



Council of the
European Union

Brussels, 22 September 2022
(OR. en)

12612/22

LIMITE

FISC 185
ECOFIN 885

NOTE

From: General Secretariat of the Council

To: Delegations

Subject: Code of Conduct Group report to the Council outlining information about updates of Annexes regarding specific jurisdictions, both listing and delisting

**Code of Conduct Group report to the Council outlining information about updates of
Annexes regarding specific jurisdictions, both listing and delisting**

I. INTRODUCTION

1. On 24 February 2022, the Council updated 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) ¹ initially endorsed by the ECOFIN Council on 5 December 2017² and subsequently revised by the Council on 23 January 2018,³ 13 March 2018,⁴ 25 May 2018⁵, 2 October 2018,⁶ 6 November 2018,⁷ 4 December 2018,⁸ 12 March 2019,⁹ 22 May 2019,¹⁰ 14 June 2019,¹¹ 17 October 2019,¹² 8 November 2019¹³, 5 December 2019 ¹⁴, 18 February 2020¹⁵, 6 October 2020¹⁶, 22 February 2021¹⁷ and 5 October 2021¹⁸ .

¹ OJ C 103, 3.3.2022, p. 1-4.

² OJ C 438 2017, p. 5-24.

³ OJ C 29 2018, p. 2.

⁴ OJ C 100 2018, p. 4-5.

⁵ OJ C 191 2018, p. 1-3.

⁶ OJ C 359 2018, p. 3-5.

⁷ OJ C 403 2018, p. 4-6.

⁸ OJ C 441 2018, p. 3-4.

⁹ OJ C 114 2019, p. 2-8.

¹⁰ OJ C 176, 22.5.2019, p.2.

¹¹ OJ C 210, 21.6.2019, p.8.

¹² OJ C 351, 17.10.2019, p. 7.

¹³ OJ C 386, 14.11.2019, p.2.

¹⁴ OJ C 416, 11.12.2019, p.10.

¹⁵ OJ C 64 2020, p. 8-14.

¹⁶ OJ C 331 2020, p. 3-5.

¹⁷ OJ C 66, 26.2.2021, p. 40-45.

¹⁸ OJ C 413I, 12.10.2021, p. 1-4.

2. As agreed by the ECOFIN Council in its conclusions of 12 March 2019, as from 2020 onwards, updates of the EU list should be done no more than twice a year.

3. In its conclusions of 24 February 2022¹⁹ the ECOFIN Council underlined the importance of promoting and strengthening tax good governance mechanisms, fair taxation, global tax transparency and fight against tax fraud, evasion and avoidance, both at the EU level and globally, and appreciated the continuous productive cooperation on tax matters between the EU Code of Conduct Group on Business Taxation and most jurisdictions around the world;

4. In its conclusions of June 2022²⁰ 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, invited the Code of Conduct Group (further referred to as "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. The Council also welcomed the recent dialogue with jurisdictions engaged in reforming their foreign source income exemption regimes (FSIE), 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);

5. In that spirit, the Group continued interactions and dialogues with the relevant jurisdictions through its elected Chair (Ms Lyudmila Petkova), supported by the General Secretariat of the Council and with technical assistance of the Commission services. The Group mandated the Subgroup to discuss urgent issues at the meeting on 6 July, 9 and 15 September 2022 in the run-up to its meeting on 20 September 2022.

¹⁹ Doc. 6437/22.

²⁰ Doc. 10346/22.

6. In the light of the above, and based on an objective assessment of the most recent developments, the October 2022 update of the EU list should, as appropriate, allow the Council to:

- take necessary decisions in the context of the upcoming listing;
- remove from Annex I jurisdictions that took sufficient steps to address the identified issues, and move them to Annex II where relevant;
- list in Annex I jurisdictions which do not comply with the requirements of the EU list criteria for jurisdictions which are under screening;
- 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 list criteria that their tax systems have been found to be inconsistent with; and
- remove jurisdictions that completed their commitments from Annex II.

II. UPDATES OF ANNEX I

Listing

7. Regarding the monitoring of the implementation of economic substance legislation, in July 2021 the Group agreed to take stock of the assessment by the Forum on Harmful Tax Practices (FHTP) of no or only nominal tax jurisdictions to the extent that the EU criterion 2.2 and the FHTP standard overlap in terms of scope and jurisdictions concerned. In light of the FHTP assessment from November 2021, a number of jurisdictions committed to remedy the deficiencies identified in time to allow the FHTP to conclude at its subsequent meeting in 2022 that their recommendations had been addressed.

8. At its meeting on 2 June 2022, the Group decided to take into account the conclusions reached by the FHTP at the April 2022 meeting on the 2021 monitoring exercise (which relates to the enforcement of the economic substance requirements for the year 2019 and 2020) and any progress made by the jurisdictions concerned in the monitoring areas up until the update of the EU list in October 2022.

9. Following the April 2022 meeting of the FHTP, Anguilla was given four recommendations with regard to the effective implementation of substance requirements. Based on the information provided by the jurisdiction on whether/how they have addressed the deficiencies identified in the monitoring areas concerned (i.e. substance returns/IT systems, compliance actions, statistical data, and exchanges of information), the Group considers that Anguilla has not fulfilled its commitment and recommends to include this jurisdiction in the EU list of non-cooperative jurisdictions for tax purposes (Annex I).

10. At the same FHTP meeting, The Bahamas was given two recommendations with regard to the effective implementation of substance requirements. Based on the information provided by the jurisdiction on whether/how they have addressed the deficiencies identified in the monitoring areas concerned (i.e., compliance actions, and exchanges of information), the Group considers that The Bahamas has not fulfilled its commitment and recommends to include this jurisdiction in the EU list of non-cooperative jurisdictions for tax purposes (Annex I).

11. Turks and Caicos Islands was given four recommendations at the April 2022 FHTP meeting with regard to the effective implementation of substance requirements. Based on the information provided by the jurisdiction on whether/how they have addressed the deficiencies identified in the monitoring areas concerned (i.e. substance returns/IT systems, compliance actions, statistical data, and exchanges of information), the Group considers that Turks and Caicos Islands has not fulfilled its commitment and recommends to include this jurisdiction in the EU list of non-cooperative jurisdictions for tax purposes (Annex I).

III. UPDATES OF ANNEX II

1.1 Commitment to implement the automatic exchange of information, either by signing the Multilateral Competent Authority agreement or through bilateral agreements

12. In accordance with the Council conclusions agreed by Ecofin on 18 February 2020, Turkey was given a deadline until 31 December 2020 to comply with the requirements for effective exchanges of information under the OECD Common Reporting Standard (which corresponds to criterion 1.1 under the EU list).

This deadline extension followed the engagement of Turkey with the Code of Conduct Group for business taxation in 2019 and their reassurances that progress would be made by end of 2020. In its Conclusions of 22 February 2021, the Council took note of the state of play and regretted that Turkey had not made material progress in the effective implementation of the automatic exchange of information with all EU Member States. The Council reiterated that the effective exchange of information with all Member States is a condition for Turkey to comply with criterion 1.1 of the EU list in accordance with the Council conclusions of February 2020. In its conclusions of February 2021, the Council called on Turkey to fully commit at a high political level by 31 May 2021 to effectively activate automatic information exchange relationships with the 6 remaining Member States by 30 June 2021. The Council also called on Turkey to send to all Member States information for fiscal year 2019 no later than by 1 September 2021. Finally, the Council conclusions called on Turkey to send such information for fiscal years 2020 and 2021 in accordance with the OECD calendar for the automatic exchange of information with all Member States and no later than by, respectively, 30 September 2021 and 30 September 2022.

13. In its Conclusions of 5 October 2021, the Council took note of the commitment that Turkey undertook on 19 May 2021 to effectively activate automatic information exchange relationships by 30 June 2021 with all Member States with which Turkey has diplomatic relations and underlined that further engagement and technical work on effective exchange of data from Turkey towards all Member States will be required to meet the agreed international standard and fully comply with the conclusions of the Ecofin Council of 22 February 2021.

In its Conclusions of 24 February 2022, the Council considered that the progress made by Turkey is still not fully in line with the Conclusions of the ECOFIN Councils of 22 February 2021 and 5 October 2021 and called on Turkey to begin or continue the technical work on the effective exchange of data from Turkey with all Member States to meet the agreed international standards and fully comply with the requirements set in the above mentioned conclusions of the ECOFIN Council. The Council reiterated that the effective automatic exchange of information with all Member States according to the OECD calendar and standard is a condition to fulfil criterion 1.1 of the EU list and to fully comply with the requirements set out in the above mentioned Council conclusions.

14. In 2022, the Group monitored technical progress concerning the effective exchange of information with the EU Member States and noted that Turkey solved all outstanding technical issues and activated the exchange of data with 26 Member States for fiscal years 2019 and 2020. The Group concluded that despite the progress, Turkey is still not in line with the commitments required under the above mentioned Council conclusions with regard to the exchange of information with all Member States. Therefore the reference to Turkey should be maintained in section 1.1 of Annex II.

2.1 Existence of harmful tax regimes

– Harmful tax regimes in the scope of the FHTP

15. On 8 June 2022 the Group sent a letter to Armenia requesting this jurisdiction to reiterate to the Group the commitment made to the FHTP to amend or abolish the Free Economic Zones and Information Technology Projects regimes by 31 December 2023²¹. In light of the high level commitment letter received from Armenia within the set timeframe²², the Group recommends to include this commitment in Annex II.

²¹ WK-R 8496/22.

²² WK-R 12175/22.

16. On 8 June 2022, the Group also sent a letter to Eswatini requesting it to reiterate its commitment to the FHTP to amend or abolish the Special Economic Zones regime by 31 December 2023²³. On 28 July 2022, Eswatini committed at a high political level to amend or abolish the regime²⁴, and the Group consequently recommends to reflect this commitment in Annex II.

17. On 5 January 2022, Costa Rica reiterated to the Group the commitment to the FHTP to amend the Special Economic Zones regime by the end of 2022. In April 2022, the FHTP decided to consider Costa Rica's Special economic zone regime 'amended – not harmful', subject to formal adoption of the necessary legislative changes and their publication in the official gazette. Since the formal adoption and publication have taken place in May 2022, the Group recommends to remove the reference to Costa Rica under this section of Annex II.

2.2 Existence of tax regimes that facilitate offshore structures which attract profits without real economic activity

18. As regards the monitoring of the implementation of economic substance legislation, Bermuda committed in January 2022 to remedy the deficiencies identified in the FHTP assessment from November 2021 in time to allow the FHTP to conclude at its subsequent meeting in 2022 that their recommendation had been implemented. In April 2022, the FHTP removed the recommendation to Bermuda, and therefore, the reference to Bermuda should be removed from Annex II.

19. Barbados also committed in January 2022 to remedy the deficiencies identified in the FHTP assessment from November 2021 in time to allow the FHTP to conclude at its subsequent meeting in 2022 that their recommendations had been implemented. At the April 2022 FHTP meeting, it was given two recommendations with regard to the effective implementation of substance requirements. Based on the information provided by the jurisdiction on how they have addressed the deficiencies identified in the monitoring areas concerned (i.e. progress in taking compliance and enforcement actions, and evidence of exchanges of information initiated), the Group recommends to maintain the reference to this jurisdiction in Annex II to the Council conclusions on the revised list, and to revert to this issue at the next update of the EU list in February 2023, also to allow the Group to take into account the assessment at the next FHTP meeting in November 2022.

²³WK-R 8498/22.

²⁴ WK-R 11084/22.

3.2. Implementation of the Country-by Country Reporting (CbCR) minimum standard (BEPS Action 13)

20. On 4 January 2022, Tunisia committed to activate country-by-country reporting (CbCR) exchange relationships with all Member States to comply with criterion 3.2. Tunisia completed the activation process in July 2022 and started CbCR exchanges with relevant partners as a non-reciprocal jurisdiction. Tunisia has completed its commitment and should therefore be removed from Annex II with regard to criterion 3.2.
