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'A' ITEM NOTE

From:	General Secretariat of the Council
To:	Council
No. prev. doc.:	6853/18
Subject:	The EU list of non-cooperative jurisdictions for tax purposes: - Changes due to commitments received from jurisdictions affected by hurricanes = Adoption

1. On 5 December 2017, the ECOFIN Council adopted Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes¹. More specifically it endorsed the 'EU list of non-cooperative jurisdictions for tax purposes' as well as recommendations to the concerned jurisdictions on steps to take in order to get de-listed (Annex I of the Council conclusions). The Council conclusions also noted with satisfaction the meaningful commitments at high political level made by other jurisdictions (Annex II) and determined the Guidelines for further work in this area (Annex IV).

¹ Doc. 15429/17 FISC 345 ECOFIN 1088.

2. At this occasion, the Council agreed²:
 - i) to "*put on hold*" the screening process for eight jurisdictions in the Caribbean region that were severely struck by devastating hurricanes in September 2017: Anguilla, Antigua and Barbuda, Bahamas, British Virgin Islands, Dominica, Saint Kitts and Nevis, Turks and Caicos Islands, and the US Virgin Islands.
 - ii) that the Code of Conduct Group (business taxation) "*should, by February 2018, pursue further contacts with these jurisdictions, with the view to resolving these concerns by the end of 2018*".
3. Delegations agreed by way of silence procedure at the end of January and beginning of February 2018 that letters are sent out to Anguilla, Antigua and Barbuda, Bahamas, British Virgin Islands, Dominica, Saint Kitts and Nevis and the US Virgin Islands to seek, by 28 February 2018, commitments at high political level to address the deficiencies identified by the Code of Conduct Group (see doc. 6671/18).
4. In agreement with the Code of Conduct Group, a Fiscal Attachés meeting was thereafter convened on 1st March 2018 to discuss the responses from the above-mentioned jurisdictions. At this occasion it was agreed to seek, by Monday 5 March 2018 14:00 Brussels time, a number of clarifications and/or missing commitments from Anguilla, Antigua and Barbuda, Bahamas, British Virgin Islands, Dominica, Saint Kitts and Nevis, and the US Virgin Islands.
5. Fiscal Attachés met again on the afternoon of Monday 5 March 2018 to discuss the follow-up commitment letters, all signed at high political level, received from these jurisdictions.

² Doc. 15429/17 FISC 345 ECOFIN 1088, paragraph 12.

6. In respect of the Turks and Caicos Islands, it responded to a Code of Conduct Group questionnaire on criterion 2.2 by the same above deadline of 28 February 2018 and Fiscal Attachés agreed on 1 March 2018 to seek, by 31 March 2018, commitment at high political level by the Turks and Caicos Islands to address the deficiencies identified by the Code of Conduct Group by 31 December 2018 (see doc. 6671/18).
7. On 7 March 2018, the Permanent Representatives Committee discussed the state of play and mandated Fiscal Attachés to review a new letter received from one jurisdiction on 6 March 2018 and update the recommended changes to the 5 December 2017 Council conclusions accordingly.
8. On this basis (and as set out in detail in the annex to this note), the Permanent Representatives Committee agreed that the following jurisdictions should be included in Annex I of the Council conclusions:
 - i) Bahamas;
 - ii) Saint Kitts and Nevis;
 - iii) US Virgin Islands.
9. It was furthermore agreed that, based on the specific commitments made, the following jurisdictions should be included in Annex II of the Council conclusions:
 - i) Anguilla;
 - ii) Antigua and Barbuda;
 - iii) British Virgin Islands;
 - iv) Dominica.

10. To be noted that all commitments officially taken by jurisdictions, as well as the implementation of the recommendations made by the Council in order to address open issues, will be carefully monitored by the Code of Conduct Group, supported by the General Secretariat of the Council, with technical assistance of the European Commission, in order to evaluate their effective implementation (Annex IV).
 11. The ECOFIN Council in March 2018 is therefore invited to:
 - adopt the amendments to the Council conclusions of 5 December 2017 in annex to the present note, as an "A" item on the agenda,
 - agree on the publication of the above-mentioned amendments in the Official Journal.
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With effect from the day of publication in the *Official Journal of the European Union*, the Council conclusions of 5 December 2017 on the EU list of non-cooperative jurisdictions for tax purposes³ are amended as follows:

In Annex I:

1. Bahamas is added with the following text:

"Bahamas facilitates offshore structures and arrangements aimed at attracting profits without real economic substance and did not commit to addressing these issues by 31 December 2018.

Bahamas' commitment to comply with criteria 1.1 and 1.3 will be monitored."

2. Saint Kitts and Nevis is added with the following text:

"Saint Kitts and Nevis has a harmful preferential tax regime and did not commit to amending or abolishing it by 31 December 2018.

Saint Kitts and Nevis' commitment to comply with criterion 3 will be monitored."

3. US Virgin Islands is added with the following text:

"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 a harmful preferential tax regime and did not clearly commit to amending or abolishing it, does not apply the BEPS minimum standards and did not commit to addressing these issues by 31 December 2018."

³ Official Journal of the European Union, C 438 2017 pages 5-24.

In Annex II:

4. Anguilla is added in section 2.2.
 5. Antigua and Barbuda is added in the first sub-sections of sections 1.1, 1.3, 2.1 and 3.
 6. British Virgin Islands is added to section 2.2.
 7. Dominica is added in the first sub-sections of sections 1.1, 1.3, 2.1 and 3.
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