Council of the European Union

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REPORT

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

I. BACKGROUND

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

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

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

4. This report from the COCG encompasses the work of the Group in the first half of 2019 under the Romanian Presidency of the Council.

II. GENERAL ASPECTS

5. The COCG met four times during the Romanian Presidency of the Council: on 30 January, 27 February, 11 April and 20 May 2019.

6. The subgroup on third countries met on 18 January, 25 January, 27 March and 6 May 2019, whilst the subgroup on the interpretation of the third and fourth criteria of the Code of conduct met on 27 March and 6 May 2019.

1. Chair and Vice-Chairs

7. Since the two-year period for which Prof. Fabrizia Lapecorella was appointed as COCG Chair expired on 4 February 2019, the issue of the appointment of the future Chair was on the agenda of the COCG meeting of 30 January 2019.

8. At this meeting, Ms. Lyudmila Petkova, Director of the Tax Policy Directorate at the Bulgarian Ministry of Finance, was appointed by common accord as COCG Chair for a period of two years. The period started on 5 February 2019, after the term of the current Chair had come to an end.

9. Ms. Ioana-Roxana Ionescu (Romania) and Ms. Anu Rajamäki (Finland) were furthermore confirmed respectively as the first and the second Vice-Chairs for the period up to the end of the Romanian Presidency.

2. Organisation of work

10. At the COCG meeting of 30 January 2019, in line with its new work package, the Group approved a work programme until the end of the Romanian Presidency: see doc. 6008/2019.

11. The newly appointed Chair furthermore presented at the COCG meeting of 11 April 2019 her work plan intentions for the duration of her mandate.

3. Update/revision of the December 1997 mandate of the Code of Conduct Group

12. In line with the Council conclusions of 8 December 2015 and 8 March 2016, ongoing discussions on an update/revision of the December 1997 COCG mandate are conducted at the level of the Council's High Level Working Party on Tax Questions (HLWP). They had however recently been put on hold due to the workload of the Group linked to the revision of the EU list of non-cooperative jurisdictions for tax purposes.

13. The COCG reviewed the state of play on this file at its meeting of 20 May 2019 with a view to providing an input to HLWP discussions. The Group discussed notably the two main remaining open issues:

- whether and how to modify the gateway criterion;
- how to integrate criterion 2.2 of the EU listing exercise in the COCG mandate.

14. On this occasion, delegations agreed to suspend the revision of the COCG mandate until the end of 2020 given links with ongoing discussions at OECD level on a global anti-base erosion (GloBE) proposal.

4. Review of the subgroups' mandate

15. The COCG reviewed the mandates of its various subgroups at its meetings of 11 April and 20 May 2019. Three of them are active as of today:

- The subgroup on anti-abuse issues related to inbound and outbound profit transfers and mismatches between tax systems ("anti-abuse subgroup"): established in 2009, it fulfilled its initial mandate[1] with the exception of a pending draft guidance on outbound payments, for which the Group agreed to wait until new data on the effectiveness of anti-abuse measures in EU directives have become available;

[1] This subgroup elaborated COCG guidance on profit participating loans (doc. 10033/10), inbound profit transfers (doc. 16766/10) and hybrid mismatches (intra-EU and with third countries) before that the PSD revision, ATAD 1 and ATAD 2 had been adopted.

- The subgroup on the interpretation of the third and fourth criteria of the Code of conduct ("subgroup on criteria 3 and 4"): created in 2016, this subgroup recently examined the last pending issue of transfer pricing (see below) and thereby completed its initial mandate[2]. It was however recently tasked with examining a new proposal for a guidance on notional interest deduction regimes (see below).

- The subgroup on third countries: also created in 2016, this subgroup has been tasked with examining technical aspects of the process of monitoring commitments taken in the context of the EU listing process, future criteria 1.4 and 3.2 as well as further coordinated defensive measures against listed jurisdictions. More recently, it started monitoring the screening of new jurisdictions by the Commission services.

16. On the occasion of the 20 May 2019 COCG meeting, the Group agreed to:

- divide the work between a subgroup on external issues (third countries) and a subgroup on internal issues (intra-EU) and close the anti-abuse subgroup;

- rename the 'subgroup on third countries' as subgroup on 'external issues' and task it with preparing COCG decisions in relation to third countries.

- rename the 'subgroup on the interpretation of the third and fourth criteria' as subgroup on 'internal issues' and task it with preparing COCG decisions in relation to EU Member States.

[2] This subgroup elaborated COCG guidance on the interpretation of the third (doc. 10419/18) and fourth (doc. 15447/17) criteria of the Code of conduct.

17. From a governance point of view, the Group furthermore agreed on the following procedural aspects regarding work at subgroup level:

- the COCG - as the main group - remains in charge of all the final decisions and direction of work (only preparatory body able to report to Coreper/ECOFIN), i.e. any decision agreed at subgroup level would need to be endorsed by the COCG;
- preparatory technical work at subgroup level should allow both to have more in-depth technical discussions at this level and alleviate COCG meetings' agendas, thereby focusing COCG meetings on the most important procedural and political issues;
- the same one-day meeting may cover - where appropriate - both subgroups, as it has been the case in the past;
- as in the case of COCG, documents for subgroup meetings should be distributed minimum one week before meetings, with a view to allowing a more informed discussion;
- the two subgroups will continue to be chaired by the rotating Presidency of the Council, but the chairperson does not necessarily need to be the same person as the 1st Vice-chair (as already happened in several occurrences in the past).

III. STANDSTILL AND ROLLBACK REVIEW PROCESSES

1. Standstill review process

18. Following the call for standstill notifications of new preferential tax measures enacted by end 2018, the following measures were notified by Member States to the Group:

- Croatia: Incentive measures for research and development projects (HR013);
- France: new intellectual property (hereafter "IP") regime (FR054);
- Malta: new patent box (MT015);
- Poland: 9% corporate income tax for taxpayers with revenues not exceeding EUR 1.2 million (PL010);
- Poland: notional interest deduction regime (PL011);
- Poland: IP regime (PL012);
- Poland: Polish Investment Zone (PL013).

19. The following decisions were reached by the Group:

- Cyprus' notional interest deduction regime (CY020) will need to be amended: see agreed description and draft assessment in ADD 1 to the present report. As a result the standstill review of the regime was put on hold until new legislation is adopted;
- France's new IP regime (FR054) is not harmful: see agreed description and final assessment in ADD 2 to the present report;
- Lithuania's patent box (LT007) is not harmful: see agreed description and final assessment in ADD 3 to the present report;

- Poland's 9% corporate income tax for taxpayers with revenues not exceeding EUR 1.2 million (PL010) does not need to be assessed: see agreed description in ADD 4 to the present report;

- Poland's IP regime (PL012) is not harmful: see agreed description and final assessment in ADD 5 to the present report;

- Croatia's Incentive measures for research and development projects (HR013) does not need to be assessed: see agreed description in ADD 6 to the present report.

20. The COCG furthermore agreed at its meeting of 20 May 2019 the descriptions of Poland's notional interest deduction regime (PL011) and Investment Zone (PL013). The COCG will assess these regimes at forthcoming meetings.

21. The standstill review of Malta's new patent box (MT015) and Romania's profit tax exemption for companies with innovation and R&D activities (RO008) was put on hold until the relevant national legislation is adopted.

2. Rollback review process

22. Following the call for rollback notifications of measures enacted by end 2018, the following rollback measures were notified by Member States to the Group:

- France: old IP regime (FR053);

- United Kingdom: Gibraltar's treatment of asset holding companies (UK020).

23. The rollback of Gibraltar's treatment of asset holding companies (UK020) had already been agreed by the COCG at the end of 2018 (see previous 6-month report[3]).

[3] Doc. 14364/18 ADD 13.

24. The COCG approved the rollback of France's old IP regime (FR053) at its meeting of 30 January 2019: see ADD 7 to the present report.

25. At its meeting of 20 May 2019, the Group furthermore reviewed the state of play as regards the rollback of Lithuania's holding company regime (LT008) referred to in Annex 1. The Group will resume discussions on the rollback of this regime in October 2019.

IV. COCG GUIDANCE NOTES

1. Monitoring of the implementation of agreed guidance

26. The Group completed the monitoring the implementation of the 2000 Guidance on Rollback and Standstill in respect of: 1) finance branches; 2) holding companies; 3) headquarter companies[4].

27. Following Member States' responses to the questionnaire agreed by the COCG in July 2018, the Commission services tabled a draft assessment of EU Member States' compliance with this guidance at the COCG meeting of 11 April 2019, after further bilateral interactions with some delegations to clarify the factual situation.

28. The COCG concluded at this meeting that all EU Member States are compliant with the 2000 Guidance, with the exception of Lithuania, whose holding company regime (LT008) was assessed as partly non-compliant and will have to be rolled back. See Annex 1.

[4] See compilation of COCG agreed guidance in doc. 5814/2/18, pages 4-10.

29. The COCG resumed the monitoring of the implementation of the 2010 COCG Guidance on inbound payments at its meeting of 11 April 2019, following discussions at the subgroup meeting of 27 March 2019. The Group had previously agreed that no monitoring is needed at COCG level in respect of EU Member States following the adoption of EU hard law (ATAD) but that it would return to the issue of the monitoring of EU Member States' dependent and associated territories "*after the end of the screening of third country jurisdictions under the external strategy*"[5]. No consensus could however be found on this point in the Group: some delegations argued that these territories should fill in the questionnaire agreed in 2014, whilst others considered that the issues at stake are not relevant for many of these territories.

30. The issue of the connection of this monitoring exercise with the EU listing process was also discussed on this occasion: see section V.2 below (participation exemption regimes).

31. The COCG furthermore started at its meeting of 20 May 2019 the monitoring of the implementation of the 2013 COCG Guidance on intermediate (financing, licensing) companies, in line with its priority list[6]. A checklist was in this respect discussed by the Group, on the basis of a proposal by the Commission services, but will need further discussions during the incoming Presidency.

[5] Doc. 14750/16, paragraphs 24-28.
[6] Doc. 6603/18.

2. Draft guidance on notional interest deduction regimes

32. The COCG started, on the basis of a proposal by the Commission services, examining a draft guidance on notional interest deduction (NID) regimes, which is aimed at assisting Member States that would wish to implement a similar regime to those already assessed as not harmful by the Group (BE018, IT019, MT014 and PT018).

33. Work on this draft guidance is ongoing at the level of the subgroup on internal issues and will continue under the incoming Presidency.

3. Transfer pricing issues

34. In its conclusions of 6 December 2016, the ECOFIN Council "*invited the European Commission to investigate the need for revising past EU guidelines on transfer pricing issues in the light of OECD BEPS report on Aligning Transfer Pricing Outcomes with Value Creation (Actions 8-9-10) and to advise the Code of Conduct Group as appropriate*". The ECOFIN Council of 5 December 2017 reiterated this invitation.

35. In this context, the subgroup on criteria 3 and 4 examined a report by the Commission services. The Group concluded that:

- The misalignment between past EU guidelines on transfer pricing issues[7] and OECD BEPS reports on Action 8-9-10 is of limited impact: see Annex 2;

[7] Namely the Code of Conduct on transfer pricing documentation (2006), JTPF Guidelines on low-value-adding intra-group services (2011), JTPF Guidelines for Advance Pricing Agreements (APAs) in the EU (2007), and JTPF Report on Cost Contribution Arrangements on services (2012).

- There is therefore no necessity for revising the respective pre-BEPS JTPF reports: given the absence of contradictions, possible practical concerns in dealing with these topics should instead be resolved by interpreting these reports in line with the OECD Transfer Pricing Guidelines 2017, where those are relevant.

36. Furthermore, in its conclusions of 8 December 2015, the ECOFIN Council had invited the COCG "*to assess the opportunity, in the light of the fourth criterion, of developing EU guidance for implementing OECD BEPS conclusions on Actions 8-9-10 (aligning transfer pricing outcomes with value creation) and on Action 13 (Guidance on transfer pricing Documentation), with the support of the Commission and its advisory bodies, notably the EU Joint Transfer Pricing Forum*".

37. Following this invitation, the COCG asked the subgroup on criteria 3-4 to assess the opportunity of a coordinated implementation of OECD BEPS Actions 8-9-10 and 13, with a view, notably, to enhancing tax certainty and preventing cross-border disputes in an EU Internal Market context. It was however argued that such issues should not be dealt with in the Code of Conduct Group, given the specific technical expertise required. The COCG meeting of 20 May 2019 followed this conclusion.

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

1. Listing and de-listing issues

Revision of the EU list

38. On 5 December 2017, the ECOFIN Council adopted Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes[8]. More specifically it endorsed the 'EU list of non-cooperative jurisdictions for tax purposes' (Annex I), noted with satisfaction the meaningful commitments made at high political level by other jurisdictions (Annex II), recommended some defensive measures against non-cooperative jurisdictions (Annex III) and determined the Guidelines for further work in this area (Annex IV).

39. On 23 January[9], 13 March[10], 25 May[11], 2 October[12], 6 November[13] and 4 December[14] 2018, the ECOFIN Council subsequently adopted several amendments/updates to Annexes I and II of the Council conclusions of 5 December 2017.

40. A more significant revision of the Council conclusions of 5 December 2017 at the beginning of 2019 appeared to be necessary considering the end 2018 deadline for the implementation of most commitments taken by jurisdictions at the end of 2017. The COCG therefore mandated its subgroup on third countries to prepare draft Council conclusions and assess what the jurisdictions concerned had implemented by the agreed deadline.

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8 Official Journal of the European Union, C 438 2017 pages 5-24.
9 Official Journal of the European Union, C 29 2018 page 2.
10 Official Journal of the European Union, C 100 2018 pages 4-5.
11 Official Journal of the European Union, C 191 2018 pages 1-3.
12 Official Journal of the European Union, C 359 2018 pages 3-5.
13 Official Journal of the European Union, C 403 2018 pages 4-6.
14 Official Journal of the European Union, C 441 2018 pages 3-4.

41. The subgroup examined successive Presidency compromise texts of Council conclusions and reviewed the Commission services' draft assessments of what individual jurisdictions had implemented by end 2018 at its meetings of 14 November 2018, 18 January 2019 and 25 January 2019, as well as at a Fiscal Attachés meeting on 11 December 2018, whilst the Code of Conduct Group and the High Level Working Party on tax issues (HLWP) reviewed the remaining open issues, in relation to both the draft Council conclusions and draft assessments, at their meetings of 30-31 January and 27-28 February 2019.

42. At the Code of Conduct Group meeting of 30 January 2019, delegations agreed to seek commitments from six jurisdictions (Barbados, Belize, Curaçao, Mauritius, Saint Lucia and Seychelles) that had replaced harmful preferential tax regimes by measures of similar effect to amend or abolish these new regimes by 31 December 2019, and set a deadline for a response to 15 February 2019.

43. As a consequence, the Group agreed to wait until the 12 March 2019 ECOFIN to revise the EU list and set an internal cut-off date (24 February 2019[15]) for any new factual developments to be considered by the Group ahead of its meeting of 27 February. A similar approach had been followed by the Group at its meeting of 30 January 2019, which took into account factual developments that occurred throughout January 2019.

[15] In practice developments occurring until 26 February 2019 were taken into account.

44. The letters seeking commitment sent to these six jurisdictions by the COCG Chair were made public[16] and consent was sought to publish the commitment letters received in response on the Council's website[17]: only two of these jurisdictions (Barbados and Saint Lucia) refused consent. The six commitment letters received were examined by the COCG meeting of 27 February 2019 and the Group agreed on this occasion that the commitment letter received from Barbados is not sufficient.

45. On 12 March 2019, the ECOFIN Council adopted Council conclusions[18] that revised the EU list of non-cooperative jurisdictions for tax purposes (Annex I) and the state of play with respect to commitments taken by cooperative jurisdictions to implement tax good governance principles (Annex II) initially endorsed by the ECOFIN Council on 5 December 2017.

46. The outcome of this revision process is summarised in the infographics set out in Annex 3. Overall, 15 jurisdictions were listed in Annex I, whilst 34 jurisdictions were included in Annex II and 43 jurisdictions were deemed compliant with existing EU listing criteria.

47. Furthermore, the General Secretariat of the Council published outcomes of proceedings on all the measures examined under EU listing criteria 2.1 and 2.2 for which the rollback had been approved by the COCG since December 2018. These can be found on the Council webpage dedicated to the EU list: https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions.

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[16] Doc. 5981/19 FISC 95 ECOFIN 98.
[17] Doc. 6097/19 FISC 99.
[18] Official Journal of the European Union, C 114, 26.03.2019, pages 2-8.

48. These outcomes of proceedings only concerned the measures under COCG monitoring. With regard to the preferential tax regimes under monitoring by the OECD Forum on Harmful Tax Practices (FHTP), the COCG took stock of the latter's conclusions and as a result endorsed the rollback of the following 40 preferential regimes[19] before the agreed cut-off date:

- Barbados: BB001, BB002, BB003, BB004, BB005, BB007 and BB009;
- Botswana: BW001;
- Costa Rica: CR001;
- Curaçao: CW003;
- Jordan: JO001;
- Labuan Island: MY001;
- Malaysia: MY005, MY007, MY008, MY011 and MY013;
- Mauritius: MU001, MU002 and MU006;
- Montserrat: MS005;
- Panama: PA001, PA004 and PA007;
- Seychelles: SC001, SC002, SC002, SC004, SC005, SC007, SC008 and SC009;
- Thailand: TH01, TH002, TH003, TH004 and TH005;
- Uruguay: UY001, UY006 and UY007.

Where these regimes where replaced by similar harmful regimes or where they also covered manufacturing activities (outside FHTP scope), these were identified as new regimes (see section 3 below).

[19] The names of the regimes can be found in the updated COCG compilation in doc. 9639/3/18 REV 3.

De-listing of certain jurisdictions and other updates of Annex I since the revision of the EU list

49. Recalling paragraph 11 of the Council conclusions of 5 December 2017, the Council conclusions of 12 March 2019 confirmed that the Code of Conduct Group "*should recommend to the Council to update at any time, and at least once a year, the EU list set out in Annex I as well as the state of play set out in Annex II on the basis of any new commitment taken or of the implementation thereof; but, as from 2020 onwards, such updates of the EU list should be done no more than twice a year, leaving sufficient time, where appropriate, for Member States to amend their domestic legislation*" (paragraph 16), thereby agreeing to keep a dynamic process throughout 2019. As a result, the following developments were taken into account since the 12 March ECOFIN Council:

50. Barbados' Minister for international business and industry sent letters to the COCG Chair on 2 and 9 April 2019[20] committing to amend or abolish by the end of 2019 the measure of similar effect that replaced its harmful preferential regimes and which the COCG had identified on 30 January 2019 as falling under criterion 2.2[21].

    The COCG agreed at its meeting of 11 April 2019 that Barbados' commitment letters should be considered as sufficient and therefore that Barbados should be moved from Annex I to Annex II of the Council conclusions of 12 March 2019 (de-listing), in a new sub-section of section 2.2. As a result, the decision to delist Barbados was adopted by the ECOFIN Council on 17 May 2019.

[20] The second letter clarified the timeline of the foreseen reform.
[21] Doc. 5981/19.

51. Bermuda adopted additional amendments to its Economic Substance Regulation on 4 March 2019, thereby resolving the last area of concern, i.e. the wording related to core income generating activities for intellectual property assets. This legislative change was adopted after the cut-off date agreed by the COCG (24 February 2019)[22] and could therefore not be examined at technical level in time for the ECOFIN Council of 12 March 2019.

The COCG subgroup on third countries examined the above legislative amendments at its meeting of 27 March 2019 and concluded that Bermuda had implemented its commitment to introduce substance requirements under criterion 2.2[23] and could therefore be removed from Annex I (delisting). The COCG confirmed this conclusion at its meeting of 11 April 2019. As a result, the decision to delist Bermuda was adopted by the ECOFIN Council on 17 May 2019. However, it was added to section 2.2 of Annex II in relation to its commitment to address the concerns relating to economic substance in the area of collective investment funds by the end of 2019.

52. Aruba adopted on 4 April 2019 a National Ordinance introducing substance requirements for its transparency regime (AW013), whilst the respective National Decree containing the detailed substance requirements was officially published on 10 April 2019 and came into force the day following its publication.

The COCG subgroup on third countries examined the above legislative amendments at its meeting of 6 May 2019 and concluded that Aruba had implemented its commitment to remove the harmful features of its transparency regime[24] and could therefore be removed from Annex I (delisting). The COCG confirmed this conclusion by silence procedure on 7 May 2019. As a result, the decision to delist Aruba was adopted by the ECOFIN Council on 17 May 2019.

[22] Doc. 7212/19 DCL 1.
[23] Outcome of proceedings: see doc. 9671/19 + COR 1.
[24] Outcome of proceedings: see doc. 9646/19.

53. Dominica having ratified on 30 April 2019 the OECD Multilateral Convention on Mutual Administrative Assistance ("MAC") as amended, the COCG subgroup on third countries agreed at its meeting on 6 May 2019 that Annex I should be updated accordingly, but that Dominica should remain listed until it complies with criterion 1.1. The COCG confirmed this conclusion by silence procedure on 7 May 2019. This update was therefore also endorsed by the ECOFIN Council on 17 May 2019.

    At its meeting of 20 May 2019, the Group furthermore agreed to recommend to the ECOFIN Council of 14 June 2019 to de-list Dominica following its compliance with criterion 1.1.

54. In addition, it should be noted that Trinidad and Tobago sent to the COCG Chair commitment letters that were deemed sufficient by the COCG on 30 January 2019 in relation to the various criteria for which it had been listed since December 2017. However, Trinidad and Tobago could not be recommended for delisting due to the fact that it remains non-compliant with criterion 1.2 (exchange of information on request). This was indeed designed as a "super criterion" in the context of the criteria agreed by the ECOFIN Council in November 2016. This situation was reflected in the Council conclusions of 12 March 2019. Furthermore, it should be noted that Trinidad and Tobago still remains on the G20/OECD list of non-cooperative jurisdictions.

2. Scoping issues: geographical scope and future criteria

Extension of the geographical scope

55. The ECOFIN Council agreed in 2018 to extend the geographical scope of the EU listing exercise to Argentina, Mexico and Russia in 2019, as well as to Azerbaijan, Guyana, Kazakhstan, Kuwait, Lebanon, Moldova, New Zealand and Ukraine in 2020. At the COCG meeting of 20 May 2019, some delegations suggested reassessing such scope extension.

56. Following this ECOFIN Council decision, the COCG agreed at its meeting of 30 January 2019 to request the Commission services to start the screening of Argentina, Mexico and Russia against the agreed EU listing criteria and based on the agreed screening rulebook, in preparation of further discussions by the Group.

57. The COCG furthermore agreed on a letter to be sent out by the COCG Chair to these three countries with a view to identifying contact persons to answer questions in relation to this screening process. All three responded favourably, which allowed the Commission services to effectively start the screening process.

58. The COCG furthermore agreed the following timeline for the screening of these three countries: update on the screening process at forthcoming COCG/subgroup meetings, final technical report to the COCG by end October 2019, COCG discussion in November 2019, possible send-out of letters seeking commitment in December 2019, final assessment by the COCG in January 2020, and decision by the ECOFIN Council at the beginning of 2020.

59. In respect of the new criterion 3.2, the COCG agreed at its meetings of 11 April and 20 May 2019 that it would be covered during the screening phase and that Argentina, Mexico and Russia would be requested to comply by the end of 2019.

60. In line with the approach agreed in 2018, the COCG also reevaluated the case of Puerto Rico at its meeting of 11 April 2019 on the basis of existing economic data but concluded not to screen this jurisdiction at this stage.

61. Finally, in respect of the consistency of the EU list of non cooperative jurisdictions for tax purposes with the AML/CFT list, the COCG was informed about the rejection by the Council of the revision recently proposed by the European Commission.

Future criterion 1.4 (beneficial ownership)

62. The EU listing criteria approved by the ECOFIN Council in 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*".

63. Discussions on this future criterion took place in the subgroup on third countries meetings of 18 and 25 January 2019 but were subsequently put on hold due to questions related to ongoing discussions on a revision of the Terms of reference of the OECD Global forum.

Participation exemption regimes

64. The COCG resumed discussions on the implementation of the 2010 COCG guidance on inbound profit transfers, which mandates Member States - as well as their dependent and associated territories[25] - that grant a corporate tax exemption on foreign source dividends to apply either effective anti-abuse provisions (e.g. CFC rules) or a switch-over provision: see above section IV.1.

65. In this context, the issue was raised of whether this guidance should be applied to all the jurisdictions covered by the EU listing exercise with a view to ensuring equal treatment: many of Member States' dependent and associated territories indeed fall in the scope of this exercise. In addition, as requested by the COCG, Liechtenstein had completed in 2018 the rollback of its participation exemption regime (LI001)[26].

66. The subgroup on third countries discussed this issue at its meeting of 27 March 2019 and considered whether the jurisdictions covered by the EU listing exercise should be screened to check whether they have similar participation exemption regimes. However the subgroup concluded that this issue should be left out from the EU listing process, considering the workload resulting from the ongoing monitoring process. The COCG confirmed this conclusion at its meeting of 11 April 2019.

[25] These are indeed covered by the December 1997 Code of conduct.
[26] Doc. 12773/18

3. Monitoring the implementation of commitments taken by jurisdictions

General overview

67. As of the end of May 2019, the implementation of a total of 50 commitments[27] taken at high political level by 39 jurisdictions (5 in Annex I[28], 34 in Annex II) remain to be monitored by the Group:

Criterion	Number of jurisdictions committed
1.1	2
1.2	7
1.3	16
2.1	14
2.2	5
3.1	6[29]

27 This figure adds up the number of jurisdictions committed under each criterion (see table).

28 Belize, Bermuda, Fiji, Marshall Islands and Trinidad and Tobago.

29 Does not include the 3 jurisdictions (Nauru, Niue and Palau) that are committed to become member of the Inclusive Framework on BEPS or implement OECD anti-BEPS minimum standards "*if and when such commitment will become relevant*".

68. As of 20 May 2019, a total of 31 harmful tax regimes[30] remain to be rolled back under criterion 2.1, 29 of which are under monitoring by the COCG[31] and 2 by the OECD FHTP[32]. A detailed overview may be found in the updated compilation of preferential regimes examined by the COCG since its creation in March 1998[33].

69. This process of monitoring commitments continues in line with the procedural guidelines approved in February 2018[34]. In particular:

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

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

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[30] These figures don't include the harmful tax regimes of the US Virgin Islands (3) and Samoa (1), for which no sufficient high-level commitments to be monitored have been received yet.

[31] Regimes AG003, BZ001, BZ006, CH001, CH002, CH003, CH004, CH005, CK001, CK002, CK004, CK006, CR002, CW005, CW006, FJ001, FJ002, FJ003, KN002, LC005, MA006, MU010, MU012, MV001, NA001, NA002, SC010, SC011, and TT001.

[32] Regimes AU001 and JO002.

[33] Doc. 9639/3/18 REV 3 (it will be issued in June 2019).

[34] Doc. 6213/18

Procedural and political aspects of the monitoring process

70. A number of procedural issues had to be resolved by the Group since December 2018, notably:

- Request for deadline extensions: the subgroup on third countries and COCG discussed a number of deadline extension requests in the context of the revision of the EU list. The instances where such requests were deemed justified are set out in paragraphs 6 and 7 of the ECOFIN Council conclusions of 12 March 2019.

- End of the general "two out of three" exception for tax transparency criteria (1.1, 1.2 and 1.3) at the end of June 2019: the COCG reviewed the state of play in respect of this deadline and concluded at its meeting of 27 February 2019 that Israel and Vanuatu already completed their commitments. The Group also mandated its Chair to initiate a dialogue with the USA in respect of criterion 1.3.

- Jurisdictions that cannot (or do not want to) join the Global forum and/or Inclusive Framework: the Group discussed the particular situation of these jurisdictions and concluded at its meeting of 20 May 2019 that:

- Given its particular situation, it would be sufficient, for Taiwan to be compliant with criterion 1.1, that it sends data[35] to the EU Member States with which it has bilateral arrangements in place;

- Taiwan would not need to comply with criterion 3.2 for the moment, as long as it has no competent authority agreements for CbCR with EU Member States. The COCG will reassess the situation at the beginning of 2020;

- The COCG will ask the Inclusive Framework on BEPS to extend its monitoring regarding the implementation of the Country by country reporting (CbCR) minimum standard to Marshall Islands and Vanuatu.

• Monitoring of changes on criterion 2.1: the Group agreed to have a more stable process of identification of new preferential regimes in third country jurisdictions as from 2020, with two rounds of new identifications per year.

• Replacement measures of similar effect: the COCG noted in January 2019 that some jurisdictions had replaced old preferential regimes that it had assessed as harmful with measures of similar effect. The COCG agreed in this respect at its meeting of 30 January 2019 that:

[35] Member States that opt for reciprocal exchange with Taiwan will have to comply with the provisions under the GDPR (Articles 46 and 49) for the transmission of personal data towards a non-EU jurisdiction.

- it will consider on a case by case basis whether the regime/measure concerned should be assessed under criterion 2.1 or 2.2, with the understanding that the default option should be criterion 2.1[36];

- where assessed as harmful, the jurisdiction concerned would be requested to commit to amend/abolish the measure concerned by 31 December 2019;

- no grandfathering, no delays and no further replacement with measures of similar effect will be accepted.

The COCG furthermore discussed at its meeting of 20 May 2019 whether similar regimes in other jurisdictions should be identified, and agreed that the Commission services will carry out before end 2019 an initial screening to establish how many similar Foreign Source Income Exemption regimes fall within the scope of the EU list.

- Technical guidance on collective investment funds (CIVs): following the ECOFIN Council conclusions of 12 March 2019, the COCG discussed a draft technical guidance on Substance Requirements for CIVs, on the basis of input by the Commission services, at its meeting of 11 April 2019. The final technical guidance was approved through a silence procedure on 25 April 2019 and is set out in Annex 4.

- Coordination with FHTP on criterion 2.2: the COCG mandated its Chair to initiate a dialogue with the OECD FHTP on a possible alignment of its new standard on no/only nominal tax jurisdictions (approved by the Inclusive Framework end 2018) and EU's criterion 2.2 with a view to establishing a single global standard in this field.

[36] In the end only one of these measures (that of Barbados) was deemed to fall under criterion 2.2.

- Monitoring changes regarding criterion 2.2: the COCG agreed to send a letter to all jurisdictions that have enacted sufficient legislation on criterion 2.2 requesting them to communicate to the Group any new legislation or guidance that they may adopt in the future related to substance requirements and related transparency aspects.

- Follow-up questions on the new criterion 3.2: a number of jurisdictions raised technical and procedural questions on this new criterion, which the COCG discussed at its meetings of 27 February and 11 April 2019. The COCG concluded notably that:

  - For the first assessment of criterion 3.2, the COCG will take stock of the results of the Action 13 Phase 3 peer review by the BEPS Inclusive Framework.

  - Jurisdictions should have arrangements in place to exchange CbC reports with all Member States that they already have an international agreement with in effect for the year of the particular annual review.

  - To ensure consistency with the IF peer review process, the concept of “material shortcoming” should be clarified as equivalent to “significant non-compliance” and ‘systemic failure’, as defined in the CbCR MCAA and in the Terms of Reference, in order to cover all recommendations related to deficiencies in the CbCR legislation enacted by a jurisdictions and to the exchange of information framework, including the confidentiality and appropriate use of CbC reports.

  - Flexibility will be granted for developing countries that are not a financial center, a G20 country or an OECD member, and that have no multinational enterprise with a consolidated group revenue above EUR 750 million headquartered in their jurisdiction.

71. Furthermore, the COCG Chair received a number of political letters from jurisdictions and also held telephone conferences at political level in the context of the revision of the EU list and its follow-up (requests for delisting). Delegations were kept informed about these interactions, and in some cases response letters were agreed by the Group.

Identification of new preferential regimes under criterion 2.1

72. The following 16 new preferential regimes were identified by the COCG since the last 6-month progress report:

- BB010: Insurance regime (under FHTP monitoring);
- BZ003: Fiscal Incentives Act (under COCG monitoring);
- BZ004: General Income Tax Act (section 14) (under COCG monitoring);
- BZ005: Commercial free zone (CFZ) (under COCG monitoring);
- BZ006: exemption of foreign income (under COCG monitoring);
- CK007: Patent box (under FHTP monitoring);
- CK008: Holding company regime (under FHTP monitoring);
- CK009: Strategic Industries Incentives (under FHTP monitoring);
- CR002: manufacturing activities under the Free Zones regime (under COCG monitoring);

- CV003: Shipping regime (Budget law 2019) (under FHTP monitoring);
- CW006: exemption of foreign income (under COCG monitoring);
- LC005: exemption of foreign income (under COCG monitoring);
- MY016: manufacturing activities under the Pioneer status regime (high technology) (under COCG monitoring)
- QA001: Qatar Science and Technology Park (QSTP) (under FHTP monitoring);
- SC011: exemption of foreign income (under COCG monitoring);
- SZ001: Special economic zones (under COCG monitoring).

73. In relation to the manufacturing activities falling under regimes that were deemed amended (not harmful) for both their IP and non-IP parts by the FHTP, the COCG agreed not to identify them as new regimes. Only when the non-IP parts of these regimes would be deemed by the FHTP as "amended (out of scope)" or "out of scope" the COCG would then have to identify them as new regimes to be reviewed under COCG criteria.

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

- The foreign income exemption regimes of Belize (BZ006), Curaçao (CW006), Mauritius (MU010), Saint Lucia (LC005) and Seychelles (SC011) are harmful: the assessments of these regimes have already been published[37] by the COCG in February 2019 together with the letters seeking commitment by these jurisdictions;
- Cook Islands' Overseas insurance regime (CK003) does not meet the Code of Conduct gateway criterion: see ADD 8;
- Costa Rica's manufacturing regime (CR002) is harmful: see ADD 9;
- Malaysia's manufacturing regime (MY016) is not harmful: see ADD 10.

[37] Doc. 5981/19.

75. A letter seeking commitment was also sent to Jordan in February 2019 regarding its development zone regime (JO002), which was deemed potentially harmful by the FHTP.

76. With regard to the other regimes falling under FHTP monitoring, the COCG will take stock of FHTP assessments at forthcoming meetings.

77. The COCG assessed as sufficient the commitment letters received from Antigua and Barbuda (AG003), Australia (AU001), Belize (BZ006), Costa Rica (CR002), Curaçao (CW005 and CW006), Jordan (JO002), Mauritius (MU010 and MU012), Morocco (MA006), Saint Lucia (LC005), Saint Kitts and Nevis (KN002) and Seychelles (SC010 and SC011). This was reflected in Annex II of the conclusions adopted by the ECOFIN Council on 12 March 2019.

<u>Identification of new measures under criterion 2.2</u>

78. The COCG meeting of 30 January 2019 agreed to identify the measure introduced by Barbados in replacement of its old harmful preferential regimes as a new measure falling under criterion 2.2, namely the introduction of regressive corporate income tax rates (as low as 1%) applicable to all entities.

<u>Updates of Annex II since the revision of the EU list</u>

79. Morocco having joined the Inclusive Framework on BEPS in March 2019, the Code of Conduct Group agreed on 11 April 2019 that Morocco should be removed from section 3.1 of Annex II. This update was endorsed by the ECOFIN Council on 17 May 2019.

4. Further coordination of defensive measures against listed jurisdictions

80. The ECOFIN Council conclusions of 5 December 2017 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) and a compilation of Member States' preliminary responses was prepared at the beginning of 2018[38].

81. Member States' delegations were therefore invited at the COCG meeting of 27 February 2019 to notify any changes compared to their previous notification. The updated compilation that resulted from this exercise was discussed at the subgroup meeting of 27 March 2019.

82. Discussions on further coordinated defensive measures against non-cooperative jurisdictions in the tax area will resume under the incoming Presidency.

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[38] See summary in doc. 7232/18 DCL 1.

ANNEX 1

Compliance of EU Member States with the

COCG Guidance on standstill and rollback (2000)

Compliance with 2000 Guidance				Monitoring of the results
	Finance Branch	**Headquarters Company**	**Holding Company**	Specific steps to be taken
Austria	Compliant	Compliant	Compliant	
Belgium	Compliant	Compliant	Compliant	
Bulgaria	Compliant	Compliant	Compliant	
Cyprus	Compliant	Compliant	Compliant	
Czech Republic	Compliant	Compliant	Compliant	
Germany	Compliant	Compliant	Compliant	
Denmark	Compliant	Compliant	Compliant	
Estonia	Compliant	Compliant	Compliant	
Greece	Compliant	Compliant	Compliant	
Spain	Compliant	Compliant	Compliant	
Finland	Compliant	Compliant	Compliant	
France	Compliant	Compliant	Compliant	
Croatia	Compliant	Compliant	Compliant	

Hungary	Compliant	Compliant	Compliant	
Ireland	Compliant	Compliant	Compliant	
Italy	Compliant	Compliant	Compliant	
Latvia	Compliant	Compliant	Compliant	
Lithuania	Compliant	Compliant	Partly non-compliant	Rollback
Luxembourg	Compliant	Compliant	Compliant	
Malta	Compliant	Compliant	Compliant	
Netherlands	Compliant	Compliant	Compliant	
Poland	Compliant	Compliant	Compliant	
Portugal	Compliant	Compliant	Compliant	
Romania	Compliant	Compliant	Compliant	
Sweden	Compliant	Compliant	Compliant	
Slovenia	Compliant	Compliant	Compliant	
Slovak Republic	Compliant	Compliant	Compliant	
United Kingdom	Compliant	Compliant	Compliant	

Regarding the effects of the participation exemption under the Lithuanian tax rules (LT008)[39]:

- o the capital gains are exempt; while
- o the corresponding capital losses are deductible;

  There are two limitations: such capital losses can be deducted:

  i) only in the year they are incurred (no loss carry forward); and

  ii) to the maximum amount of other capital gains from the sale of other securities.

In practice, it may thus happen that, if in a particular taxable year the holding company incurs capital losses from the disposal of its qualifying participations, the treatment of such losses may be:

- Either fully deductible when the company has obtained sufficient capital gains from the sale of other securities in that year or partly deductible if the amount of the capital gains is not high enough to fully deduct the capital losses;
- Or not deductible at all, when the company does not obtain other capital gains in that year (the capital losses would not be carried forward).

In light of the asymmetry revealed in the first scenario, the COCG is of the view that the Lithuanian tax rules do not comply with the 2000 Guidance on Holding companies, and that such non-compliance is partial because of the two limitations (in time and amount) described above.

[39] More than 10% voting rights for a holding period of more than two years.

ANNEX 2

Analysis of past EU guidelines on transfer pricing issues in the light of OECD BEPS reports on Actions 8-9-10

1. **Code of conduct on transfer pricing documentation (2006):**
    - o Documentation requirements in the JTPF Code of Conduct on transfer pricing documentation are generally less detailed than those of the OECD TPG.
    - o The JTPF report recommends a master file and local file, but this does not create an obligation for Member States. In fact, the report recognizes that one or more Member States may decide not to have transfer pricing documentation at all.
    - o Under the OECD TPG, Member States committed, alongside other jurisdictions worldwide, to introduce the standard documentation required by Action 13. This consists of a master file, local file and country-by-country reports (CbCR).
    - o It should be noted that although CbCR reporting is missing from the JTPF report, Member States have already implemented it and apply this minimum standard.

2. **JTPF Guidelines on low-value-adding intra-group services (2011):**
    - o JTPF Guidelines are less specific in determining which services should be considered as low-value-adding intra-group services, whereas the OECD TPG include positive and negative lists.
    - o The OECD TPG are less strict with regard to the benefit test, compared to the JTPF Guidelines.
    - o The mark-up in the OECD TPG is fixed at 5%, whereas the mark-up in the JTPF Guidance is more flexible and can be set within a range of 3 to 10%. It is mentioned that this can often be around 5%.
    - o The difference in the percentage of the mark-up is not substantial; the principle essentially remains the same.

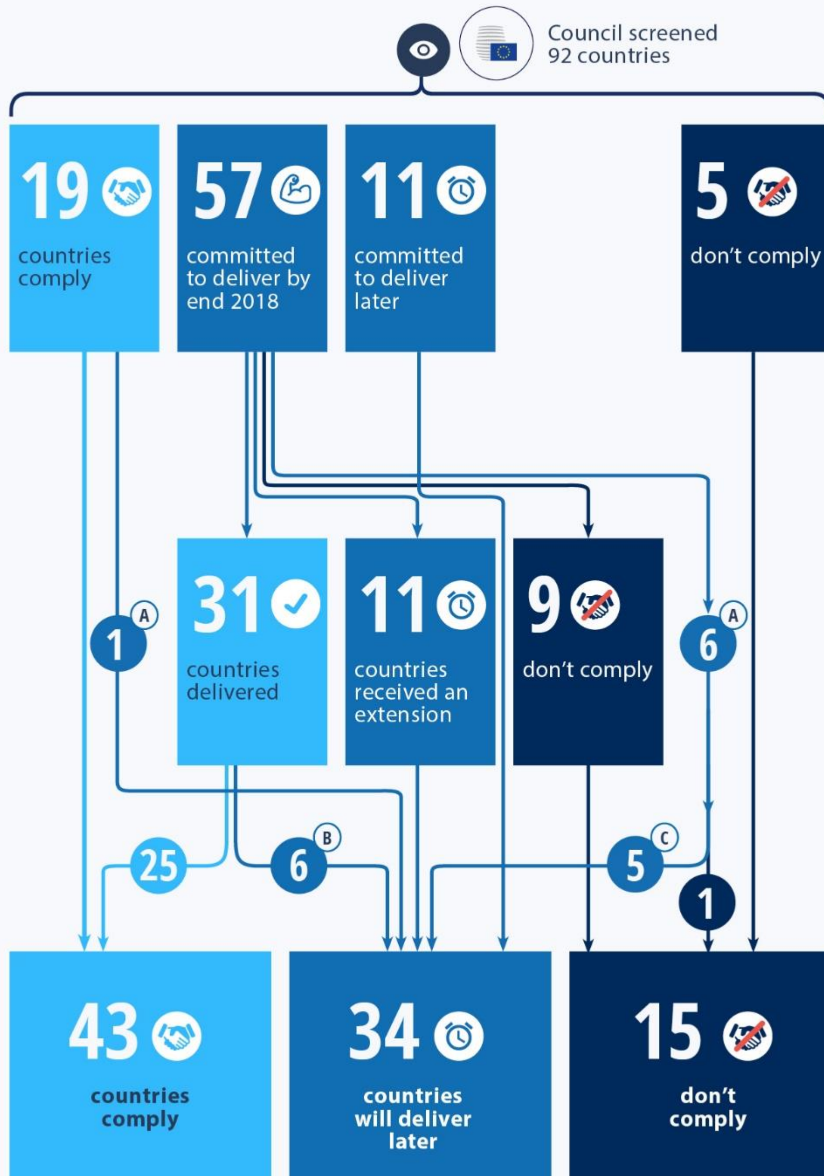
3. **JTPF Guidelines for Advance Pricing Agreements (APAs) in the EU (2007):**

- o The Guidelines for APAs primarily involve best practices for administrative procedures and in this respect, bear no direct relevance to the modifications that the BEPS project brought to the OECD TPG.
- o This said, the best practice on how to perform the functional analysis in APAs refers to the assumption of risk and includes a brief analysis of the relevant concepts as they stood in 2007. Ever since, the thinking has moved on, in particular due to the growing importance of intangibles assets and the digitalisation of the world economy.
- o Although the content of the functional analysis in the JTPF Guidelines is not contradictory to the current state of play, it looks incomplete.
- o In this light, when it comes to a functional analysis on the assumption of risk and how this is attributed, it would be necessary that Member States rely on the more thorough recent guidance on remuneration for DEMPE functions under the post-BEPS OECD TPG.

4. **JTPF Report on CCAs on services (2012):**

- o The JTPF Report on CCAs on services not creating Intellectual Property (IP) presents cash or in kind payments by participants in a CCA as being consistent with the arm's length principle. Thus, active involvement is not a requirement for participating in a CCA on services not creating IP. The level of influence on decision-making varies depending on the type of CCA, the expertise of the participants and the amount of costs allocated to the respective participants.

- Differently, the post-BEPS OECD TPG generally require control over risk and financial capacity, to assume the risks.
- CCAs on services not creating IP do not require the assumption of significant risks. This context differs from CCAs on IP development where the undertaken risks are critical and associated with uncertain and distant benefits.
- To the extent that based on the facts of each case, the assumption of risk is important for CCAs on services not creating IP, Member States should take into account the most recent thinking on risks, as this features in the OECD TPG.


Taxation: EU list of non-cooperative jurisdictions
Council screened 92 countries
19 countries comply
57 committed to deliver by end 2018
11 committed to deliver later
5 don't comply
31 countries delivered
11 countries received an extension
9 don't comply
1 A
6 A
25
6 B
5 C
1
43 countries comply
34 countries will deliver later
15 don't comply
A introduced a new harmful regime
B still have commitments to deliver later
C took sufficient commitments
Council of the European Union
General Secretariat
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ANNEX 4

Technical Guidance on

Substance Requirements for Collective Investment Funds (CIVs)

The Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes adopted on 12 March 2019 acknowledged that "further work will be needed to define acceptable economic substance requirements for collective investment funds under criterion 2.2" and invited the Code of Conduct Group (COCG) to "provide further technical guidance to the jurisdictions concerned by mid 2019" (paragraph 9).

This note provides technical guidance on the specific economic substance requirements for CIVs, which are complementary to but also distinctive from and apply in addition to the requirements for fund management activities. While CIVs may include undertakings raising capital from multiple investors and investing it for the benefit of the latter, fund managers perform investment management, including portfolio and risk management. The fund management activities were targeted and finally addressed within the general substance requirements of the 2.2 criterion in the EU listing process.

This guidance details the four pillars against which the COCG has agreed to scrutinize CIV's legislation in relevant jurisdictions[40].

[40] Bahamas, Bermuda, British Virgin Islands (BVI) and Cayman Islands are the four jurisdictions deemed relevant at this stage of the listing process. All have a significant fund industry but raise concerns as to the robustness of the respective domestic legislative framework.

The four pillars are:

a) Legislative and Administrative Framework for CIVs' Authorisation and/or Registration
b) Legislative and Administrative Framework for CIVs' Supervision and Rules' Enforcement
c) Legislative and Administrative Framework regarding Valuation, Accounting and Auditing of CIVs
d) Depositary rules.

In line with the principles of the EU listing process, the requirements in relation to funds legislation for third country jurisdictions do not go beyond the standards applicable to Member States.

Annex I includes background information on the adoption of the four pillars' approach for the application of the respective provisions of the Scoping Paper.

Annex II includes information on the progress made so far with the jurisdictions concerned applying the four pillars' approach. It also includes information on how economic substance requirements apply to fund management activities in each one of these jurisdictions, in line with criterion 2.2.

Technical Guidance

The four pillars have been developed in the context of the dialogue with the relevant jurisdictions, drawing inspiration from the AIFMD. The outcome of this dialogue provides the basis for the present technical guidance.

1. Aspects Analysed Under the Four Pillars

Under each pillar, the following (non-exhaustive) aspects may be in particular analysed taking also into account the specific factual and legal circumstances of each jurisdiction (point 3).

a) Authorisation and/or Registration (Pillar 1)

To determine if the domestic framework is adequately robust in this respect, the following may be considered.

- Scope and types of CIVs subject to authorisation and/or registration
- Provisions on registration and authorization of all funds that can be established or operated in the jurisdiction
- Framework of verification of the information provided upon registration and of ongoing monitoring of compliance with requirements for CIVs.

b) Supervision and Rules' Enforcement (Pillar 2)

To determine if the domestic framework is adequately robust in this respect, the following may be considered.

- Presence of authority with supervisory oversight over the CIVs
- Requirement of regular reporting on funds' activities and reporting of any changes
- Competences and powers granted to the supervisory authority for the purpose of effective exercise of its duties, e.g. power to require and to access documents and other data, power to enter premises and carry out on-site inspection, power to refer matters for criminal investigations, power to require the (temporary) cessation of activities etc.
- Sanctions' framework in case of non-compliance with the law, including administrative and criminal sanctions
- Staffing and resources of the supervisory authority permitting the effective exercise of its duties and powers, including assessment of the size of personnel in relation to the size of the industry, IT and data analytics systems

- Adherence to and implementation of regional or international standards of identification of financial instruments (e.g. ISIN) and entities (e.g. Legal Entity Identifier) for operational, supervisory and reporting purposes
- Any available track record of international cooperation and exchange of information, including for the purpose of cross-border investigations and enforcement
- Any available track record of investigations and sanctions imposed.

c) Valuation, Accounting and Auditing of CIVs (Annex Activities) (Pillar 3)

To determine if the domestic framework is adequately robust in this respect, the following may be considered.

- Requirements for proper evaluation of funds' assets
- Accounting standards applicable to CIVs
- Auditing standards applicable to CIVs

d) Depositary rules (Pillar 4)

To determine if the domestic framework is adequately robust in this respect, the following may be considered:

- Requirements for the appointment of a depositary (or equivalent) by certain or all types of funds and/or their managers
- The duties and functions of the depositary (or equivalent), e.g. in relation to overseeing compliance, record-keeping etc.
- The types of entities that qualify as depositary (or equivalent), and the requirements for respective authorisation/registration and ongoing supervision.

2. Prioritization of the Pillars

Pillars 1 and 2 (authorization/registration and supervision/enforcement) are usually prioritized in the context of assessment of the relevant framework. This is because all jurisdictions concerned have a significant fund industry and therefore can be expected to already have in place an adequate framework for depositary rules and annex activities.

3. Specific Circumstances of Each Jurisdiction

The assessment of the various elements of the framework must take into account the specific factual and legal circumstances in each jurisdiction. The objective is to ensure that the legislation required is reasonable, fit for purpose, proportionate and operational in practice.

An example in this respect is the sanctions' framework, e.g. penalties, limitation periods for the imposition of sanctions etc.. A 6 years' limitation period (e.g. as provided in the draft legislation of one jurisdiction) might seem rather short. However, it might be sufficient, if the supervisory authority of that jurisdiction has the necessary capacity and resources to effectively administer sanctions within that period. Track records should be taken into account, where possible.

Another example relates to the staffing of the supervisory authority. No one-size-fits-all approach can be applied. Instead, the number of employees must be assessed taking into account their expertise as well as the IT systems available and the size of the funds' industry in the jurisdiction.