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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Draft Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes - Approval

1. On 17 October 2023, the Council agreed on the latest revision of 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).
2. In its conclusions of 8 December 2023, the Ecofin Council welcomed the progress achieved by the Code of Conduct Group, in particular with regard to the revision of the EU list of non-cooperative jurisdictions in October 2023. The Council welcomed the positive effect of the Code of Conduct and the work of the Group on reducing harmful tax practices and the decrease of preferential tax regimes both in the EU and globally and called on 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.

3. The Code of Conduct Group (Business Taxation) continued the interactions and dialogues with the relevant jurisdictions to assess recent developments and the implementation of their commitments, with a view to the revision of the EU list.
4. The sub-group of the Code of Conduct Group met on 19 January 2024 to take stock of developments in jurisdictions and to prepare the revision of the EU list. On 7 February 2024, the Code of Conduct Group (COCG) considered and agreed the text of the draft Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes and the COCG report to the Council on the update of the EU list. The text of the draft Council conclusions is set out in the Annex.
5. The Permanent Representatives Committee is invited to:
 - confirm the agreement on the text and suggest that the Council approve the draft Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes set out in the Annex as an “A” item at its meeting on 20 February 2024;
 - suggest that the Council agree on the publication of the revised list set out in the Annex to the Council conclusions in the Official Journal.

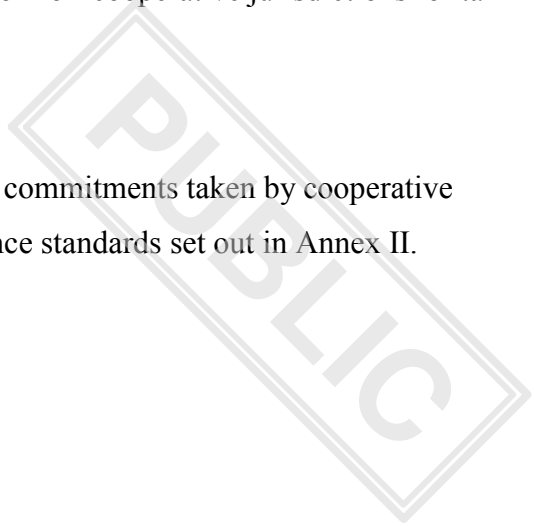
Draft Council conclusions
on the revised EU list of non-cooperative jurisdictions for tax purposes

The Council of the European Union,

1. UNDERLINES 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;
2. APPRECIATES the continuous productive cooperation on tax matters between the Code of Conduct Group on Business Taxation (“Code of Conduct Group”) and most jurisdictions around the world;
3. WELCOMES the progress in the relevant jurisdictions through the active steps taken by the agreed deadlines, in particular with regard to the exchange of information on request, the automatic exchange of financial account information and harmful tax regimes, and the enforcement of economic substance requirements;

4. REGRETS that some jurisdictions remain non-cooperative for tax purposes and that a number of jurisdictions failed to fulfil their commitments to the Code of Conduct Group, including on the automatic exchange of financial account information (criterion 1.1), the exchange of information on request (criterion 1.2), on the reform of harmful tax regimes under criterion 2.1, or the enforcement of the economic substance requirements under criterion 2.2; INVITES these jurisdictions to engage with the Code of Conduct Group in order to resolve the remaining issues;
5. REGRETS that Türkiye has not made any progress with one Member State on the effective automatic exchange of information; REITERATES 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, 4 October 2022, 14 February 2023 and 17 October 2023; REITERATES 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; INVITES the Group to inform the Council about developments in this regard and to continue addressing the outstanding issues where no progress has been made;
6. APPROVES the Code of Conduct Group Report set out in doc. ST 6299/2024;

7. APPROVES accordingly the revised EU list of non-cooperative jurisdictions for tax purposes set out in Annex I;
8. ENDORSES the state of play with respect to commitments taken by cooperative jurisdictions to implement tax good governance standards set out in Annex II.



The EU list of non-cooperative jurisdictions for tax purposes

1. American Samoa

American Samoa does not apply any automatic exchange of financial information, has not signed and ratified, including through the jurisdiction they are dependent on, the OECD Multilateral Convention on Mutual Administrative Assistance as amended, has not committed to applying the minimum standards on base erosion and profit shifting (BEPS minimum standards) and has not committed to addressing these issues.

2. Anguilla

Anguilla does not have a rating of at least “Largely Compliant” by the Global Forum for exchange of information on request. Anguilla also facilitates offshore structures and arrangements aimed at attracting profits without real economic substance by failing to take all necessary actions to ensure the effective implementation of substance requirements under criterion 2.2.

3. Antigua and Barbuda

Antigua and Barbuda does not have a rating of at least “Largely Compliant” by the Global Forum for exchange of information on request.

4. Fiji

Fiji has not signed and ratified the OECD Multilateral Convention on Mutual Administrative Assistance as amended, has harmful preferential tax regimes (Exporting Companies, Income Communication Technology (ICT) Incentive, Concessionary rate of tax for regional or global headquarters), has not become a member of the Inclusive Framework nor implemented the BEPS minimum standards, and has not resolved these issues yet.

5. Guam

Guam does not apply any automatic exchange of financial information, has not signed and ratified, including through the jurisdiction they are dependent on, the OECD Multilateral Convention on Mutual Administrative Assistance as amended, has not committed to apply the BEPS minimum standards and has not committed to addressing these issues.

6. Palau

Palau does not apply any automatic exchange of financial information, has not signed and ratified the OECD Multilateral Convention on Mutual Administrative Assistance as amended, and has not resolved these issues yet

7. Panama

Panama does not have a rating of at least “Largely Compliant” by the Global Forum for exchange of information on request, has a harmful foreign source income exemption regime and has not resolved these issues yet.

8. Russian Federation

The Russian Federation has a harmful preferential tax regime (International Holding Companies) and has not resolved this issue.

9. Samoa

Samoa has a harmful preferential tax regime (Offshore Business) and has not resolved this issue yet.

10. Trinidad and Tobago

Trinidad and Tobago does not have a rating of at least “Largely Compliant” by the Global Forum for exchange of information on request, has not signed and ratified the OECD Multilateral Convention on Mutual Administrative Assistance as amended, has harmful preferential tax regimes (Free Zones), does not implement the BEPS minimum standard on country-by-country reporting and has not resolved these issues yet.

Trinidad and Tobago has also committed to addressing the Global Forum recommendations with regard to automatic exchange of information (criterion 1.1) in due time, so as to achieve determinations of at least “In place, but needs improvement” on core requirements 1 and 2 in the Global Forum peer review report in the autumn of 2024.

11. US Virgin Islands

US Virgin Islands does not apply any automatic exchange of financial information, has not signed and ratified, including through the jurisdiction they are dependent on, the OECD Multilateral Convention on Mutual Administrative Assistance as amended, has harmful preferential tax regimes (Economic Development Programme, Exempt companies, International Banking Center Regulatory Act), has not committed to apply the BEPS minimum standards and has not committed to addressing these issues.

12. Vanuatu

Vanuatu facilitates offshore structures and arrangements aimed at attracting profits without real economic substance and has not resolved this issue yet.

Vanuatu is waiting for a supplementary review by the Global Forum in relation to exchange of information on request.

State of play of the cooperation with the EU with respect to commitments taken by cooperative jurisdictions to implement tax good governance principles

1. Transparency

1.1 Automatic exchange of information

The following jurisdiction is expected to effectively exchange information with all 27 Member States according to the timeline referred to in paragraph 6 of the Council conclusions of 22 February 2021, paragraph 4 of the Council conclusions of 5 October 2021, paragraph 4 of the Council conclusions of 24 February 2022, paragraph 4 of the Council conclusions of 4 October 2022, and paragraph 7 of the Council conclusions of 14 February 2023 and paragraph 7 of the Council conclusions of 17 October 2023:

Türkiye

The following jurisdictions committed to address the Global Forum recommendations with regard to automatic exchange of information in due time, so as to achieve determinations of at least “In place, but needs improvement” on core requirements 1 and 2 in the Global Forum peer review report in the autumn of 2024:

Costa Rica and Curaçao

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

The following jurisdictions are waiting for a supplementary review by the Global Forum:

Belize, British Virgin Islands and Seychelles

2. Fair Taxation

2.1 *Existence of harmful tax regimes*

The following jurisdiction, which committed to amending or abolishing its harmful foreign-sourced income exemption regime by the end of 2022 and demonstrated tangible progress with these reforms in 2022 and 2023, was granted until 31 March 2024 to adapt its legislation as regards the treatment of capital gains:

Malaysia

The following jurisdictions, which committed to amending or abolishing preferential tax regimes in the scope of the Forum on Harmful Tax Practices (FHTP) by 31 December 2023, are awaiting final assessments by the FHTP:

Armenia (Free economic zones) and Eswatini (Special economic zone)

3. Prevention of base erosion and profit shifting

3.2 *Implementation of the CbCR minimum standard (BEPS Action 13)*

The following jurisdiction committed to implement the CbCR minimum standard and to activate CbCR exchange relationships with all EU Member States according to the agreed deadline (by 31 August 2024):

Vietnam