



Council of the
European Union

**Brussels, 7 July 2023
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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group (Business Taxation)
Subject: Code of Conduct Group (Business Taxation)
- Work Programme under the Spanish Presidency

Delegations will find attached the work programme under the Spanish Presidency as agreed by the Code of Conduct Group (Business Taxation).

CODE OF CONDUCT GROUP (BUSINESS TAXATION):

WORK PROGRAMME UNDER THE SPANISH PRESIDENCY

1. In its conclusions of 16 June 2023 (doc. 10157/23), the Ecofin Council welcomed the positive effect of the Code of Conduct and the work of the Group on reducing harmful tax practices and the decrease of preferential tax regimes both at the EU level and globally. The EU Ministers also welcomed the progress achieved by the Code of Conduct Group during the Swedish Presidency, in particular with regard to the standstill and rollback notifications, the revision of the EU list of non-cooperative jurisdictions in February 2023 and the work on further strengthening of the EU listing process;
2. Furthermore, the Ecofin Council notably:
 - a. endorsed the progress reached in the assessment of standstill and rollback notifications by the Group and asked the Group to continue monitoring standstill and the implementation of the rollback, endorsed the assessments agreed by the Group of actual effects of individual measures as agreed by the Group and asked the Group to continue monitoring the individual measures;
 - b. invited the Group to continue an effective dialogue with jurisdictions and monitoring, so that jurisdictions continue to fulfil their respective commitments and comply with the EU listing criteria in accordance with the agreed deadlines;
 - c. welcomed in particular the progress made by jurisdictions that completed the reform of their foreign-source income exemption (FSIE) regimes within the suggested deadline and the ongoing dialogue with some other jurisdictions that are in the process of reforming their FSIE regime with a view to include foreign-source capital gains in the scope of the reform; also

- d. welcomed the progress made with no or only nominal tax jurisdictions in the context of monitoring the implementation of economic substance requirements under criterion 2.2 and with relevant jurisdictions regarding the implementation of the country-by-country reporting (CbCR) anti-BEPS minimum standard (criterion 3.2) and regarding the implementation of automatic exchange of information (AEOI) (criterion 1.1) and exchange of information on request (criterion 1.2);
 - e. called on the Group to continue the work to incorporate beneficial ownership as a fourth tax transparency criterion;
 - f. called on the Group to keep working on the evaluation of the application by the Member States of defensive measures in the tax area towards non-cooperative jurisdictions, in accordance with the agreed Guidance, and report to the Council on further progress in these matters;
 - g. welcomed the work of the Group, as set out in the Group's report, on further strengthening the EU list, including the possible extension of the geographical scope of the EU list as soon as possible and asked the Group to keep working and report to the Council on further progress in these matters;
 - h. invited the Group to report back to the Council on its work during the Spanish Presidency.
3. Furthermore, in its conclusions of 8 November 2022 on the reform of the Code of Conduct the Ecofin Council notably invited the Code of Conduct Group to continue its work on developing or, where appropriate, revising the agreed guidance to enhance clarity and present its outcomes to the Council and invited the Code of Conduct Group to develop and submit for approval by the Council proposals for guidance on specific tax features of general application that fall within the scope of the revised Code of Conduct (Business Taxation).
 4. Against this background, this note sets out the proposed COCG work programme for the duration of the Spanish Presidency of the Council (second semester of 2023).

I. General aspects

5. The revised Code of Conduct for business taxation set out in the Resolution of the Council and the representatives of the governments of the Member States meeting within the Council of 8 November 2022 applies from 1 January 2023 and constitutes a mandate for the work during the Spanish Presidency.
6. The Code of Conduct Group and its Chair, Ms. María José Garde Garde, will propose to take forward a new multiannual work programme within the existing mandate.

II. Monitoring of the standstill and the implementation of the rollback

7. The COCG will monitor developments in administrative practices of Member States, complete the review of the tax measures notified by Member States under the standstill and rollback process for the year ending on 31 December 2022.
8. The Group will also continue the monitoring of actual effects of some regimes for which it was decided to have regular monitoring. Following the overview of Existing Cooperative Compliance Programmes in the Member States, the Commission will explore the measures further.
9. The Group will focus on notifications by the Member States under the standstill procedure in accordance with the Guidance on the notification of tax measures under paragraph E of the Code, including the upcoming notification of tax features of general application.

III. Links with third countries

10. The COCG will continue to monitor jurisdictions covered by the current geographical scope and the implementation of the commitments taken by cooperative jurisdictions.

11. The EU list of non-cooperative jurisdictions for tax purposes will be updated by the Ecofin Council foreseeably in October 2023 with the following objectives:

- take the necessary decisions in the context of the upcoming listing;
- remove from Annex I jurisdictions that addressed pending issues;
- list in Annex I jurisdictions which do not comply with the requirements of the EU listing criteria for jurisdictions which are under screening, or have declined to undertake appropriate commitments to comply with the EU listing criteria;
- include in Annex II jurisdictions which have undertaken commitments to cooperate with the EU and to take the necessary steps towards complying with one or more EU listing criteria that their systems have been found to be inconsistent with;
- remove from Annex II jurisdictions that fulfilled their commitments.

For this purpose, consideration should be given in particular to the monitoring of jurisdictions' progress on amending or abolishing foreign source income exemption (FSIE) regimes (criterion 2.1).

12. Beyond the topics mentioned above, the Group will also work on:

- a. taking stock mid-term of progress by jurisdictions on criterion 1.1, following the publication of 2023 Global Forum peer reviews on AEOI in order to identify remaining gaps ahead of the deadline for commitments in 2024;
- b. the future criterion 1.4 to incorporate beneficial ownership as a fourth tax transparency criterion of the EU screening process;
- c. the screening exercise for trusts and other legal arrangements in 2.2 jurisdictions, in close cooperation with the Forum on Harmful Tax Practices;
- d. the monitoring of economic substance requirements for collective investment funds (CIVs) and partnerships under criterion 2.2;
- e. the assessment of commitments under criterion 3.2 following the Inclusive Framework Action 13 peer review report in the autumn of 2023;
- f. the extension of criterion 3.2 to jurisdictions which joined the Inclusive Framework after 31 December 2017, including requests of commitments;

- g. the evaluation of the application by the Member States of defensive measures in the tax area towards non-cooperative jurisdictions, in accordance with the agreed Guidance;
 - h. further strengthening the EU list;
 - i. the possible extension of the geographical scope of the EU list.
13. The Chair, Ms. María José Garde Garde (Spain), will continue the procedural/political dialogue with jurisdictions, as necessary.

IV. Organisation of work

14. It is scheduled to organise 3/4 meetings of the Code of Conduct Group (on 3 July, 3 October, (poss. 24 October) and 22 November 2023), supported by the subgroups, as appropriate, to make progress on items falling within its remit and report to the Council before the end of this Presidency.
15. On the occasion of 25 years of existence of the Group (1998-2023), the informal HLWP on 21 and 22 September in Madrid will allow reflection on the impact of the Code addressing harmful tax competition in the EU and beyond.
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