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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 6 October 2020, 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> and on 18 February 2020<sup>15</sup>.

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<sup>1</sup> OJ C 331 2020 pages 3-5  
<sup>2</sup> OJ C 438 2017 pages 5-24.  
<sup>3</sup> OJ C 29 2018 page 2.  
<sup>4</sup> OJ C 100 2018 pages 4-5.  
<sup>5</sup> OJ C 191 2018 pages 1-3.  
<sup>6</sup> OJ C 359 2018 pages 3-5.  
<sup>7</sup> OJ C 403 2018 pages 4-6.  
<sup>8</sup> OJ C 441 2018 pages 3-4.  
<sup>9</sup> OJ C 114 2019 pages 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, pages 8-14.

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.

3. In its conclusions of 12 June 2020<sup>16</sup> the ECOFIN Council acknowledged the impact of the ongoing COVID-19 pandemic on the work of the Code of Conduct Group (Business Taxation) (further referred to as "Group").

4. In its conclusion of 27 November 2020<sup>17</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.

5. In that spirit, the Group through its elected Chair (Ms Lyudmila Petkova) continued interactions and dialogues with the relevant jurisdictions, supported by the General Secretariat of the Council and with the technical assistance of the Commission services. The Group mandated Fiscal Attachés to discuss urgent issues at the meetings on 8 December 2020 and 26 January 2021 in the run-up to its meeting on 1 February 2021.

6. In light of the above, and based on an objective assessment of the most recent developments, the February 2021 update of the EU list will allow the Council to:

- remove jurisdictions that completed their commitments from Annex I;
- list in Annex I jurisdictions which do not comply with the requirements of the criteria for screening jurisdictions, also taking into consideration the newly released OECD Global Forum for Transparency and Exchange of Information (Global Forum) ratings for criterion 1.2;

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<sup>16</sup> Doc. 8892/20.

<sup>17</sup> Doc. 13350/20.

- remove jurisdictions that completed their commitments from Annex II, also taking into consideration the newly released OECD Global Forum ratings for criterion 1.2; and
- set new deadlines for certain jurisdictions listed on Annex II to comply with their undertaken commitments, as appropriate.

## II. UPDATES OF ANNEX I

### a) Delisting

#### 7. Barbados<sup>18</sup>

After having been granted a supplementary review by the Global Forum, the Group concluded that Barbados can be removed from Annex I of the EU list for criterion 1.2 and should be put on Annex II pending the outcome of such supplementary review by the Global Forum.

### b) Listing

8. Dominica<sup>19</sup> received a "Partially Compliant" rating by the Global Forum for its second round of peer review process and does not meet any more criterion 1.2. Dominica should therefore be put on Annex I for criterion 1.2 until it requests a supplementary review to the Global Forum and this request is accepted.

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<sup>18</sup> WK EU-R 626/2021.

<sup>19</sup> WK EU-R 625/2021.

### c) Other changes

#### 9. Samoa

The Group took note of Samoa's progress on implementing its commitments and acknowledged that Samoa is now a member of the Inclusive Framework on BEPS. The reference to criterion 3.1 should therefore be removed from Samoa's entry in Annex I.

### III. UPDATES OF ANNEX II

10. The Code of Conduct Group asked Australia<sup>20</sup> to reform by the end of 2019 a harmful tax regime (*Offshore Banking Units*) which had been identified in 2018. The OECD Forum on Harmful Tax Practices (FHTP) has also asked Australia to reform the regime in question. In February 2020, Australia was granted a deadline extension until the end of 2020 to comply. As the assessment by the FHTP is pending, Australia should remain listed in Annex II until 31 December 2021 unless the FHTP decides earlier, in which case the Group can already proceed immediately after.

11. The Group took note of the preliminary conclusion by the FHTP that following the proposed legislation, the Development Zone regime in Jordan<sup>21</sup> could be considered "not harmful, amended" once the draft law to reform the regime is adopted – assuming the adopted law did not differ materially from the draft. On 3 January 2021, Jordan adopted a law to reform the regime. As the assessment by the FHTP of the adopted law remains pending, Jordan should remain listed in Annex II until 31 December 2021 unless the FHTP decides earlier, in which case the Group can already proceed immediately after.

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<sup>20</sup> WK EU-R 628/2021.

<sup>21</sup> WK EU-R 628/2021.

12. Maldives<sup>22</sup>

Maldives has committed to sign the MAC by the end of April 2021 and should remain listed in Annex II.

13. Following the conclusion by the FHTP that after the amended legislation adopted by Morocco<sup>23</sup>, the Casablanca Finance City regime could be considered "not harmful, amended" since "ring-fencing was removed, substance requirements (non-IP) was in place and grandfathering in accordance with FHTP timelines", the Group, in line with the EU list requirements, recommended that Morocco should be removed from section 2.1 of Annex II.

14. Namibia amended the Income Tax Law in order to abolish the harmful tax features of two manufacturing regimes<sup>24</sup>. The Group agreed to accept the request of Namibia, to extend the grandfathering for the period of 5 years for the harmful regimes under the specified conditions and concluded that Namibia should be removed from section 2.1 of Annex II.

Namibia deposited the instruments of ratification of the MAC as amended on 9 December 2020. The Group agreed that it should be removed from section 1.3 of Annex II.

15. The Group considered that the Economic Substance Act adopted and published on 30 December 2020 abolishes harmful effects of the foreign source income exemption regime in St. Lucia<sup>25</sup> and suggested to remove St. Lucia from section 2.1 of Annex II.

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<sup>22</sup> WK EU-R 628/2021.

<sup>23</sup> WK-EU-R 14059/2020.

<sup>24</sup> WK EU-R 628/2021.

<sup>25</sup> WK EU-R 628/2021.

16. Following the recent contacts, Turkey indicated that it needs more time to solve open problems with regards to determining the tax residency of a large number of highly mobile citizens and has therefore not fully activated exchange relations with all EU Member States. The Group noted that Turkey announced that it aims at setting a concrete date to start exchanging information referring to Fiscal Year 2021 with five Member States (Austria, Belgium, France, Germany and Netherlands). No progress has been made with regard to the exchange of information with one Member State (Cyprus). The Group agrees to give Turkey more time to solve all open issues. The Group will ask Turkey to fully commit on a high political level by 31 May 2021 to effectively activate its automatic information exchange relationship with the remaining 6 Member States by 30 June 2021. For all 27 Member States the information for fiscal year 2019 has to be sent no later than by 1 September 2021 and the information for fiscal years 2020 and 2021 has to be sent according to the OECD calendar for automatic exchange of information and no later than by, respectively, 30 September 2021 and 30 September 2022. Turkey will be reminded that the 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. It will be reiterated to Turkey that failure to comply with any of the five above stated deadlines would fulfil the conditions for Turkey to be listed in Annex I under criterion 1.1.

The Group will evaluate and regularly monitor progress concerning the effective exchange of information with all Member States and inform the Council about developments in this regard, the next updates of the list being foreseen for October 2021 and February 2022. Without the commitment and fulfilment of the above mentioned timeline, Turkey would fulfil the conditions to be listed in Annex I under criterion 1.1 and the Group will take prompt action.

17. The Group took note of the assessment of Jamaica's<sup>26</sup> Special economic zone regime by the FHTP and suggested to request Jamaica to confirm to the EU their commitment vis-à-vis the FHTP leading to listing in Annex II. Jamaica confirmed the iteration of their commitment and should be included in Annex II.

#### **IV. OTHER ISSUES**

18. The Group examined legislative changes made by Switzerland<sup>27</sup> and agreed to assess the tax deduction for legal entities' equity financing as not actually harmful for now and to monitor the evolution of the notional interest rate.

19. Eswatini completed the domestic process of ratification of the MAC, however the deposit of an instrument of ratification is pending. The Group will revert to this case in preparation of the next update of the EU list.

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<sup>26</sup> WK EU-R 624/2021.

<sup>27</sup> WK EU-R 11513/2020.