.2: "*The jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction*". The jurisdictions which raised concerns were asked to address these through the imposition of substance requirements, where appropriate. It is considered that those substance requirements should mirror those used in the FHTP in the context of specified preferential regimes.

A taxpayer should not be able to avoid the substantial activity requirements and still benefit from a low or no tax rate simply by moving to a 2.2 jurisdiction which at present is not subject to the substance requirements; rather, the same test for carrying out the core income generating activities in a jurisdiction should apply equally whether these are carried out in a preferential regime or in a 2.2 jurisdiction In fact, the need for this approach has been underlined by some members of the Inclusive Framework which are now adding substantial activity requirements to their preferential regimes, and have expressed concern that they may be at a competitive disadvantage if taxpayers relocate to a zero tax jurisdiction rather than comply with the new requirements. Thus, there is a strong level playing field argument that points in this direction.

In the context of FHTP assessments, the substantial activities criterion requires that jurisdictions ensure that core activities relevant to the regime type are undertaken by the taxpayer wishing to benefit from the regime (or are undertaken in the jurisdiction). The FHTP guidance on substantial activities further notes that core income generating activities presuppose having an adequate number of full-time employees with necessary qualifications and incurring an adequate amount of operating expenditures to undertake such activities. Finally, it requires the jurisdiction to have a transparent mechanism to ensure taxpayer compliance and to deny benefits if these core income generating activities are not undertaken by the taxpayer or do not occur within the jurisdiction. For IP regimes, specific substance requirements apply, namely the nexus approach.

a. Non-IP Substantial Activities Test

For companies dealing with assets other than IP, the substance requirements would apply to the same types of geographically mobile activities which have typically been the focus of the preferential regimes. 2.2 Jurisdictions would be required to meet the same substantial activities test for each sector, demonstrating that the core income generating activities are undertaken by the entity (or in the jurisdiction), involving an adequate number of employees and expenditure, supported by effective enforcement mechanisms. Annex 2 of this paper contains the 2017 FHTP Guidance on non-IP regimes which will have to be considered as the guidance for this exercise to be applied by analogy.

This would include fund managers as this is a mobile activity within the scope. However, collective investment funds (CIVs) are of a different nature, except in rare circumstances where the manager and the CIV form one legal entity. Therefore, the usual substance requirements cannot automatically be applied to CIVs. Thus, and in part similar to pure equity holding companies, reduced substantial activities requirements adapted to CIVs should apply Requirements in this regard can be paralleled with EU legislation on investment funds, in particular Directive 2011/61/EU on Alternative Investment Fund Managers.

b. Substance requirements for IP income

Income derived from IP assets can pose a higher risk of artificial profit shifting than non-IP assets. This is reflected in international standards in the field of taxation, which require that income deriving from IP assets must be subject to specific substantial activity requirements. For example, the FHTP's approach to income deriving from IP assets in the context of preferential regimes requires that the tax benefits a company can derive are conditional on the extent of substantial R&D activities of taxpayers receiving benefits income deriving from IP assets. This approach uses expenditures as a proxy for substantial activities to calculate the proportion of income that may enjoy the tax benefit ('The Nexus approach').

In the context of 2.2 jurisdictions, the absence of a preferential regime poses significant challenges to applying the Nexus approach. The overall aim in this context is not to calculate the portion of a company's intangible asset income that can take advantage of a preferential tax rate, but rather to determine whether a company generating income from intangible assets can incorporate or operate within a 2.2 jurisdiction. Therefore, while the focus of the Nexus approach on intellectual property derived from local R&D activities is acceptable as a standard for preferential IP regimes, it could in this context prohibit genuine commercial activities by failing to recognise other intangible assets and different ways in which those assets can be created or otherwise exploited through core income generating activities.

Any approach to substance requirements for IP income must therefore be effective, proportionate and both: (i) adequately address the higher risk of artificial profit shifting posed by income derived from IP assets in certain scenarios; and (ii) not inadvertently prohibit activities that constitute real economic activity

Strengthened general substantial activities approach

The approach that meets these requirements:

1) applies a targeted version of the general substantial activities approach to income derived from intangible assets in low risk scenarios;

2) includes a rebuttable presumption that the test is failed in these situations absent local R&D activities (for IP assets) or local marketing and branding activities (for non-IP intangible assets);

3) Makes the rebuttal of that presumption contingent on a taxpayer being able to evidence that it undertakes the substantive activities supporting intangible asset income, and makes it subject to enhanced reporting and monitoring requirements regardless of the decision taken by the 2.2 jurisdiction on the appropriateness of this substance;

4) presumes the non-compliance of companies that merely passively hold~~s~~ and generate~~s~~ income from intangible assets within higher risk scenarios.

b.1. Core Income generating activities for income deriving from IP assets

For intellectual property assets such as patents it is expected that core income generating activities include R&D activities.

For non-trade intangible assets such as brand, trademark and customer data it is expected that the core income generating activities include marketing, branding and distribution activities.

However the core income generating activities associated with an intangible asset will ultimately depend on the nature of the asset e.g. whether it's a patent, technical know-how, a trademark, customer lists or brand/goodwill.

They will also depend on how that asset is being used to generate income for the company e.g. whether it is being licenced or used to generate income from trading activities, such as the provision of services to third-party customers.

In certain situations therefore, a company might be given the possibility to prove that it is undertaking other core income generating activities associated with intangible asset income without specifically undertaking R&D, marketing and branding. Those activities might include:

- Taking the strategic decisions and managing (as well as bearing) the principal risks relating to the development and subsequent exploitation of the intangible asset; or
- Taking the strategic decisions and managing (as well as bearing) the principal risks relating to the third-party acquisition and subsequent exploitation of the intangible asset; or
- Carrying on the underlying trading activities through which the intangible assets are exploited and which lead to the generation of revenue from third-parties.

These activities, as well as R&D, branding and distribution activities which remain the main core activities to be looked at, would require the necessary staff, premises and equipment. Therefore, it would require more than local staff passively holding intangible assets whose creation and exploitation is a function of decisions made and activities performed outside of the jurisdiction.

They equally wouldn't be satisfied by the periodic decisions of non-resident board members, with the need instead for local, permanent and qualified staff making active and ongoing decisions in relation to the generation of income in the 2.2 jurisdiction.

b.2. Higher-risk scenarios – involvement of foreign related parties

The risks of artificial profit shifting are likely to be greater where a company

(a) owns an intangible asset that has been acquired from related parties or obtained through the funding of overseas R&D activities e.g. under a cost-sharing agreement; and

(b) is licenced to foreign related parties or monetised through activities performed by foreign related parties (e.g. foreign-related parties are paid to develop and sell a product in which the intangible asset is embedded).

To mitigate this greater risk, there should be a rebuttable presumption that the core income generating activities test is not satisfied in these scenarios, even if there are local activities that would, under a transfer pricing analysis, entitle the company to some allocation of taxable profits.

Companies could be given the ability to challenge this default presumption, and evidence how the income being generated in these higher risk situations is directly linked and justified by activities undertaken in the local jurisdiction rather than overseas.

This would need to be a high evidential threshold. Companies would, for example, need to evidence that, in addition or alternatively to R&D, branding and distribution activities, a high degree of control over the development, exploitation, maintenance, enhancement and protection of the intangible asset is, and historically has been, exercised by full time highly skilled employees that permanently reside and perform their core activities within the 2.2. jurisdiction. They must be able to support these evidences through the provision of additional information including:

- Detailed business plans which allow to clearly ascertain the commercial rationale of holding IP assets in the jurisdiction,
- employee information including level of experience, type of contracts, qualifications, duration of employment,
- concrete evidence that decision making is taking place within the jurisdiction.

This information would have to prove that in the jurisdiction there is more than local staff passively holding intangible assets whose creation and exploitation is a function of decisions made and activities performed outside of the jurisdiction.

This test will not be satisfied by mere periodic decisions of non-resident board members, with the need instead for local, permanent and qualified staff making active and regular decisions in relation to all the activities linked to the generation of IP income.

In order to further mitigate the higher level of risk that these scenarios pose, even where a taxpayer is able to rebut the presumption (i.e. it can demonstrate that it undertakes the substantive activities supporting intangible asset income) the 2.2 jurisdiction would be required to disclose the full evidence to the competent authority in the country of residence/relevant jurisdiction. (This may require that legislation be put in place that requires enhanced reporting from companies that fall into this category). This would allow Member States to review whether the testing being implemented by 2.2 jurisdictions' competent authorities in higher risk scenarios adequately mitigated tax risks.

The effectiveness and proportionality of the new legislation reflecting this approach will be subject to review after 1 year of application by the relevant jurisdictions. Since the new legislation is requested to be in place as of 1 January 2019 and will be immediately applicable to new companies (as well as to new activities and new IP assets), while existing companies (or existing activities and existing IP assets) will be given 6 months to adapt (i.e. by 1 July 2019 at the latest), the COCG will review this approach in July 2020 (1 year after the new legislation has been applicable to all companies) with a view to considering possible amendments.

III/ Implementation by 2.2 jurisdictions and consequences for non-compliance

A 2.2 jurisdiction would implement the substantial activities requirement in three key steps:

(1) identify the relevant activities in their jurisdiction;

(2) impose substance requirements;

(3) ensure there are enforcement provisions in place.

The first obligation for the 2.2 jurisdictions is to identify the relevant categories of activities in the jurisdiction in respect of which substance requirements would apply, including at least banking, insurance, fund management, financing, leasing, headquarters, and shipping. The 2.2 jurisdictions may be able to identify these categories of activity through existing or newly introduced regulatory requirements or by obtaining other information from reporting requirements or service providers. Alternatively, if it is administratively easier, a jurisdiction could apply the substance requirements to all businesses but then reduce requirements / carve out those entities that are not in scope. A jurisdiction may also decide to exempt local businesses that are not in scope of the work on harmful tax practices, such as hotels and retail, or alternatively have them covered as presumably such entities would have no difficulty in meeting the requirements.

Second, for each set of activities, the 2.2 jurisdiction would need to impose substance requirements to ensure consistency with the COCG and FHTP guidance. This may require legislative changes, as is the case for many of the other Inclusive Framework members, and which many of the 2.2 jurisdictions have already indicated their willingness to do.

Third, the 2.2 jurisdiction would need to implement adequate enforcement and sanction mechanisms to ensure compliance by the relevant individual entities with substance requirements. This would need to include mechanisms to identify which entities are conducting the relevant categories of activities, and to detect and enforce the substantial activities requirements for entities which purport to have substantial activities but in fact do not meet the requirements. To be able to do so, a 2.2 jurisdiction would need to require each entity in scope to prepare and file information on at least business type (to identify the type of mobile activity); amount and type (e.g. rents, royalties, dividends, sales, services) of gross income; amount and type of expenses and assets; premises, and number of employees, specifying the number of full time employees. In addition, each entity must be required to prepare and file information showing that it has conducted relevant core income generating activities such as R&D, marketing, branding and exploitation within the 2.2 jurisdiction.

Ordinarily in the context of a preferential regime, where a taxpayer has failed to meet the substantial activity requirements the result should be that the tax benefits of the regime are denied. This would not apply in the 2.2 context, but there would need to be an equivalent level of enforcement. The consequences where an entity fails the substance requirements should include rigorous, effective and dissuasive regulatory penalties and enhanced spontaneous exchange with jurisdictions of residence (e.g. of a party making a deductible payment to such a company) and ultimately, where other sanctions produce no results, this should lead to the striking off the register of such an entity. This should be complemented by a commitment by the 2.2 jurisdiction to continue enforcement efforts and remedy any shortcomings in the enforcement process.

IV/ Review and monitoring of the 2.2 jurisdictions' implementation of the substance requirements

Drawing on the process and practice of the Code of Conduct Group and FHTP, there are two parts to the review to ensure a 2.2 jurisdiction had implemented the substance requirements: a review of the legal and administrative framework and monitoring of effectiveness in practice.

The first part in the assessment of the 2.2 jurisdiction would involve a review of the legal and administrative framework (whether regulatory, commercial tax, or other legislation) and other information provided by the jurisdiction to determine whether the substance requirements are met. This includes whether the legislation requires substance, and whether there are adequate enforcement and sanction provisions, as well as information on the mechanism for overseeing these provisions (such as which agency will enforce the requirements, how this will be done and with which resources).

The second part is an ongoing annual monitoring process to ensure that the legislative and enforcement provisions were being adequately administered by the 2.2 jurisdiction at a systemic level. This includes collecting information on the core income generating activities for the activity, requirements for an adequate number of full-time employees with necessary qualifications and for an adequate amount of operating expenditures to undertake core income generating activities, enforcement mechanisms and statistics such as the aggregate numbers of entities, aggregate amount of income, employees and expenditure in that type of activity, and information on the number of entities which have been found to not meet the requirements.

This information is used as a high level indicator as to whether the law or enforcement mechanisms are deficient and need to be remedied by the jurisdiction. Moreover, given the fact that the Global Forum initiated a close cooperation on the 2.2. issue, on site assessments on the adherence of the above standards by this forum could be an option.

The existing review documents (i.e. the self-review template and monitoring questionnaire) could be used, with slight adjustments to accommodate the analytical approach.

V/ Further transparency requirements

Three requirements are set out below to enhance transparency. These draw on existing transparency initiatives related to both the EU and the OECD. Those requirements are not mutually exclusive and could be applied simultaneously by the 2.2 jurisdictions.

1 – Spontaneous exchange on specific risk issues

Spontaneous exchange of information has long been a part of the EU work and the FHTP framework for addressing harmful tax practices to better equip other countries to enforce their own tax laws and identify BEPS concerns. For example, in the FHTP context, specific requirements have been agreed for spontaneous exchange of information on tax rulings (including rulings related to preferential regimes), on certain features of IP regimes, and on downward adjustments.

In this vein, specific transparency requirements must be devised as a backstop to the substance requirements for 2.2 jurisdictions. The information filed by entities that are in scope (see Section "*Implementation by 2.2 jurisdictions and consequences for non-compliance*", fourth paragraph) must be spontaneously exchanged with EU members where either the legal or beneficial owner is tax resident, which then links also to the availability of legal and beneficial ownership information discussed below. The burden of proof whether substance criteria are met is on the taxpayer.

In these cases, it could be possible to use the FHTP transparency framework for spontaneous exchange of information on tax rulings. For example, the transparency framework sets out with which jurisdictions information must be exchanged, such as country of residence of related party which is on the other side of a relevant transaction, and the immediate parent and ultimate parent company. It would also be possible to design a standardised format for such exchanges, using a similar template and XML Schema as is used for the exchange on rulings and which was developed in cooperation with the EU).

2 – Beneficial ownership

The need for accurate and accessible beneficial ownership information is part of the international tax and anti-money laundering standards. EU Member States have been ambitious on this agenda, most recently in December 2017 by reaching political agreement on the Fifth Anti-Money Laundering Directive, which will ensure the creation of beneficial ownership registers in all EU Member States, as well as their interconnectivity and their access to the public under certain circumstances. This is the latest step in the wider strategy to achieve greater efficiency in access to ownership information, including through the Fourth Anti-Money Laundering Directive, the DAC 5, the regulation on the interconnection of corporate registers and initial scoping efforts at OECD's Working Party 10 with respect to the standardisation of the structuring of ownership information held in central repositories in electronically searchable form.

To further drive forward this agenda, a 2.2 jurisdiction could be required to ensure that every company or other body corporate created under its laws would be subject to enhanced transparency requirements that ensure that ownership information is available and accessible in a timely, accurate and electronically searchable manner. This could be done, for instance, by creating more efficient exchange of information on beneficial ownership through efficient access to registries being made accessible to designated authorities from participating jurisdictions.

As such, 2.2 jurisdictions would need to ensure that legal and beneficial ownership information in relation to bodies corporate is kept up to date and can be readily queried in an electronic manner, therewith allowing relevant international authorities to ascertain the ownership of an entity in a real-time or close to real time manner.

This would allow each 2.2 jurisdiction to keep its own, domestic repositories in place, while enabling the instantaneous query of ownership information across jurisdictions through, for instance, a single interconnected query platform.

In this context, 2.2 jurisdictions would be expected to have fully accurate legal ownership information in relation to their bodies corporate available in all instances, as well as to require that up-to-date beneficial ownership information be made available and kept up to date by bodies corporate, to the extent obtainable under domestic law and taking into account the circumstances of publically traded entities. In light of the experience in the EU of implementing enhanced access to beneficial ownership information, the implementation of the enhanced transparency requirements in 2.2 jurisdictions could be introduced in a staged manner to ensure the greatest quality and usability of the data, effectiveness of access agreements and so on.

More broadly, the efforts made at the EU level and with the 2.2 jurisdictions could be supported and expanded internationally including through ongoing work within through the OECD's WP10.

3 – Mandatory disclosure rules

The relevance of mandatory disclosure rules in the offshore tax avoidance and evasion field is now heightened, with the EU directive ("DAC6") and the approval of rules by Working Party 10 and Working Party 11 on mandatory disclosure rules for CRS Avoidance Arrangement and Opaque Offshore Structures. Building on this work, a third option for enhanced transparency would be to require 2.2 jurisdictions to introduce mandatory disclosure rules consistent with DAC6 and the OECD work. Given that many of the 2.2 jurisdictions were actively involved in the discussions in WP10 and WP11, they are already very familiar with these rules (and thus the equivalent hallmark D in DAC6).

These rules would require such promoters and service providers to disclose information on the arrangement or structure to the competent authority (which is identified in accordance with a test set out in domestic law on the basis of the one set out in DAC6).

Information on those schemes (including the identity of any user or beneficial owner) would then be exchanged with the tax authorities of jurisdiction in which the users and/or beneficial owners are resident in accordance with the requirements of the applicable information exchange agreement.