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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 Belgian Presidency

Delegations will find attached the work programme under the Belgian Presidency as agreed by the Code of Conduct Group (Business Taxation).

ANNEX

CODE OF CONDUCT GROUP (BUSINESS TAXATION):

WORK PROGRAMME UNDER THE BELGIAN PRESIDENCY

1. The Ecofin Council on a number of occasions acknowledged 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 at the EU level and globally[1]. Most recently, in its conclusions of 8 December 2023[2] the Ecofin Council welcomed the progress achieved by the Code of Conduct Group during the Spanish Presidency, in particular with regard to the revision of the EU list of non-cooperative jurisdictions in October 2023;

2. Furthermore, the Ecofin Council notably:

   a. endorsed the new multiannual work package set out in doc. 13649/23;

   b. endorsed the standstill assessments agreed by the Group, asked the Group to continue monitoring standstill and the implementation of the rollback and welcomed the ongoing discussions concerning the notification process;

   c. endorsed the assessments of actual effects of individual measures as agreed by the Group and asked the Group to continue monitoring individual measures;

   d. 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;

[1] 16361/23
[2] Most recently, Council conclusions of 8 December (16361/23), 16 June 2023 (10157/23), 17 October 2023 (13879/23), 14 February 2023 (6378/23).

e. 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;

f. 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, 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 exchange of information on request (criterion 1.2);

g. welcomed the progress concerning the future criterion 1.4 on beneficial ownership information and called on the Group to continue the work to incorporate beneficial ownership as a fourth criterion on tax transparency;

h. called on the Group to keep working on the evaluation of defensive measures in the tax area towards non-cooperative jurisdictions, in accordance with the agreed Guidance, and report to the Council on further progress in these matters;

c. endorsed the extension of the geographical scope of the EU screening and listing exercise as from 2024 which was agreed by the Group;

e. invited the Group to engage with relevant jurisdictions which have not yet been assessed for the country-by-country reporting (CbCR) anti-BEPS minimum standard (criterion 3.2);

f. invited the Group to report back to the Council on its work during the Belgian Presidency.

3. Furthermore, in its conclusions of 8 November 2022 on the reform of the Code of Conduct the Ecofin Council notably 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).

4. Against this background, this note sets out the proposed COCG work programme for the duration of the Belgian Presidency of the Council (first semester of 2024).

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 constitutes a mandate for the work during the Belgian Presidency.

6. The Code of Conduct Group will pursue the work in accordance with the multiannual work package.[3]

I. 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 2023. The current notification is the first time Member States will notify, if applicable, tax features of general application as defined in paragraph B.2 of the revised Code of Conduct.

8. The Group will also continue the monitoring of actual effects of some regimes for which it was decided to have regular monitoring.

[3] 13649/23

9. The Group will continue the reflection and work to improve its working practices in order to to ensure a level playing field in the self-notifications under paragraph E of the Code of Conduct.

II. Links with third countries

10. The Group will continue to monitor jurisdictions covered by the geographical scope and the implementation of the commitments taken by cooperative jurisdictions. The Group will start the screening process of the three new jurisdictions included in the geographical scope[4], including requests for commitments if the case.

11. The EU list of non-cooperative jurisdictions for tax purposes will be updated by the Council foreseeably in February 2024 with the following objectives:

– 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;

- remove from Annex I jurisdictions that addressed pending issues;

– 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 jurisdictions that fulfilled their commitments.

[4] Brunei Darussalam, Kuwait and New Zealand.

For these purposes, consideration should be given in particular to the progress achieved by jurisdictions on:

- automatic exchange of financial information (criterion 1.1), following the publication of 2023 Global Forum peer reviews on AEOI, in particular for jurisdictions that have fulfilled the criterion already in 2023, ahead of the deadline in 2024;

- exchange of information on request (criterion 1.2), in view of new peer reviews that may be published, or supplementary reviews that may be granted, by the Global Forum in the first semester of 2024;

- amending or abolishing preferential tax regimes (criterion 2.1);

- adapting legislation as regards the tax treatment of relevant items of foreign source income exemption (FSIE) regimes in place in certain jurisdictions (criterion 2.1);

- effective implementation of the economic substance requirements (criterion 2.2), following the FHTP annual monitoring for companies, and the annual monitoring carried out separately by the COCG for partnerships as well as for collective investment vehicles.

12. Beyond the topics mentioned above, the Group will also work on:

    a. the future criterion 1.4 to incorporate beneficial ownership as a fourth criterion of the EU list on tax transparency;
    b. preparation for the future monitoring of compliance with criteria 1.1 and 1.2 following the expected changes to the peer review process for AEOI and EOIR by the Global Forum from 2025;
    c. preparation for the assessment in the second semester of 2024 for criterion 3.2 on country-by-country reporting (CbCR) of relevant jurisdictions that joined the Inclusive Framework after 31 December 2017;
    d. the possible screening exercise for trusts and other similar legal arrangements in 2.2 jurisdictions, in close cooperation with the FHTP;

e. the effectiveness of the Member States' application of defensive measures in the tax area towards non-cooperative jurisdictions, in accordance with the agreed Guidance;
f. the screening of the three new jurisdictions added to the geographical scope in 2023;
g. interaction between the OECD/G20 BEPS Inclusive Framework GloBE rules under Pillar Two and the criterion 2.2 of the EU list on fair taxation;
h. regular monitoring of progress by jurisdictions in Annex I and Annex II on an ongoing basis.

13. The Chair, Ms. María José Garde Garde (Spain), will continue the procedural/political dialogue with jurisdictions, as necessary.

III. <u>Organisation of work</u>

14. It is scheduled to organise three meetings of the Code of Conduct Group (on 7 February, 24 April and 10 June 2024), 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.