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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)

- Procedural guidelines for carrying out the process of monitoring commitments concerning the EU list of non-cooperative jurisdictions for tax purposes

Delegations will find attached the "Procedural guidelines for carrying out the process of monitoring commitments concerning the EU list of non-cooperative jurisdictions for tax purposes" as agreed by the Code of Conduct Group (Business Taxation) meeting of 14 February 2018.

Procedural Guidelines

for carrying out the process of monitoring commitments concerning the EU list of non-cooperative jurisdictions for tax purposes¹

The monitoring process as set out in these guidelines will be carried out based on the Council conclusions of 5 December 2017 (doc. 15429/17), in particular Annex IV.

1. SEQUENCING OF THE MONITORING PROCESS

1.1. Jurisdictions are expected to send the Code of Conduct Group (hereafter "COCG") the following information:

- Phase 1 (*by 9 March 2018*): precise timeline and description of the steps for the implementation of the commitments that they have taken;
- Phase 2: information in due time about each of the steps mentioned in step 1, including, where relevant, an English translation of their draft legislation(s) as presented to their Parliament so as to enable an early analysis and feedback by the COCG;
- Phase 3 (*by the agreed deadline*): an English translation of the final measure(s) as enacted.

1.2. Technical assistance to the jurisdictions to help them in meeting their specific commitments will be provided by the Commission Services. Where relevant, such technical assistance will also be provided by the OECD Secretariat or Member States.

¹ Agreed by the Code of Conduct Group (business taxation) at its meeting of 14 February 2018.

- 1.3. The COCG ensures the necessary ownership by Member States through delegating the review of preliminary individual assessments prepared by the Commission Services to the subgroup on third countries. When consensus is not achieved in a meeting of the subgroup, the Chair of the subgroup will consult the COCG Chair on the way forward.
- 1.4. If necessary, jurisdictions could also be invited to attend meetings of the COCG or the subgroup, following the procedures of the COCG (i.e. invited jurisdictions can make presentations and answer questions asked by Delegations but they cannot participate in the Group/subgroup discussions and deliberations).
- 1.5. Progress reports on the monitoring process will be submitted to the ECOFIN Council at the end of each semester. An updated version of Annex II of the 5 December 2017 Council conclusions will be included in these progress reports.
- 1.6. At the beginning of 2019 (respectively 2020), the COCG will assess the overall implementation of commitments made by jurisdictions with a view to updating the EU list of non-cooperative jurisdictions for tax purposes accordingly.

2. ACTORS INVOLVED IN THE MONITORING PROCESS

- 2.1. The day-to-day interactions with jurisdictions on technical aspects of the monitoring process will be carried out by the Commission services, in order to prepare the relevant assessments and decisions by the COCG. The COCG Chair's team and General Secretariat of the Council (hereafter "GSC") will be kept informed of all steps and the Delegations of the Member States will receive weekly or bi-monthly as appropriate a report of all the activities and exchanges undertaken.

- 2.2. The interactions and dialogues on procedural and/or political aspects (e.g. requests by jurisdictions to discuss horizontal or political aspects, further process in the Council) will be conducted by the COCG Chair's team, supported by the GSC, with the technical assistance of the Commission services, liaising with the Presidency and EEAS (e.g. through bilateral meetings or telephone conferences). When the issue is of particular procedural and/or political importance, it will be discussed by the COCG. The Delegations of the Member States will receive by the Chair of the COCG, with the support of GSC, weekly or bi-monthly as appropriate a report of these procedural and political interactions, including all relevant emails, letters and documents.
- 2.3. The GSC will continue to serve as a "focal point" for the monitoring process as set out above. The exchange of formal letters from/to jurisdictions will be channeled through the functional email address (Secretariat.COCG-jurisdictions@consilium.europa.eu). For the sake of transparency and to ensure the necessary ownership of Member States, the same functional email address will be copied in all inbound and outbound correspondence relevant for the monitoring process.
- 2.4. Where urgent decisions by the 28 Member States are required, Fiscal Attachés meetings will be convened, whilst approval by silence procedure should be used only in exceptional circumstances.
- 2.5. All documents requiring a decision should be circulated to delegations at least 3 working days before the meeting concerned (fiscal attachés, subgroup, or COCG), and include as much contextual elements as possible (summary of interactions with the jurisdiction in question).
- 2.6. Where the issue at stake is of technical nature, meeting documents will normally be issued by the Commission services to the subgroup on third countries. Where it is of procedural/political nature, they will normally be issued by the Chair (for the COCG) or the Presidency in connection with the COCG Chair (for the subgroup on third countries).

2.7. The COCG Chair, supported by the GSC, will continue liaising with the Chairs of the OECD Committee on Fiscal Affairs, Inclusive Framework on BEPS, Global Forum (GF), and Forum on Harmful Tax Practices (FHTP), with the technical assistance of the Commission Services, in order to ensure that the monitoring process is well coordinated with the activities of the GF and FHTP in terms of scope and timing consistency.
