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**NOTE**

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From: General Secretariat of the Council

To: Delegations

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

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**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 5 October 2021, the Council revised 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> and 22 February 2021<sup>17</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 413I, 12.10.2021, p. 1-4.

<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.

3. In its conclusions of 27 November 2020<sup>18</sup> the ECOFIN Council reiterated the importance of the principles of tax good governance in the EU and beyond and the continuation of the successful work undertaken so far in the context of the Code of Conduct (Business Taxation) including on the EU list of non-cooperative jurisdictions for tax purposes that should be further pursued and enhanced, where necessary.

4. In its conclusions of 7 December 2021<sup>19</sup> the ECOFIN Council invited the Code of Conduct Group (further referred to as "the Group") to continue an effective dialogue with jurisdictions and monitoring, so that jurisdictions fulfil their respective commitments and comply with the EU listing criteria in accordance with the agreed deadlines, expressed its support for the preparatory work done with a view to assessment of relevant jurisdictions for compliance with criterion 3.2 on country-by-country reporting (CbCR) in view of the update of the EU list in the first quarter of 2022 and also invited the Group to request commitments from jurisdictions where appropriate and according to a timeline agreed by the Group.

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 on external issues to discuss urgent issues at the meeting on 14 January 2022 in the run-up to its meeting on 24 January 2022. The Subgroup on 2 February 2022 was subsequently tasked to finalise the update of the list.

6. In the light of the above, and based on an objective assessment of the most recent developments, the February 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;

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<sup>18</sup> Doc. 13350/20.

<sup>19</sup> Doc. 14653/21.

- 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, also taking into consideration the latest developments concerning ratification of the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC).

## **II. UPDATES OF ANNEX I**

### **a) Delisting**

### **b) Listing**

### **c) Other changes**

7. Panama received a letter on 13 December 2021 inviting it to make a formal political commitment to address two recommendations issued to it by the Inclusive Framework in the context of criterion 3.2 and to activate exchange relationships for CbCR with one remaining EU Member State. Panama replied to the COCG Chair on 4 January 2022<sup>20</sup>, confirming its commitment to address the recommendations received from the Inclusive Framework in a timely manner in order to be evidenced in future peer review reports<sup>21</sup>. The Group recommends to mention in Annex I that Panama has committed to cooperate on criterion 3.2<sup>22</sup>.

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<sup>20</sup> WK-R 148/22.

<sup>21</sup> See also point 28 and 29.

<sup>22</sup> WK-R 198/22.

8. Trinidad and Tobago sent letters to the COCG Chair on 6 January 2022 and 11 January 2022<sup>23</sup> in which it committed to addressing the general recommendations by the BEPS Inclusive Framework and to activating country-by-country exchanges with all EU Member States within the required timeframe<sup>24</sup>. The Group consequently recommends to mention in Annex I that Trinidad and Tobago has committed to cooperate on criterion 3.2.

9. Vanuatu was granted a supplementary review by the Global Forum in January 2022. The Group recommends to mention in Annex I that Vanuatu has made progress on criterion 1.2.

### III. UPDATES OF ANNEX II

#### *1.2 Membership of the Global Forum and satisfactory rating in relation to exchange of information on request*

10. The Group takes note of the progress of Botswana, a developing country without a financial centre, which in January 2022 was granted a supplementary review by the Global Forum.

#### *1.3 Signatory and ratification of the OECD Multilateral Convention on Mutual Administrative Assistance (MAC) or network of agreements covering all EU Member States*

11. Thailand, which had committed to ratify the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC) by 31 December 2021, deposited its instrument of ratification for the Convention on 22 December 2021. The OECD procès-verbal that was issued by the OECD was transmitted to the COCG Chair on 6 January 2022<sup>25</sup>. The Group therefore recommends to remove Thailand from Annex II for criterion 1.3, as it has fulfilled its commitment.

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<sup>23</sup> WK-R 151/22 and WK-R 399/22.

<sup>24</sup> See also point 28 and 29.

<sup>25</sup> WK-R 194/22.

## *2.1 Existence of harmful tax regimes*

12. Costa Rica, which features in Annex II since October 2021 on account of having committed to reform its FSIE regime, sent a letter dated 15 December 2021<sup>26</sup> to the Chair of the Code of Conduct Group in order to provide an update on the legislative process to align the domestic definition of permanent establishment with the international standard. The Group takes note of and welcomes the recent progress made.

13. Furthermore, in a letter dated 30 November 2021<sup>27</sup>, the Group requested Costa Rica to reiterate to the Code of Conduct Group the commitment to the Forum on Harmful Tax Practices (FHTP) to amend the Special Economic Zones regime by the end of 2022. In light of the high level commitment letter received from Costa Rica within the set timeframe<sup>28</sup>, the Group proposes to add Costa Rica to Annex II for this commitment as well.

14. Qatar was included in Annex II in the October 2021 listing exercise following its commitment to reform its FSIE regime and its commitment to amend or abolish preferential tax regimes in the scope of the FHTP. At the November 2021 FHTP meeting, the FHTP concluded that after amendments, the three Qatari tax regimes in scope of the FHTP were no longer harmful<sup>29</sup>. The Group takes note of and welcomes the progress made by Qatar, and recommends to remove Qatar from Annex II for this section of criterion 2.1.

15. On 16 July 2021 the Group sent a letter to the Russian Federation requesting a commitment to amend its International Holding Companies regime by the end of 2022, which was found to be potentially harmful. The COCG Chair received a letter from the Russian Federation dated 23 September 2021<sup>30</sup>, committing to reform some aspects of the regime. Since the receipt of the letter, the COCG Chair and the Commission services have been in contact with the Russian authorities, which have outlined their intention to bring the regime in line with the criteria by the set deadline.<sup>31</sup> The Group therefore recommends to include the Russian Federation in Annex II.

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<sup>26</sup> WK-R 141/22.

<sup>27</sup> WK-R 15550/21.

<sup>28</sup> WK-R 196/22.

<sup>29</sup> WK 13939/21.

<sup>30</sup> WK-R 11595/22.

<sup>31</sup> WK-R 712/22 + ADD 1.

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

16. Regarding the monitoring of the implementation of economic substance legislation, in July 2021 the Group agreed to take stock of the FHTP assessment 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 this assessment, the COCG decided to send letters to a number of jurisdictions that failed to meet one or more of the requisite standards and were therefore “urged” by the FHTP to take action. In the letters, these jurisdictions were requested to commit to remedy the deficiencies identified within the timeline agreed in the context of the FHTP.

17. In this context, Anguilla received a letter from the COCG Chair, with the request for Anguilla to formally undertake to address the issues identified in the FHTP assessment in time to be reflected at the next FHTP meeting in 2022. Anguilla replied with letters dated 17 January 2022<sup>32</sup> and 19 January 2022<sup>33</sup> containing the requested commitment at a high level. The Group therefore recommends to include Anguilla in Annex II.

18. On 13 December 2021, the Group sent a letter<sup>34</sup> on the same issues to The Bahamas, requesting a commitment to address the issues identified in the assessment in due time, so that the FHTP can conclude at its next meeting in 2022 that the recommendations have been addressed. The Bahamas’ Prime Minister sent a number of letters<sup>35</sup> where The Bahamas strongly commits to addressing the recommendations received within the set deadline. The Group therefore recommends to include The Bahamas in Annex II.

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<sup>32</sup> WK-R 711/22.

<sup>33</sup> WK-R 865/22.

<sup>34</sup> WK-R 15552/21.

<sup>35</sup> WK-R 139/22, WK-R 195/22 and WK-R 1282/22.

19. A letter<sup>36</sup> was also sent to Barbados, which was urged by the FHTP to address a number of issues regarding the monitoring of the implementation of economic substance legislation. In the letter, the Group requested Barbados to commit to address these recommendations within a deadline allowing the FHTP to conclude at its next meeting that the recommendations have been addressed. In a letter dated 4 January 2022, Barbados undertook to complete the process within the set deadline. The Group therefore recommends to include Barbados in Annex II for this issue.

20. The Group sent a letter<sup>37</sup> to Bermuda as well, requesting a formal political commitment to address the issues identified in the FHTP assessment. Bermuda replied to this letter on 30 December 2021<sup>38</sup> with the requested high-level commitment. The Group welcomes Bermuda's cooperation with the COCG and its actions addressing the recommendation from the FHTP. However, pending a formal decision by the FHTP, the Group recommends to include Bermuda in Annex II.

21. Turks and Caicos Islands, having been urged by the FHTP to take a number of actions, also received a letter<sup>39</sup> from the Group requesting a commitment to address the issues identified on 14 December 2021. Turks and Caicos Islands replied with a letter on 6 January 2022, undertaking to complete the process within the set deadline. The Group therefore recommends to include Turks and Caicos Islands in Annex II.

### *3.2 Implementation of country-by-country reporting (CbCR)*

22. On the basis of the October 2021 Action 13 peer review report by the OECD BEPS Inclusive Framework (IF) on country-by-country reporting and additional assessments of bilateral exchange relations for CbCR with EU Member States, the Group decided to send letters to relevant jurisdictions, requesting them to commit to address any IF general recommendations on time to be taken into account for the peer review reports in 2023 and, where necessary, to activate exchange relationships with EU Member States in due time.

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<sup>36</sup> WK-R 15553/21.

<sup>37</sup> WK-R 15555/21.

<sup>38</sup> WK-R 146/22.

<sup>39</sup> WK-R 15559/21.



23. In this context, the Group Chair sent letters to the Bahamas, Barbados, Belize, British Virgin Islands, Israel, Montserrat, Panama, Thailand, Tunisia, Vietnam, Trinidad and Tobago in November and December 2021 inviting them to continue working on the implementation of the CbCR standard and to commit to address any outstanding issues.

24. The Bahamas received a letter on 13 December 2021<sup>40</sup> (in addition to the request detailed under point 19 above) inviting it to make a formal political commitment to address one recommendation issued to it by the IF in October 2021 with regard to the BEPS minimum standard on CbCR. The Bahamas' authorities sent reply letters dated 15 December 2021, 6 January 2022<sup>41</sup> and 26 January 2022 committing to the effective implementation of the BEPS minimum standard on CbCR within the set deadline. For this reason, the Group recommends to include The Bahamas in Annex II with regard to criterion 3.2.

25. On 19 November 2021, Barbados received a letter by the Group Chair on the implementation of CbCR. In this letter Barbados was asked to commit to addressing four general recommendations issued to it by the IF and to activate exchange relationships for CbCR with all EU Member States. Barbados replied in letters dated 30 December 2021, committing at a high level to address the issues. The Group consequently recommends to include Barbados in Annex II with regard to criterion 3.2.

26. The Group Chair sent a letter to Belize on 13 December 2021<sup>42</sup>, asking Belize to commit to addressing one recommendation in due time. On 24 December 2021<sup>43</sup>, Belize undertook to address the IF recommendation by the set deadline. On this basis, the Group recommends on this basis to include Belize in Annex II of the Council Conclusions on the revised EU list with regard to criterion 3.2.

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<sup>40</sup> WK-R 15552/22.

<sup>41</sup> WK-R 139/22, WK-R 195/22 and WK-R 1282/22.

<sup>42</sup> WK-R 15554/22.

<sup>43</sup> WK-R 144/22.

27. The British Virgin Islands received a letter on 13 December inviting it to make a formal political commitment to address one recommendation issued to it by the IF in October 2021 with regard to the BEPS minimum standard on CbCR. In its reply to the letter<sup>44</sup> the British Virgin Islands committed to ensuring that the recommendation will be met by the Autumn 2023 report of the IF (by letter of 6 January 2022<sup>45</sup>). The Group therefore recommends to include the British Virgin Islands in Annex II with regard to criterion 3.2.

28. Israel received a letter by the Chair on the implementation of CbCR on 19 November 2021<sup>46</sup>. In this letter the Group asked Israel to commit to addressing four general recommendations issued to it by the IF and to activate exchange relationships for CbCR with all EU Member States. Israel's Minister of Finance sent a commitment letter<sup>47</sup> to the COCG Chair on 22 December 2021, undertaking to complete the process within the set deadline. Against this background, the Group recommends to include Israel in Annex II with regards to criterion 3.2.

29. On 19 November 2021, Montserrat was asked to commit to addressing four general recommendations issued to it by the IF and to activate exchange relationships for CbCR with all EU Member States. On 19 January 2022<sup>48</sup>, Montserrat committed to implement the recommendations within the set timeframe. The Group therefore recommends to include Montserrat in Annex II for with regard to criterion 3.2.

30. On 19 November 2021, the Group Chair sent a letter to Thailand, which received four general recommendations in the October 2021 Action 13 peer review report. In the letter, Thailand was asked to undertake to address the recommendations by the BEPS IF and to activate exchange relationships for CbCR with all EU Member States within the set deadline. Since Thailand made a high-level commitment to this effect on 28 December 2021<sup>49</sup>, the Group recommends to include Thailand in Annex II with regard to criterion 3.2.

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<sup>44</sup> WK-R 15556/21.

<sup>45</sup> WK-R 152/22.

<sup>46</sup> WK-R 14662/21.

<sup>47</sup> WK-R 142/22.

<sup>48</sup> WK-R 866/22.

<sup>49</sup> WK-R 145/22.

31. On 13 December 2021<sup>50</sup>, Tunisia was asked to commit at a high-level to activate exchange relationships for CbCR with all EU Member States and to continue working on the implementation of the CbCR standard. Having already communicated its intentions to comply on 30 November 2021<sup>51</sup>, Tunisia replied officially to the letter with a high-level commitment as requested on 4 January 2022. The Group consequently recommends to include Tunisia in Annex II with regard to criterion 3.2.

32. In addition to receiving three general recommendations from the IF, Vietnam has no exchange relations for CbCR with any EU Member State. Vietnam was therefore asked on 13 December 2021 to commit to sign the MAC 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 28 January 2022, Vietnam sent a commitment letter at a high political level<sup>52</sup>. For this reason, the Group recommends to include Vietnam in Annex II of the Council Conclusions on the revised EU list with regard to criterion 3.2.

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<sup>50</sup> WK-R 15560/22.

<sup>51</sup> WK-R 15547/21.

<sup>52</sup> WK-R 1284/22.

33. 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 EU Code of Conduct Group for business taxation in 2019 and their reassurances that progress would have been 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 fulfil 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 Turkey to send such information for fiscal years 2020 and 2021 according to the OECD calendar for automatic exchange of information with all Member States and no later than by, respectively, 30 September 2021 and 30 September 2022.

34. In its Conclusions of 5 October 2021 the Council took note of the commitment by Turkey of 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 to all Member States will be required to meet the agreed international standards and fully comply with the conclusions of the Ecofin Council of 22 February 2021.

35. The Group monitored technical progress concerning the effective exchange of information with the EU Member States and noted that Turkey made a substantive progress and activated the exchange of data with 26 Member States. The Group also noted that there are ongoing contacts between some Member States' and Turkey's competent authorities to resolve outstanding technical issues. The Group concluded that despite the substantial progress Turkey is still not fully in line with the commitments required under the above mentioned Council conclusions with regard to the exchange of information with all Member States. Therefore Turkey should remain in section 1.1 of Annex II.

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