



Brussels, 23 November 2023
(OR. en)

15757/23

LIMITE

FISC 266
ECOFIN 1244

REPORT

From: General Secretariat of the Council
To: Delegations
Subject: Code of Conduct Group (Business Taxation)
- Report to the Council

I. BACKGROUND

1. On 1 December 1997, the Council and the representatives of the Governments of the Member States, meeting within the Council, adopted a resolution on a Code of Conduct for business taxation. This resolution provides for the establishment of a group within the framework of the Council to assess tax measures that may fall within the Code, which was established on 9 March 1998.¹ On 8 November 2008 the Council reformed the Code of Conduct. The resolution provides that the Code of Conduct Group (hereafter "COCG" or "Group") "*will report regularly on the measures assessed*" and that "*These reports will be forwarded to the Council for deliberation. They will include the agreed descriptions and final assessments of the tax measures it has examined. Final documents, as approved by the Council, will be made public, as appropriate, in accordance with relevant rules.*" (paragraph H).
2. In its conclusions of 8 December 2015,² the Council expressed the wish to improve the visibility of the work of the COCG and agreed "*that its results, in particular its 6-monthly reports, are systematically made available to the public*" (paragraph 16).

¹ ST 6619/98.
² ST 15148/15.

3. In its conclusions of 8 March 2016,³ the Council furthermore called "*for having more substantial 6-monthly Group reports to ECOFIN, reflecting the main elements and views, which were discussed under specific items and reporting also on the monitoring concerning (non-) compliance with agreed guidance*" (paragraph 16).
4. This report from the COCG encompasses the work of the Group in the second half of 2023 during the term of the Spanish Presidency of the Council. The previous reports, guidelines and other documents can be found on the website of the Council of the EU (Code of Conduct Group)⁴.

II. GENERAL ASPECTS

A. Organisation of work

5. In the second half of 2023, the COCG, chaired by Ms Maria José Garde Garde, Director-General for Taxation at the Ministry of Finance of Spain, has continued to fulfil her mandate in accordance with the agreed work programme.
6. Meetings of the COCG were held on 3 July, 3 October and 22 November 2023.
7. At the COCG meeting on 3 July, Mr. Christophe Vinck (Belgium) was confirmed as the Vice-Chair. In accordance with the mandate of the Code of Conduct Group⁵, Spain has not appointed a Vice-Chair during this semester.

B. Work programme and the multiannual work package

8. At the meeting of the Code of Conduct Group of 3 July 2023, the Group approved the work programme during the Spanish Presidency as set out in doc. 10731/23.
9. Following the Work Package agreed in 2018 by the Ecofin Council, and the new Code mandate, the Chair proposed to take forward a multiannual work package. This multiannual work package was agreed at the COCG meeting on 3 October 2023.

³ ST 6900/16.

⁴ <https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/code-conduct-group>.

⁵ Council conclusions of 9 March 1998 concerning the establishment of the Code of Conduct Group (business taxation) (OJ C 99/1, 01.04 1998, p. 1-2), paragraph 8: "If the Member State of the chairman holds the Presidency of the Council, or is next in line to do so, then a vice-chairman shall not be appointed by that Member State during the chairman's period of office and the Group will consequently have only one vice-chairman for that period."

III. STANDSTILL AND ROLLBACK REVIEW PROCESS

10. A call for standstill and rollback notifications of new preferential tax measures enacted by the end of 2022 was launched in mid-November 2022, the results were presented at the COCG meeting of 1 February 2023. The following new regimes were identified⁶:

- Croatia: Investment Promotion Act (2022) (HR020);
- Poland: Amendments to the holding company regime (PL017);
- Romania: Exemption from payment of the tax specific to certain activities for the taxpayers in the field of HORECA (RO013);
- Spain: Support of startup ecosystems (ES024)

A. Standstill review process

11. The following decisions were reached by the Group:

1. Croatia's Investment Promotion Act (2022) (HR020) – the COCG agreed that the assessment of the previous Investment Promotion Act (HR019) shall be applied by analogy to the New Investment Promotion Act (HR020).⁷
2. Ireland's digital games relief (IE017, notification on 2021) – the COCG considered the draft assessment and agreed that the measure should be considered not harmful and that the effects of the use of subcontractors should be monitored.⁸
3. Poland's – amendment to the Holding company regime (PL017) – the COCG considered the draft assessment and agreed that the measure should be considered not harmful.⁹
4. Spain's support of startup ecosystems (ES024) – the COCG agreed that the measure does not need to be assessed by the Group.¹⁰

12. The standstill review of Romania's profit tax exemption for companies with innovation and R&D activities (RO008) is kept on hold until the relevant national legislation is adopted: this

⁶ See updated compilation in doc. 8602/6/20 REV 6.

⁷ See ADD 1.

⁸ See ADD 2.

⁹ See ADD 3.

¹⁰ See ADD 4.

regime is currently not applied because the subsequent administrative acts have so far not been adopted.

B. Rollback review process

13. Regarding the rollback notification on Croatia's Act on Investment Promotion (HR019), the Group agreed that the roll-back is still pending and that it should be extended to the New Investment Promotion Act (HR020)¹¹.

C. Focus on notifications under the standstill procedure

14. At the meetings on 2 June and 22 November 2023 the COCG considered possible ways to improve its working practices, to further clarify when Member States should inform the Group of measures which may fall within the scope of the Code, and that such measures are notified by reference to clear and objective criteria.

IV. MONITORING OF THE ACTUAL EFFECTS OF INDIVIDUAL MEASURES

15. During recent years, some of the measures subject to scrutiny were put under annual monitoring. Last year, delegations were requested to submit the relevant data also for the year 2020. At its meetings of 3 October and 22 November 2023, the Group concluded as follows:
 1. Greece's measure on Patent tax incentive (EL015) – the Group took note of information regarding the EL015 regime. In particular, that additional data received from Greece confirmed the conclusion drawn already in 2022 that the measure did not seem to have affected in a significant way the business location among the Member States. Accordingly, the monitoring is closed.¹²
 2. Lithuania's New corporate income tax for companies implementing large projects (LT009) - the regime does not seem to have affected the business location among the Member States in a significant way but the Group should continue looking into the effects in the next year's monitoring exercise.¹³

¹¹ See ADD 5.

¹² See ADD 6.

¹³ See ADD 7.

3. Luxembourg's measure on Intra-Group Financing – use of safe harbour rule (LU016) – the regime does not seem to have affected the business location among the Member States in a significant way and the monitoring of the measure can be terminated.¹⁴
4. Poland's Notional interest deduction regime (PL011) – the regime does not seem to have affected the business location among the Member States in a significant way but the Group should continue looking into the effects in the next year's monitoring exercise.¹⁵
5. Poland's co-operative compliance programme for large taxpayers (PL014) – the regime does not seem to have affected the business location among the Member States in a significant way but the Group should continue looking into the effects in the next year's monitoring exercise.¹⁶
6. Portugal's notional interest deduction regime (PT018) – the regime does not seem to have affected the business location among the Member States in a significant way and the monitoring of the measure can be terminated, in light of the available data for the past nine years.¹⁷
7. Romania's measure on Reduction of income tax for maintain / increasing own capital (RO011) – the regime does not seem to have affected the business location among the Member States in a significant way but the Group should continue looking into the effects in the next year's monitoring exercise.¹⁸

The Group will look into the effects of the remaining measure CY020 and the use of the safe-harbour rules in Cyprus and Poland once relevant data is made available to it.

V. MAPPING COOPERATIVE COMPLIANCE PROGRAMMES IN THE EU IN LIGHT OF THE CODE CRITERIA

16. On 25 May 2023 the subgroup confirmed a summary regarding the specific design and the main features of the existing cooperative compliance programmes (CCPs) in each Member State. Based on this verified summary, the Group agreed to examine the CCPs in Member States to ensure that CCPs do not go beyond the primary aim of ensuring tax compliance and

¹⁴ See ADD 8.

¹⁵ See ADD 9.

¹⁶ See ADD 10.

¹⁷ See ADD 11.

¹⁸ See ADD 12.

do not result in substantive benefits that may lead to paying less tax. On 3 October 2023 the Group agreed with the conclusions of the mapping exercise, including that the Group monitors the effects of the tacit rulings in the Italian Cooperative Compliance Programme.

VI. THE EU LIST OF NON-COOPERATIVE JURISDICTIONS FOR TAX PURPOSES

A. Update of the EU list of non-cooperative jurisdictions for tax purposes

17. In its conclusions of 6 December 2022¹⁹, the Ecofin Council welcomed the progress achieved by the Code of Conduct Group, 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;
18. The Council 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. The Council 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).
19. The Council 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.
20. The COCG continued interactions and dialogue with the relevant jurisdictions to assess recent developments and the implementation of their commitments, with a view to the update of the EU list.
21. The Group mandated Fiscal Counsellors/Attachés to discuss urgent issues regarding the update of the EU list at the meetings on 15 September 2023. The preparation of the revision of the list was finalised at the COCG meeting on 3 October 2023. The updated EU list of non-

¹⁹ 10157/23.

cooperative jurisdictions was approved by the Council on 17 October 2023²⁰ and published in the Official Journal on 23 October 2023.²¹

22. There are 16 jurisdictions on the EU list after the update. Three jurisdictions were added to Annex I of the EU list: Antigua and Barbuda, Belize and Seychelles. All three jurisdictions were found to be lacking with regard to the exchange of tax information on request (criterion 1.2). At the same time, three jurisdictions were delisted from the EU list of non-cooperative jurisdictions for tax purposes. British Virgin Islands amended its framework on exchange of information on request (criterion 1.2) and will be reassessed in accordance with the OECD standard. Pending this reassessment this jurisdiction has been included in Annex II. Costa Rica amended the harmful aspects of its FSIE regime (criterion 2.1). Marshall Islands was delisted as it made significant progress in enforcement of economic substance requirements (criterion 2.2).
23. Thirteen other jurisdictions remain listed on Annex I: American Samoa, Anguilla, Bahamas, Fiji, Guam, Palau, Panama, Russia, Samoa, Trinidad and Tobago, Turks and Caicos Islands, US Virgin Islands and Vanuatu.
24. Jordan, Qatar, Montserrat and Thailand fulfilled their commitments and were removed from Annex II.
25. Türkiye remains on Annex II for criterion 1.1 (automatic exchange of information) as it is still not fully in line with the commitments required under the conclusions of the Ecofin Council of 22 February 2021, 5 October 2021, 24 February 2022, 4 October 2022, 14 February 2023 and 17 October 2023. Türkiye is expected to begin or continue the technical work on the effective exchange of data with all Member States to meet the agreed international standards and fully comply with the requirements set in the mentioned conclusions of the Ecofin Council.

B. Monitoring of the implementation of commitments taken by jurisdictions

General overview

²⁰ 13879/23.

²¹ OJ C 437, 23.10.2023, pages 1-4.

26. As of October 2023, the implementation of a total of 17 commitments²² taken at a high political level by 14 jurisdictions²³ remains to be monitored by the Group. These are recorded in Annex II of the Council conclusions:

Criterion	Number of jurisdictions committed
1.1	7
1.2	4
2.1	5
3.2	1

27. Specifically, a total of 6 harmful tax regimes remain to be rolled back under criterion 2.1, 2 of which are under monitoring by the COCG²⁴ and 4 by the OECD FHTP²⁵. A detailed overview can be found in the compilation²⁶ of preferential regimes and measures examined by the COCG under criteria 2.1 and 2.2.

Political and procedural dialogue

28. The Chair of the COCG continued to conduct political and procedural dialogues with relevant international organisations and jurisdictions, where necessary.

29. The Chair received a number of letters from jurisdictions and also held in-person meetings and videoconferences at a high political level with a number of them. Delegations were kept informed about these interactions, and response letters signed by the Chair were agreed by the Group.

C. Screening and scoping issues

Criterion 1.1 (peer reviews by the Global Forum with respect to the Common Reporting Standard for AEOI)

²² This figure adds up the number of commitments by jurisdictions under each criterion (see table).

²³ Albania, Armenia, Aruba, Botswana, Belize, British Virgin Islands, Botswana, Costa Rica, Hong Kong, Israel, Jordan, Malaysia, Türkiye, and Vietnam.

²⁴ The FSIE regimes of Hong Kong and Malaysia.

²⁵ Albania's "Industrial Incentives", Armenia's "Free economic zones" and "Information technology projects and "Eswatini's "Special economic zone".

²⁶ ST 6430/23.

30. From the outset, criterion 1.1 has been designed to evolve in line with the peer review process on the Automatic Exchange of Financial Account Information (AEOI) by the Global Forum on tax transparency and exchange of information (Global Forum). In 2022, as part of the peer review process on AEOI, the Global Forum issued for the first time ratings on the effectiveness of the implementation of the AEOI standard in practice.
31. In June 2022, the Code of Conduct Group agreed on a two-step approach to implement criterion 1.1, taking stock of the evolution of the Global Forum peer reviews on AEOI, starting with the 2022 report. The Group also adopted Guidance on the implementation of the updated criterion 1.1 under the first step²⁷. In particular, the Guidance clarified that the benchmark for COCG assessments for criterion 1.1 are the legal determinations attributed to jurisdictions by the Global Forum for implementing the required domestic and international legal framework. The minimum level of compliance required for jurisdictions in scope is “In place, but needs improvement” for both Core Requirement 1 and Core Requirement 2 in the AEOI Terms of Reference. Letters signed by the Chair were sent to all concerned jurisdictions to inform them about this update. At the meeting on 24 October 2022, the COCG agreed on the way forward regarding the jurisdictions that the Global Forum found to be non-compliant based on the AEOI peer reviews for 2022.
32. The 2022 Global Forum peer review report on AEOI was published on 9 November 2022²⁸. Letters signed by the Chair requesting commitments to address the deficiencies were subsequently sent to jurisdictions, which did not demonstrate a sufficient level of compliance in the 2022 AEOI peer review²⁹. The commitments taken by jurisdictions were reflected in the update of the EU list of February 2023. The 2023 Global Forum peer review report on AEOI is expected in December 2023.

Criterion 1.2 (peer reviews by the Global Forum with respect to the standard on Exchange of Information on request)

33. In July, the Global Forum published the outcome of its peer review process regarding one jurisdiction that had been included in Annex II pending a supplementary review³⁰. This

²⁷ Annex to 10346/22.

²⁸ https://www.oecd-ilibrary.org/taxation/peer-review-of-the-automatic-exchange-of-financial-account-information-2022_36e7cded-en.

²⁹ Aruba, Belize, Curaçao, Costa Rica, Israel and Trinidad and Tobago.

³⁰ Seychelles.

jurisdiction received a “partially compliant” rating and was subsequently included in Annex I by the Council on 17 October 2023.

34. On 8 November 2023, the Global Forum published the outcome of its peer review process regarding Botswana (supplementary review), Dominica (supplementary review), Serbia and Thailand. All four jurisdictions have been rated as Largely Compliant. Botswana and Dominica are currently included in Annex II pending the outcome of their supplementary reviews. The Group will therefore recommend on this basis to remove Botswana and Dominica from Annex II at the next update of the EU list.

New criterion 1.4 on beneficial ownership information

35. In its conclusions of 6 December 2022, the Council called on the Group to continue the work to incorporate beneficial ownership (BO) information as a fourth tax transparency criterion (criterion 1.4). At its meeting on 1 February 2023, the Code of Conduct Group held a first discussion on the further strengthening of the EU listing process for tax purposes and resumed work on the design of a new criterion 1.4 and explored a more comprehensive approach to BO information. The work on the design of the new criterion continued at the meeting of the subgroup on 3 and 29 March 2023, and of the Group on 26 April 2023, 2 June 2023, 3 October and 22 November 2023. Further work will be necessary on this issue.

Criterion 2.1 Regimes under FHTP monitoring

36. At its meeting on 26 and 27 October 2023, the FHTP assessed the reforms of four regimes regarding jurisdictions which made commitments to the Code of Conduct Group³¹, and the Group examined these assessments at its meeting on 22 November 2023.

Criterion 2.1 (Foreign source income exemption regimes)

37. In October 2019, the Ecofin Council approved guidance on foreign source income exemption (FSIE) regimes in the framework of the EU listing exercise (criterion 2.1). This guidance acknowledges that FSIE regimes are a legitimate approach to prevent double taxation, but identifies potentially harmful elements that could be present in such regimes.
38. In December 2019, the COCG Chair wrote to thirteen jurisdictions to inform them that a regime of this kind was identified in their jurisdiction. The Commission Services followed up

³¹ Albania’s “Industrial Incentives”, Armenia’s “Free economic zones” and “Information technology projects and “Eswatini’s ”Special economic zone”.

with a questionnaire to nine jurisdictions in February 2020 with a deadline of 20 March 2020 to reply. It was agreed to screen four jurisdictions at a later stage.

39. All the jurisdictions that were contacted responded to the questionnaire. The Commission Services analysed the replies and followed up where necessary. On this basis, the Commission prepared an overview of the work carried out so far, as well as country-specific progress reports.
40. On 19 May 2021, the COCG agreed to send letters to six jurisdictions from which the COCG would seek commitments to repeal or amend their harmful FSIE regimes. Five jurisdictions responded and confirmed their commitment to abolish or amend their regimes³². One jurisdiction did not express the requested commitment³³. The remaining three jurisdictions³⁴ were deemed compliant under the EU listing criteria. One jurisdiction³⁵ reformed its FSIE regime before the end of 2022, with effect from 1 January 2023.
41. During the technical examinations of FSIE reforms, there was a need to clarify the language of the Guidance on FSIE on certain aspects, notably on the tax treatment of capital gains. Following this clarification of the Guidance on FSIE regimes in December 2022³⁶, the Group decided to grant the two concerned jurisdictions³⁷ additional time to amend their legislation concerning the tax treatment of capital gains, i.e. by the end of 2023, with effect from 1 January 2024. One jurisdiction³⁸ was asked to make a commitment by 30 June 2023, to amend its FSIE regime in line with the FSIE Guidance by 30 June 2024, with effect from 1 July 2024. This jurisdiction made a commitment to amend its FSIE regime by 31 December 2023, with effect from 1 January 2024, and adopted the relevant legislation on 3 October 2023, in line with the FSIE Guidance. One jurisdiction³⁹ was given an extension to March 2023 to reform its FSIE regime and adopted the relevant primary and secondary legislation with effect from 22 December 2022.

³² Costa Rica, Hong Kong, Malaysia, Qatar and Uruguay.

³³ Panama.

³⁴ Maldives, Nauru and Singapore.

³⁵ Uruguay.

³⁶ Doc. 14674/22.

³⁷ Hong Kong and Malaysia

³⁸ Singapore.

³⁹ Qatar.

42. One jurisdiction⁴⁰ amended its FSIE regime and two jurisdictions⁴¹ fulfilled their commitments in line with the Guidance on FSIE regimes before the October 2023 update of the EU list.

Monitoring under criterion 2.2

43. In July 2021, the Group decided to carry out the annual monitoring of the enforcement of economic substance requirements by 2.2 jurisdictions⁴² by ensuring synergy with the parallel monitoring by the FHTP of no or only nominal tax jurisdictions.
44. At its meeting on 2 June 2022, the Group decided that, from 2023 onwards, it would take into account the FHTP conclusions reached in the last quarter of the year before, in preparation of the update of the EU list in the first quarter of the year that would follow such conclusions.
45. In addition, the Group discussed the situation of entities or arrangements which can carry out highly mobile activities in the scope of criterion 2.2 and which have not yet been included in the scope of domestic legislation on economic substance requirements in all 2.2 jurisdictions. The Group agreed to start a screening exercise for trusts and fiduciaries similar to that of 2019 on partnerships, given that criterion 2.2 has a comprehensive scope, encompassing in principle all entities or arrangements. To this aim, the Group decided to bring this work forward in close cooperation with the FHTP, which agreed to conduct a parallel mapping exercise at its meeting in November 2022. This work is ongoing, and the Group will revert to this issue with a view to finishing the work on including all relevant entities in the scope of criterion 2.2.
46. At the 2 June 2022 meeting, the Group also agreed to take into account the recently adopted FHTP guidance on pure equity holding companies and entities claiming tax residence in another no or only nominal tax jurisdiction under criterion 2.2.
47. Following the FHTP meeting of 21-22 November 2022, which concluded the second annual monitoring of the enforcement of the substantial activities requirements in practice, the Chair sent in January 2023 letters to four jurisdictions⁴³ inviting them to take necessary actions in

⁴⁰ Costa Rica.

⁴¹ Qatar and Singapore.

⁴² These jurisdictions include the twelve no or only nominal tax jurisdictions (Anguilla, Bahamas, Barbados, Bahrain, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Jersey, Turks and Caicos Islands, United Arab Emirates) and the Republic of Marshall Islands.

⁴³ Bahrain, Bermuda, British Virgin Islands and Cayman Islands.

relation to the recommendations made by the FHTP. At the November 2022 meeting, Barbados was given a ‘hard’ recommendation on exchange of information by the FHTP. However, on 31 January 2023, the FHTP approved by written procedure an updated assessment for Barbados removing its ‘hard’ recommendation to this jurisdiction as part of the 2022 monitoring process. At its meeting on 1 February 2023, the Group therefore recommended to remove the reference to Barbados from the relevant section in Annex II at the update of the EU list in February 2023.

48. The preliminary assessment of the 2023 monitoring of the enforcement of the substantial activities requirements for 2022 (the monitored year) was presented at the FHTP meeting on 26-27 October 2023. Out of 12 no or only nominal tax jurisdictions in scope of the FHTP standard, 4⁴⁴ received soft recommendations, in particular on statistical data and compliance programmes. Moreover, 4 jurisdictions⁴⁵ received hard recommendations on exchange of information. The latter will however be re-assessed in January 2024 based on any progress made in this area by the end of 2023. The Group will take into account the results of the FHTP final assessment in time for the update of the EU list in February 2024.

Process for the Monitoring of Economic Substance Requirements for Collective Investment Funds (CIVs) under criterion 2.2

49. In May 2018, the COCG agreed on Technical Guidance on Substance Requirements for Collective Investment Funds (CIVs) giving effect to a distinctive treatment for CIVs, in terms of economic substance requirements, in the Scoping Paper on criterion 2.2.
50. In September 2018, the COCG found that four jurisdictions (The Bahamas, Bermuda, British Virgin Islands and Cayman Islands) in the scope of the EU listing process had a “relevant” fund sector. Subsequently, the COCG asked these jurisdictions to reform their funds’ framework in line with the Technical Guidance⁴⁶. The reforms, approved by the COCG, entered into effect in these jurisdictions in 2020, i.e. one year later than other economic substance requirements (general substance requirements).
51. In May 2022 the COCG kicked off a targeted annual monitoring of the implementation of the enhanced framework on CIVs by the four jurisdictions concerned on the basis of a specific

⁴⁴ Anguilla, the Bahamas, Barbados, and Turks and Caicos Islands

⁴⁵ Anguilla, the Bahamas, Turks and Caicos, as well as the British Virgin Islands

⁴⁶ The Bahamas, Bermuda, British Virgin Islands and Cayman Islands.

questionnaire. Given that CIVs are out of the scope of the FHTP standard, such monitoring would be led entirely by the Group with the technical assistance of the Commission.

52. For the first relevant period of CIVs monitoring, for years 2020, 2021 and partly 2022, the Group acknowledged the substantial efforts made by all jurisdictions concerned. Recommendations were addressed to three out of four jurisdictions.
53. Furthermore, in August 2023 the Group agreed on an updated questionnaire for the second monitoring year (2023). The findings were discussed at the meeting of 22 November 2023 with a view to addressing updated recommendations to the jurisdictions concerned.

Process for the Monitoring of Economic Substance Requirements for partnerships under criterion 2.2

54. In May 2020, the COCG assessed how different 2.2 jurisdictions treat partnerships in their legislation on economic substance. The results confirmed that only five 2.2 jurisdictions included all relevant partnerships in the scope of their legislation on economic substance⁴⁷. The COCG asked the 2.2 jurisdictions for which this was not the case⁴⁸ to extend the scope of their legislation on economic substance to relevant partnerships by June 2021, with effect from 1 July 2021.
55. In May 2023, the COCG agreed on a yearly monitoring process to ensure a proper enforcement of economic substance requirement for partnerships over time. The first year of monitoring (2023) concerns information/data and compliance actions taken by 2.2 jurisdictions from 1 July 2021 to 31 December 2022.
56. Following coordination with the FHTP Secretariat and with a view to facilitating the process for relevant jurisdictions, a questionnaire targeting partnerships was agreed to be circulated as an annex to the questionnaire on the implementation of economic substance requirements for companies and set to follow the same timeline.

Implementation of criterion 3.2

⁴⁷ The Bahamas, Bahrain, the Republic of Marshall Islands, Turks and Caicos Islands, and United Arab Emirates.

⁴⁸ Anguilla, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, and Jersey.

57. In 2019, the COCG agreed on a general approach for assessing compliance with criterion 3.2 on country-by-country reporting (CbCR), in particular for early adopters of the minimum standard on CbCR, i.e. jurisdictions that joined the Inclusive Framework before the end of 2017.
58. In October and November 2021, the Code of Conduct Group discussed and agreed on the assessment of the relevant jurisdictions for compliance with criterion 3.2, based on the 2021 Peer Review Report by the BEPS Inclusive Framework (IF) on CbCR and additional assessments of bilateral exchange relations for CbCR with EU Member States. Eleven jurisdictions with identified deficiencies on CbCR were asked to undertake commitments to address these deficiencies in time to be reflected in the 2023 IF peer review report on CbCR. These commitments were recorded at the update of the EU list in February 2022.
59. Following the release of the IF peer review report on CbCR on 4 October 2022, the Code of Conduct Group decided at its meeting on 24 October 2022 to remove Barbados British Virgin Islands and Tunisia from Annex II for criterion 3.2 and to delete the reference to criterion 3.2 in the entry of the Bahamas in Annex I, at the update of the EU list in February 2023.
60. On 25 September 2023, the IF published its 2023 peer review report on CbCR. At its meeting on 3 October 2023, the Code of Conduct Group assessed the results of the IF peer reviews for the remaining jurisdictions with pending commitments on criterion 3.2. In 2023, the IF no longer addressed any general recommendations to Belize, Israel, Montserrat, Panama and Thailand. These jurisdictions had also taken the necessary steps to be able to exchange effectively CbC reports with all EU Member States. As a result, the COCG deemed their commitments on criterion 3.2 fulfilled and recommended to remove the references to these jurisdictions with regard to criterion 3.2 from the relevant Annexes. Trinidad and Tobago did not fulfil its commitment on CbCR within the agreed deadline. Accordingly, the Group recommended to update the entry on Trinidad and Tobago in Annex I to include a reference to criterion 3.2.
61. At its meetings on 23 November 2022, 3 October 2023 and 22 November 2023 the Code of Conduct Group considered the implementation of the CbCR standard by other jurisdictions within the scope of criterion 3.2, which were not deemed deficient in 2021, as well as the state of play in relation to relevant jurisdictions to which criterion 3.2 has not been applied so far, as they have joined the BEPS IF on or after 1 January 2018. The COCG agreed to extend the scope of criterion 3.2 to relevant jurisdictions in this group.

62. At its meeting on 22 November 2023, the COCG decided to start the process by asking jurisdictions within the scope of the EU list that have joined the BEPS Inclusive Framework since 1 January 2018, except those who have fully implemented the global standard on CbCR or opted out in 2023 from the BEPS Action 13 Peer Review Process, for information about resident UPEs of multinational enterprise groups with a consolidated group revenue above the CbCR reporting threshold.

Tax defensive measures vis-à-vis third country jurisdictions

63. In line with the Guidance on tax defensive measures agreed in December 2019, the COCG resumed its work on defensive measures.

64. At the meeting of 2 June 2022, the Group agreed to continue working on effective application of the defensive measures, in accordance with the agreed Guidance in a staged approach. As a first step, an analysis could be conducted on how tax defensive measures have been effectively applied by Member States. The outcome of such analysis could serve as a basis for further discussions on whether and how coordination of the measures could be enhanced.

65. At the meeting on 20 September 2022, the Code of Conduct Group agreed the draft questionnaire on the application by Member States of defensive measures.

66. In its conclusions on 6 December 2022 the Council took note of the need for further work to assess the application by Member States of defensive measures in the tax area, as provided for by the 2019 Guidance.

67. On 1 February 2023, the COCG agreed that Member States should update the state of play as regards defensive measures that they apply towards non-cooperative jurisdictions for tax purposes. A revised state of play of the implementation of the 2019 Guidance on Defensive Measures by EU Member States, as of 1 January 2023, was attached to the report of 2 June 2023⁴⁹.

68. The COCG at its meetings of 1 February and 26 April 2023 and the subgroup at its meetings of 3 and 29 March 2023 considered the proposal from the Commission to put in place a process for monitoring how Member States implement the defensive measures in practice in the tax area. At the COCG meeting in April, the Group concluded that further work is

⁴⁹ ST 9875/23

necessary for an efficient and flexible monitoring, including work on how to measure the effectiveness of defensive measures.

69. At the COCG meeting on 22 November 2023 the Group considered a proposal for monitoring the implementation of defensive measures in the tax area. The work will continue on this basis.

Geographical scope

70. In March 2019 the Ecofin Council recalled “the extensions of the geographical scope of the EU screening exercise to other jurisdictions agreed in 2018”⁵⁰. This invitation was reiterated in February 2020 with a view “to focus on the most relevant jurisdictions, having regard to the agreed work on the extended geographical scope as identified in 2018”. The COCG will undertake a reflection on the most appropriate selection indicators for future extensions of the geographical scope of the EU list.
71. The COCG at its meetings of 1 February, 26 April, 2 June, 3 October and 22 November 2023 had an exchange of views on a possible extension of the geographical scope⁵¹ and agreed to include the following jurisdictions in the geographical scope of the EU listing exercise: Brunei Darussalam, Kuwait and New Zealand.

⁵⁰ ST 14364/21.

⁵¹ In this context, the Group recollected of the annual dialogue foreseen in the Joint Declaration on Countering Harmful Tax Regimes under the EU-UK Trade and Cooperation Agreement (TCA). Horizontal arrangements for structured dialogues under the TCA are under discussion in the Working Party on the United Kingdom. The annual dialogues foreseen in the Joint Declaration have not yet started.