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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) - Work Programme under the Swedish Presidency

Delegations will find attached the work programme under the Swedish Presidency as agreed by the Code of Conduct Group (Business Taxation) meeting of 1 February 2023.

CODE OF CONDUCT GROUP (BUSINESS TAXATION):

WORK PROGRAMME UNDER THE SWEDISH PRESIDENCY

1. In its conclusions of 6 December 2022 (doc. 15726/22), the Ecofin Council welcomed the progress achieved by the Code of Conduct Group ("COCG" or "the Group") during the Czech Presidency, reaffirmed the importance of the recent reform the Code of Conduct (Business Taxation) as a strengthened political commitment of the Member States to continue to address harmful tax practices and preferential tax measures with the objective to tackle harmful tax competition, tax avoidance and tax evasion in the EU and to promote tax good governance worldwide. The Council expressed its appreciation for the work of the Group and its Chair for their contribution to fulfilling the mandate and objectives as reflected in the Code of Conduct, and invited the Group to continue its work with the indispensable assistance of the Commission.

2. Furthermore, the Ecofin Council notably:

   a. endorsed the standstill assessments agreed by the Group and asked the Group to continue the monitoring of the standstill and the implementation of the rollback,
   b. endorsed the assessments of actual effects of individual measures as agreed by the Group and asked the Group to continue the monitoring of individual measures,
   c. endorsed the assessment of Member States' compliance with the 2017 COCG Guidelines on tax privileges related to special economic zones and asked the Group to continue monitoring the implementation of its past guidance notes,
   d. welcomed the progress achieved by the Code of Conduct Group with regard to the revision of the EU list of non-cooperative jurisdictions for tax purposes on 4 October 2022 and invited the Group to continue its effective dialogue with jurisdictions and its monitoring, so that jurisdictions continue to fulfil their respective commitments and comply with the EU listing criteria in accordance with the agreed deadlines,

e. welcomed the ongoing progress of jurisdictions engaged in reforming their foreign source income exemption (FSIE) regimes and endorsed guidance on foreign source income exemption regimes,
f. welcomed the monitoring of no or only nominal tax jurisdictions with regard to the enforcement of economic substance requirements under criterion 2.2, as well as the ongoing work to extend the screening to trusts and fiduciaries in no or only nominal tax jurisdictions under criterion 2.2,
g. welcomed the screening of the implementation of the country-by-country reporting (CbCR) anti-BEPS minimum standard (criterion 3.2) by jurisdictions under monitoring and the extension of the application of criterion 3.2 to jurisdictions that joined the OECD/G20 Inclusive Framework on BEPS after 1 January 2018,
h. took note of the results of the peer review process by the Global Forum on tax transparency and exchange of information ("Global Forum") to assess the implementation of automatic exchange of information on financial accounts according to the OECD Common Reporting Standard for the purposes of criterion 1.1 and supported the dialogue with relevant jurisdictions with identified deficiencies on automatic exchange of information in 2022, with a view to recording their commitments on criterion 1.1 at the update of the EU list in the first quarter of 2023,
i. called on the Group to continue the work to incorporate beneficial ownership as a fourth transparency criterion,
j. took note of further work on the assessment of the application by Member States of defensive measures in the tax area in line with the COCG Guidance on defensive measures,
k. invited the Group to report back to the Council on its work during the Swedish Presidency.

3. Furthermore, in its conclusions of 8 November 2022 on the reform of the Code of Conduct the Ecofin Council notably:
   a. invited the Code of Conduct Group to continue its work on developing or, where appropriate, revising the agreed guidance to enhance clarity and present its outcomes to the Council and invited the Code of Conduct Group to develop and submit for approval by the Council proposals for guidance on specific tax features of general application that fall within the scope of the revised Code of Conduct (Business Taxation),

b. welcomed the steps taken to enhance the transparency of the Code of Conduct Group and to improve its public communication, noted that the revised Code of Conduct (Business Taxation) specifies that final documents, approved by the Council, will be made public and additional documents will be made public, as appropriate, in accordance with the applicable rules and invited the Code of Conduct Group to explore further steps in accordance with the applicable rules and report in this direction to the Council by 30 June 2023.

4. Against this background, this note sets out the proposed COCG work programme for the duration of the Swedish Presidency of the Council (first semester of 2023).

I. General aspects

5. The revised Code of Conduct for business taxation set out in the Resolution of the Council and the representatives of the governments of the Member States meeting within the Council of 8 November 2022 applies from 1 January 2023 and it will constitute a mandate for the work during the Swedish Presidency.

6. As indicated in the email by the General Secretariat of the Council (GSC) from 16 November 2022, the mandate of the current Chair, Ms Lyudmila Petkova, ends on 4 February 2023. The election and appointment of the Chair for the next period will be included in the agenda of the COCG on 1 February 2023. Relevant information will be circulated by the General Secretariat of the Council in advance of that meeting. The Chair will be elected for a period of two years. The elected Chair will be assisted by the General Secretariat of the Council.

II. Monitoring of the standstill and the implementation of the rollback

7. The COCG will monitor developments in administrative practices of Member States, complete the review of the tax measures notified by Member States under the standstill and rollback process for the year ending on 31 December 2022.
The Group will also continue the monitoring of actual effects of some regimes for which it was decided to have regular monitoring. In addition, as the monitoring of the effects of the measure PL014[1] is due to take place in the second half of 2023, the Group will start preparatory work, on the basis of a summary prepared by the Commission services regarding similar measures in other Member States.

III. Links with third countries

8. The COCG will continue to monitor jurisdictions covered by the current geographical scope and the implementation of the commitments taken by cooperative jurisdictions.

9. The EU list of non-cooperative jurisdictions for tax purposes will be updated by the Ecofin Council foreseeably in February 2023 with the following objectives:

– take the necessary decisions in the context of the upcoming listing;

– remove from Annex I jurisdictions that addressed pending issues;

– 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;

– 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 of jurisdictions that fulfilled their commitments.

[1] PL014 – Cooperative Compliance program (CCP) for large taxpayers – data to be sent in July 2023.

For this purpose, consideration should be given to:

- the conclusions of the OECD Forum on Harmful Tax Practices (FHTP), reached at its November 2022 meeting regarding jurisdictions with preferential tax regimes in the scope of the FHTP (criterion 2.1) and regarding the application of substantial activities in no or only nominal tax jurisdictions (criterion 2.2);
- the results of the 2022 Global Forum peer review process as approved in November 2022 as regards the implementation of the required domestic and international legal framework for the implementation of automatic exchange of information (criterion 1.1) and the results of the Global Forum's supplementary reviews on exchange of information on request (criterion 1.2);
- the monitoring of jurisdictions' progress on amending or abolishing foreign source income exemption (FSIE) regimes (criterion 2.1);
- progress made by jurisdictions with regard to the application of the country-by-country reporting (CbCR) anti-BEPS minimum standard (criterion 3.2).

10. Beyond the topics mentioned above, the Group will also work on:
    a. the future of the EU list of non-cooperative jurisdictions for tax purposes, notably on the future criterion 1.4 on the exchange of beneficial ownership information;
    b. the screening exercise for trusts and other legal arrangements in 2.2 jurisdictions, in close cooperation with the Forum on Harmful Tax Practices;
    c. the monitoring of economic substance requirements for collective investment funds (CIVs) and partnerships under criterion 2.2;
    d. the evolution of criterion 1.1 to incorporate the AEOI ratings on effectiveness as a criterion for the EU listing process;
    e. the implementation of criterion 3.2 to jurisdictions that joined the Inclusive Framework on BEPS on or after 1 January 2018;
    f. the effective application of national tax defensive measures towards non-cooperative jurisdictions;
    g. the review of the economic data used for selecting jurisdictions to the geographical scope, with a view to its gradual extension over time.

11. The Chair will continue the procedural/political dialogue with jurisdictions, as necessary.

IV. Other

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

13. The Group will consider further steps enhancing the transparency of its work, in accordance with the applicable rules.

V. Organisation of work

14. It is scheduled to organise 3 meetings of the Code of Conduct Group (on 1 February, 21 April and 2 June 2023), 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.