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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	9637/18 FISC 241 ECOFIN 555
Subject:	Code of Conduct (Business Taxation) – New multiannual work package

Delegations will find in Annex the new multiannual work package, as endorsed by the Council at its meeting held on 22 June 2018 (see doc. 10373/18).

ANNEX

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[1], 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.

[1] 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[2] in the light of the OECD BEPS report on Actions 8-9-10 on the basis of a proposal by the Commission services[3], 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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[2] 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).

[3] 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.