



Council of the
European Union

**Brussels, 22 September 2022
(OR. en)**

12720/22

**FISC 188
ECOFIN 901**

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 Czech Presidency

Delegations will find attached the work programme under the Czech Presidency as agreed by the Code of Conduct Group (Business Taxation) meeting of 20 September 2022.

CODE OF CONDUCT GROUP (BUSINESS TAXATION):

WORK PROGRAMME UNDER THE CZECH PRESIDENCY

1. In its conclusions of 17 June 2022 (doc. 10346/22), the Ecofin Council welcomed the progress achieved by the Code of Conduct Group during the French Presidency, in particular with regard to the standstill and rollback notifications and the revision of the EU list of non-cooperative jurisdictions in February 2022.
2. Furthermore, the Ecofin Council notably:
 - a. endorsed the progress reached in the assessment of standstill and rollback notifications by the Group, asked the Group to continue monitoring standstill and the implementation of the rollback,
 - b. welcomed the ongoing monitoring by the Group of the implementation of its past guidance notes and the progress achieved with regard to the monitoring of the implementation of the 2017 Guidelines on tax privileges related to special economic zones,
 - c. recalled the discussion on the revision of the Code of Conduct and asked the Group to continue working with a view to advancing the reform,
 - d. 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, and welcomed in particular 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),

- e. 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,
- f. 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, welcomed the state of play, as set out in the Group's report, of the reflection of the Group to enhance further the efficiency of the EU list, both its current criteria and processes for third country jurisdictions, where appropriate, in particular in light of the international developments on a minimum effective level of taxation and asked the Group to keep working and report to the Council on further progress in these matters,
- g. agreed to update and implement criterion 1.1 of the listing process to take into account the Global Forum's determinations attributed to jurisdictions in the context of the peer review process on automatic exchange of information on financial accounts,
- h. invited the Group to report back to the Council on its work during the Czech Presidency.

3. Against this background, this note sets out the proposed COCG work programme for the duration of the Czech Presidency of the Council (second semester of 2022).

I. Monitoring of standstill and the implementation of rollback

4. The COCG will monitor developments in administrative practices of Member States, continue the review of the tax measures notified by Member States under the standstill and rollback process and continue the monitoring of actual effects of some regimes for which regular monitoring was decided.

II. Monitoring the implementation of agreed guidance

5. In line with its agreed priority list (doc. 6603/18), the COCG will continue the assessment of Member States' compliance with the 2017 Guidance on tax privileges related to special economic zones.

III. Revision of the Code of Conduct

6. In line with the June 2022 Council conclusions on the progress achieved by the Code of Conduct Group, the Group will continue working with a view to advancing the reform.

IV. Links with third countries

7. The COCG will continue monitoring jurisdictions covered by the current geographical scope and the implementation of the commitments taken by the cooperative jurisdictions.
8. The EU list of non-cooperative jurisdictions for tax purposes will be updated by the ECOFIN Council foreseeably in October 2022 with the following objectives:
 - remove from Annex I jurisdictions that addressed pending issues;
 - 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 systems have been found to be inconsistent with;

For this purpose, consideration should be given to:

- the monitoring of the progress on amending or abolishing the foreign source income exemption regimes;
 - the conclusions reached by the FHTP at the April meeting on the 2021 monitoring of the enforcement of economic substance requirements by 2.2 jurisdictions and any substantial and verifiable progress made by the jurisdictions concerned in the monitoring areas up until the update of the EU list in October 2022;
 - removal from Annex II of jurisdictions that completed their commitments.
9. Beyond the topics mentioned above, the Group will also work on:
 - a. a screening exercise for trusts and fiduciaries in 2.2 jurisdictions;
 - b. the implementation of criterion 1.1 following the publication of the 2022 Global Forum peer review reports on automatic exchange of information;

- c. how the recently adopted FHTP guidance on pure equity holding companies and entities claiming tax residence in another no or only nominal tax jurisdiction may impact on 2.2 jurisdictions and how it can be exploited in the context of the monitoring process;
 - d. the effective application of national defensive measures towards non-cooperative jurisdictions;
 - e. the future criterion 1.4 on the exchange of beneficial ownership information;
 - f. the review of the economic data used for selecting jurisdictions to the geographical scope.
10. The Chair will continue the procedural/political dialogue with jurisdictions, as necessary.

V. Other

11. The Group will continue the work at technical level to evaluate possible impacts of the international agreement that was reached on a minimum effective taxation (OECD Pillar 2) on its work, including on the EU listing criteria.

VI. Organisation of work

12. It is scheduled to organise two meetings of the Code of Conduct Group (on 20 September and 23 November 2022), 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.
