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Subject: Code of Conduct Group report to the Council on the update of the EU list

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## Code of Conduct Group report to the Council on the update of the EU list

### I. INTRODUCTION

1. On 20 February 2024, 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)<sup>1</sup> initially endorsed by the Ecofin Council on 5 December 2017<sup>2</sup> and subsequently revised by the Council on 23 January 2018,<sup>3</sup> 13 March 2018,<sup>4</sup> 25 May 2018<sup>5</sup>, 2 October 2018,<sup>6</sup> 6 November 2018,<sup>7</sup> 4 December 2018,<sup>8</sup> 12 March 2019,<sup>9</sup> 22 May 2019,<sup>10</sup> 14 June 2019,<sup>11</sup> 17 October 2019,<sup>12</sup> 8 November 2019<sup>13</sup>, 5 December 2019<sup>14</sup>, 18 February 2020<sup>15</sup>, 6 October 2020<sup>16</sup>, 22 February 2021<sup>17</sup>, 5 October 2021<sup>18</sup>, 24 February 2022<sup>19</sup>, 4 October 2022<sup>20</sup>, 14 February 2023<sup>21</sup> and 17 October 2023<sup>22</sup>.
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.

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<sup>1</sup> OJ C, C/2024/1804, 26.2.2024.

<sup>2</sup> OJ C 438 2017, p. 5-24.

<sup>3</sup> OJ C 29 2018, p. 2.

<sup>4</sup> OJ C 100 2018, p. 4-5.

<sup>5</sup> OJ C 191 2018, p. 1-3.

<sup>6</sup> OJ C 359 2018, p. 3-5.

<sup>7</sup> OJ C 403 2018, p. 4-6.

<sup>8</sup> OJ C 441 2018, p. 3-4.

<sup>9</sup> OJ C 114 2019, p. 2-8.

<sup>10</sup> OJ C 176, 22.5.2019, p.2.

<sup>11</sup> OJ C 210, 21.6.2019, p.8.

<sup>12</sup> OJ C 351, 17.10.2019, p. 7.

<sup>13</sup> OJ C 386, 14.11.2019, p.2.

<sup>14</sup> OJ C 416, 11.12.2019, p.10.

<sup>15</sup> OJ C 64 2020, p. 8-14.

<sup>16</sup> OJ C 331 2020, p. 3-5.

<sup>17</sup> OJ C 66, 26.2.2021, p. 40-45.

<sup>18</sup> OJ C 413I, 12.10.2021, p. 1-4.

<sup>19</sup> OJ C 103, 3.3.2022, p. 1-4.

<sup>20</sup> OJ C 391, 12.10.2022, p. 2-5.

<sup>21</sup> OJ C 64, 21.2.2023, p. 17-22.

<sup>22</sup> OJ C, C/2023/437, 23.10.2023.

3. In its conclusions of February 2024<sup>23</sup> the Ecofin Council underlined the importance of promoting and strengthening tax good governance standards, including in the area of fair taxation and tax transparency, and of fighting against tax fraud, evasion and avoidance, both at the EU level and globally. The Council appreciated the continuous productive cooperation on tax matters between the Code of Conduct Group and most jurisdictions around the world.
4. In its conclusions of 21 June 2024<sup>24</sup> the Ecofin Council invited the Code of Conduct 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 noted the progress in three jurisdictions with respect to the implementation of the AEOI standard (criterion 1.1) and two jurisdictions with respect to the standard for exchange information on request (criterion 1.2), welcomed the reforms of preferential tax regimes in jurisdictions and 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 other jurisdictions that are in the process of reforming their FSIE regime, acknowledged 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 welcomed the progress 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 María José Garde Garde), supported by the General Secretariat of the Council and with technical assistance of the Commission services. The Subgroup on external issues met on 5 July and 11 September and the Code of Conduct Group met on 25 September 2024 to prepare the planned revision of the list.

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<sup>23</sup> Ibid.

<sup>24</sup> 11465/24

6. In the light of the above, and based on an objective assessment of the most recent developments, the October 2024 update of the EU list should, as appropriate, allow the Council to:
- 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;
  - remove from Annex I jurisdictions that addressed pending issues;
  - 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.

## II. UPDATES OF ANNEX I

### Delisting

7. In July 2023, the Global Forum on Transparency and Exchange of Information for Tax Purposes (“Global Forum”) rated Antigua and Barbuda “partially compliant” in the second round peer review of its compliance with the standard on exchange of information on request (criterion 1.2). In September 2024, the Global Forum decided to grant Antigua and Barbuda an In-depth review (formerly supplementary review). Pending the outcome of this review, Antigua and Barbuda should be removed from Annex I, and a reference to the In-depth review should be included in Annex II.

### Other changes

8. Fiji was included in Annex I in March 2019 after failing to fulfil its commitments under several criteria, including criterion 2.1 (existence of harmful tax regimes). One of the regimes identified as harmful by the Code of Conduct Group in 2017, the “Concessionary Tax Rate for Regional or Global Headquarters” regime, was abolished as of 1 January 2023, as confirmed by Fiji in the spring of 2024. The entry on Fiji in Annex I should therefore be amended accordingly, noting the two remaining harmful regimes that still need to be amended or abolished.

9. Furthermore, on 27 May 2024, Fiji became a member of the BEPS Inclusive Framework. This should also be reflected in its entry, in particular by removing the reference to criterion 3.
10. In February 2020, Palau was included in the EU list of non-cooperative jurisdictions after failing to meet its commitments to comply with criteria 1.1, 1.2 and 1.3. By letter dated 3 July 2024, Palau informed the Code of Conduct Group Chair that in June 2022, the Global Forum sent a letter to Palau specifying that Palau was considered by the Global Forum a developing country without a financial centre and had not been identified or proposed by any Global Forum member as a jurisdiction of relevance for the implementation of the standard on automatic exchange of information (AEOI). Taking this in consideration, the Global Forum does not request Palau to implement the AEOI standard by a specific date. In accordance with the COCG guidance on criterion 1.1 on the automatic exchange of financial account information, the Group recommends to update Palau's entry in Annex I by removing the reference to criterion 1.1.

### III. UPDATES OF ANNEX II

#### a) Automatic 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*

11. In accordance with the Council conclusions agreed by Ecofin on 18 February 2020, Türkiye 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).
12. This deadline extension followed the engagement of Türkiye 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 Türkiye 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 Türkiye 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 Türkiye 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 Türkiye to send to all Member States information for fiscal year 2019 no later than by 1 September 2021. Finally, the Council conclusions called on Türkiye 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 Türkiye undertook on 19 May 2021 to effectively activate automatic information exchange relationships by 30 June 2021 with all Member States with which Türkiye has diplomatic relations and underlined that further engagement and technical work on effective exchange of data from Türkiye 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.
14. In its conclusions of 24 February 2022, the Council considered that the progress made by Türkiye is still not fully in line with the Conclusions of the Ecofin Councils of 22 February 2021 and 5 October 2021 and called on Türkiye to begin or continue the technical work on the effective exchange of data from Türkiye 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 Councils. 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.
15. In its conclusions of 4 October 2022, the Council took note of the effective automatic information exchange relationships between Türkiye and the Member States, regretted that Türkiye had not made any progress with one Member State, reiterated its call on Türkiye to begin or continue the effective exchange with all Member States and to fully comply with the requirements set in the Conclusions of the Ecofin Council of 22 February 2021, 5 October 2021 and 24 February 2022. The Council reiterated that the effective automatic exchange of information with all Member States in accordance with the OECD calendar and international standards and as set in the relevant Ecofin Council conclusions is a condition for Türkiye to fulfil criterion 1.1 of the EU list.

16. In its conclusions of 14 February 2023, subsequently reiterated in its conclusions of 17 October 2023 and 26 February 2024, the Council regretted that Türkiye did not make any progress with one Member State on the effective exchange of information, reiterated its call on Türkiye to begin the outstanding automatic information exchange relationships with one Member State and to fully comply with the requirements set in the conclusions of the Ecofin Council of 22 February 2021, 5 October 2021, 24 February 2022 and 4 October 2022. The Council reiterated that the effective automatic exchange of information with all Member States is a condition for Türkiye to fulfil criterion 1.1 of the EU list.
17. The Group notes that Türkiye 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 Türkiye should be maintained in section 1.1 of Annex II.

b) *Existence of harmful tax regimes (criterion 2.1)*

*– Harmful tax regimes in the scope of the FHTP*

18. In July 2021, Armenia committed to the FHTP and the COCG to address the harmful features of its “Free Economic Zones” and “Information Technology Projects” regimes, two preferential tax regimes in the scope of the FHTP by the end of 2023. At its meeting on 26 and 27 October 2023, the FHTP concluded that the “Information Technology Projects” regime was abolished. The reference to this regime was therefore removed from the relevant section in Annex II in February 2024.
19. As regards the “Free Economic Zones” regime, Armenia submitted the draft amendments to the FHTP and the FHTP concluded at its meeting in May 2024 that the regime in question was “amended (not harmful)” subject to the adoption of the final legislation. The final legislation was adopted in June 2024. The Group therefore recommends to remove the reference to Armenia from Annex II.
20. In 2022, Eswatini made a commitment to the FHTP and the COCG to addressing by the end of 2023 the harmful features of its “Special Economic Zones” regime in the scope of the FHTP. After assessing the draft amendments to the regime, the FHTP concluded in May 2024 that the regime is “amended (not harmful)” subject to the adoption of the final legislation. Since the final legislation has not been adopted yet, the Group recommends to maintain the reference to Eswatini in Annex II.

– *Foreign source income exemption (FSIE) regimes*

21. In August 2021, Malaysia committed to amending or abolishing its harmful foreign source income exemption regimes by the end of 2022. By the end of 2022, it brought the regime fully in line with criterion 2.1 with regard to the treatment of dividends, interest and royalties. Following a clarification of the COCG Guidance on FSIE regimes, Malaysia was granted until the end of 2023 to adapt its legislation as regards the treatment of capital gains. In October 2023 however, Malaysia requested an extension of the deadline to amend its regime until June 2024, which the Group did not consider positively.
22. Subsequently, the Parliament of Malaysia adopted primary legislation, introducing a tax on foreign sourced capital gains, on 13 December 2023. The legislation received Royal Assent on 27 December 2023 and was subsequently published in the Official Gazette on 29 December 2023. The amendments came into effect on 1 January 2024. On 29 December 2023, Malaysia shared draft secondary legislation with the Commission Services, exempting from tax foreign sourced capital gains for entities meeting economic substance requirements as defined in the legislation. Malaysia expected that the secondary legislation would be approved by the end of February 2024 with effect from 1 January 2024. Guidelines would also be adopted following the approval of the secondary legislation.
23. Therefore, Malaysia was granted additional time, i.e. until 31 March 2024, to complete the reform as agreed with the Group, and revert to this issue after the March deadline, with a view to the next update of the EU list in October 2024. The legislation and guidelines were respectively gazetted on 4 March and 27 March 2024, in line with the extended deadline granted by the COCG of 31 March 2024. Additionally, the guidelines were amended in April 2024 upon an assessment of the Group. Since the Group considers the reform as completed, it recommends to remove the reference to Malaysia from Annex II.

c) Implementation of country-by-country reporting (criterion 3.2)

24. On 28 January 2022, Vietnam made a commitment to sign the OECD Convention on Mutual Administrative Assistance in Tax Matters (MAAC) by 31 August 2022, to ratify it by 31 August 2023, and to activate CbCR relationships with all EU Member States by 31 August 2024. On 31 August 2023, Vietnam fulfilled the first part of its commitment by signing and ratifying the MAAC, within the agreed deadline.



25. Vietnam has not yet completed the last step of its commitment. It is still in the process of preparing to sign the Multilateral Competent Authority Agreement (MCAA) for CbCR and to activate CbCR exchange relationships with all EU Member States. On 23 September 2024, the COCG Chair received a letter from Vietnam detailing the steps it has already taken to prepare for the signature of the Agreement, including a detailed roadmap for the next steps to sign the MCAA and to activate CbCR relationships with all EU Member States. Against this background, the COCG recommends to grant Vietnam until 31 December 2024 to sign the MCAA for CbCR and until 31 January 2025 to take the necessary steps to activate CbCR relationships with all EU Member States.