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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) - Multiannual work package

Delegations will find in the Annex the multiannual work package as agreed by the Code of Conduct Group (Business Taxation) on 3 October 2023.

Multiannual work package
2023-2028

Following the Work Package agreed in 2018 by the Ecofin Council, the Code of Conduct Group and the new Code mandate, the Chair, Ms. María José Garde Garde, propose to take forward the multiannual work package as set out below.

1. Working method

It is recalled that, in accordance with its mandate, the work of the Group is accorded political importance which should be reflected in the appointment by each Member State and the Commission of a high level representative and a deputy member.

The Code of Conduct Group and its Chair will prioritise the work to be taken forward by the Group. In doing so it will take into account views expressed by Member States**.**

A. INTERNAL DIMENSION

2. Monitoring of standstill and the implementation of rollback

The Group will continue to monitor standstill and the implementation of rollback, and will start monitoring tax features of general application notified by Member States.

3. Focus on notifications

The Group will continue its work to ensure a level playing field in the self-notifications under paragraph E of the Code of Conduct.

In this context, the Group will clarify the notification procedure in respect of tax features of general application.

4. Monitoring of the actual effects of individual regimes

The Group will continue the monitoring of preferential regimes for which a decision has been taken to assess the de facto use of such regimes and evaluate possible trends.

5. Monitoring the implementation of agreed guidance

The Group has over the years agreed guidance on specific topics. During its previous Work program, the Group monitored 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*, endorsed by the ECOFIN Council on 5 December 2017. As a follow up of the monitoring of the 2017 Guidance on tax privileges related to Special Economic Zones, the Group agreed to come back and review all SEZ regimes in force in 2027.

In addition, the Group will work on the collection of data regarding the highly mobile activities in the SEZ monitored in 2022.

The Group will update the priority list the for monitoring agreed guidance and continue the monitoring accordingly.

6. Cooperative Compliance Programs

Cooperative Compliance Programs (CCPs) are generally not designed to provide tax advantages to taxpayers. The primary aim of cooperative compliance is to ensure tax compliance through an enhanced relationship with the taxpayer which, in some cases, may include certain procedural advantages. The Group decided to carry out a mapping of CCPs in the EU, in order to ensure that CCPs do not go beyond this objective and do not result in substantive benefits that may lead to paying less tax.

B. EXTERNAL DIMENSION

7. The EU External Strategy on Tax Good Governance: the EU list of non-cooperative jurisdictions for tax purposes

In line with paragraph N of the Code of Conduct, the Group will continue its efforts in promoting the adoption of its principles and standards by third countries and in territories to which the Treaty does not apply. Since its establishment in December 2017, the EU list of non-cooperative jurisdictions has become a key policy tool to promote and strengthen tax good governance standards in order to tackle tax fraud, evasion and avoidance through international cooperation and dialogue with around 100 third country jurisdictions.

The Group will continue to engage in a constructive dialogue with the jurisdictions that fall within scope of the EU list, based on the agreed listing criteria and process as detailed below, which are however meant to evolve and keep up with international developments in the tax area. In this respect, the Group will also continue to ensure consistency with the work of the other competent international fora such as the Global Forum, the Inclusive Framework on Base Erosion and Profit Shifting, and the Forum on Harmful Tax Practices of the OECD, where relevant, to maximise synergies and pave the way to a common approach to Tax Good Governance worldwide.

8. Tax transparency and exchange of information

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

The Group will continue to monitor pending commitments of relevant jurisdictions to improve their legal determinations on the domestic and international legal framework, taking into account the peer review reports on automatic exchange of information on financial accounts (AEOI) by the Global Forum on transparency and exchange of information (Global Forum).

In addition, the Group will continue to work in coordination with the Global Forum to integrate in criterion 1.1 the effectiveness ratings on AEOI issued by the Global Forum since 2022.

<u>Criterion 1.2</u> (Membership of the Global Forum and satisfactory rating in relation to exchange of information on request)

The Group will continue to monitor pending commitments of relevant jurisdictions to improve their ratings on the international standard for exchange of information on request (EOIR).

The Group will also take into account all new peer review reports issued by the Global Forum on EOIR for jurisdictions within the scope of the EU list, in order to request new commitments where necessary, and/or, to delist jurisdictions which have previously failed criterion 1.2 from Annex I, in case they have sufficiently improved their ratings.

<u>Criterion 1.3</u> (Signatory and ratification of the OECD Multilateral Convention on Mutual Administrative Assistance or network of agreements covering all EU Member States)

The Group will consider progress made by jurisdictions currently placed on Annex I, which are yet to become parties to the Convention on Mutual Administrative Assistance in Tax Matters (MAC) in order to delist these jurisdictions once they have signed and ratified the MAC.

9. <u>Fair Taxation</u>

<u>Criterion 2.1</u> (Existence of harmful tax regimes)

The Group will continue to monitor the existence of preferential tax regimes in jurisdictions that fall within the scope of the EU list, in coordination with the FHTP where appropriate.

The Group will also continue to work with jurisdictions that have in place foreign source income exemption regimes that the Group found harmful, to assist them with the necessary reforms. The Group will also consider how to monitor the proper implementation of such reforms.

<u>Criterion 2.2</u> (Existence of tax regimes that facilitate offshore structures which attract profits without real economic activity)

The Group will continue to monitor the proper implementation of the economic substance requirements in no or only nominal tax jurisdictions. To the extent the scope of criterion 2.2 coincides with the respective FHTP standard, the Group will continue to take stock of the conclusions drawn by the FHTP, as per the agreement reached by the Group in this regard.

In all situations where the scope of criterion 2.2 is broader than the FHTP standard, the Group will continue to monitor the proper implementation of the economic substance requirements independently from the FHTP. This is the case for collective investment vehicles (CIVs), whose first monitoring exercise started in 2022, and for partnerships, whose first monitoring will start in the second half of 2023.

The Group will continue to monitor the implementation of the standards above year by year. The Group will also continue to work towards extending the economic substance requirements to trusts and other similar legal arrangements, in coordination with the FHTP.

10. Implementation of BEPS minimum standards

<u>Criterion 3.1</u> (Membership of the Inclusive Framework on BEPS or implementation of BEPS minimum standards)

The Group will continue to monitor the membership of the BEPS Inclusive Framework for the purposes of the EU list.

<u>Criterion 3.2</u> (Implementation of the CbCR minimum standard (BEPS Action 13)

The Group will continue to monitor pending commitments of relevant jurisdictions to implement the minimum standard on CbCR, taking into account the peer reviews on Action 13 by the Inclusive Framework.

In addition, the Group will work to apply criterion 3.2 also to jurisdictions that have joined the IF on or after 1 January 2018.

11. **The EU External Strategy on Tax Good Governance: Tax defensive measures**

In line with the Guidance adopted in 2019, the Group will continue to work on monitoring how Member States apply tax defensive measures against non-cooperative jurisdictions as from 2021 including work on how to measure the effectiveness of defensive measures.

12. **The extension of the geographical scope of the EU list**

The Group will continue to work towards a possible extension of the geographical scope of the EU list beyond the current 95 jurisdictions. The scope of the EU list was designed from the outset to evolve over time and its scope was already extended once in 2019, i.e. from 92 to 95 jurisdictions.

The progressive extension of the geographical scope of the EU list should ensure that it remains relevant, effective and credible over time, while keeping on preserving a level playing field among jurisdictions. At a later stage, an in-depth revision of the criteria used to assess the relevance of the jurisdictions selected and the weight assigned to these criteria for the assessment would be needed.

13. **The future of the Code: further strengthening the EU listing process**

The Code of Conduct Group and its Chair will continue reflections on a possible further strengthening the EU listing process. In doing so, it will take into account views expressed by Member States and also explore the suggestions made in the Commission’s note to the Code on further strengthening of the EU listing process of February 2023.

As regards the future criterion 1.4 on beneficial ownership (BO) information, this criterion was already envisaged as a fourth transparency criterion for future screening, at the time the EU list was established in 2017. The Group will continue the discussion to seek agreement on this criterion as soon as possible. At a later stage, the Group will ask concerned jurisdictions to take commitments and regularly monitor their compliance, in coordination with the OECD.

On fair taxation, the Group could be invited to work towards strengthening the approach to economic substance requirements for all 2.2 jurisdictions, in coordination with the OECD.

As for minimum effective taxation, the Group could explore how to facilitate the proper functioning of the Pillar Two rules by making use of the EU listing process. This work will commence only after the Pillar Two rules start applying, in coordination with the OECD and possibly based on a future peer-review process.

Finally, the Group could continue to explore enhancing the common approach to legislative tax defensive measures in order to tackle base erosion and profit shifting more effectively, without prejudice to Member States' competences and obligations under EU and international law.