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- Summary of the responses to the questionnaire
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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.



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NOTE

From:	Commission services
To:	Code of Conduct Group (Business Taxation)
Subject:	Defensive measures

- Summary of the responses to the questionnaire

On the basis of replies provided by 17 Member States to the questionnaire on defensive measures, the main lines are summarised here below for each of the questions.

TAX MEASURES

1. Action to apply defensive measures linked to the EU list

Most of the Member States have not yet applied measures linked to the EU list but are considering doing so; they are at the stage of the internal preparations. A number of Member States already have legislative defensive measures in place since some years that some of them are considering to link with the EU list while others do not intend to amend them in order to create a link with the EU list.

A more limited number of Member States have already taken action to apply defensive measures that are now in force.

2. Implementation of the EU list in national legislation

For the Member States that envisage applying legislative measures, the majority of them will need to insert a general link to the EU list in their domestic law to give effect. A few Member States indicated that they would need to amend their domestic law each time the EU list was amended.

For the application of administrative measures most Member States note that the problem is not relevant.

3. Scope of the defensive measures

Member States provide different responses depending on whether they have national lists or not. The Member States that have national lists indicate that they intend to continue relying on both lists, the national and the EU list, for applying the defensive measures. The Member States that have no national lists will rely on the EU list.

4. Type of measure (administrative and/or legislative)

Member States are split as to the choice between administrative and / or legislative measures. The majority of the Member States consider applying both types of measures and many of these Member States consider applying more than one of each; for example some Member States will apply the three administrative measures together and three to four legislative measures together. Regarding the Member States that have chosen to apply administrative measures only, it seems that the measure on the increased audit risk is the one most chosen. One Member State notes that the defensive measures are all of a legislative nature.

NON TAX MEASURES

5. Link between the EU list and the foreign policy, economic relations and development cooperation

The largest majority of the Member States have not yet started to take into account the EU list in these areas but some of them are considering it. Some Member States have started to engage with their Foreign Ministries to consider the issue.

6. Link between the EU list and development funds

A few Member States already have certain provisions that link the distribution of funds to certain criteria, including tax aspects. Some of them are considering taking into account the EU list in these measures. Other Member States are either considering this issue on how to operationalise it while others have not taken any steps at this stage. Some Member States note that their development funds are anyway not yet granted to the jurisdictions in the scope of the EU list.

APPLICATION

7. Period of application of the defensive measures

8. Period of application depending on the type of measures

A large number of Member States point out the difficulties to apply and dis-apply defensive measures on a regular basis following the changes of the EU list; they are therefore considering to apply the measures for a pre-defined period of time, for example a full fiscal year. Some Member States note that the situation is different depending on the type of defensive measures; in particular administrative measures could be easier to adapt, even though one Member State notes that reporting obligations need to be applied in respect of a relevant tax year. A number of Member States are still considering the issue while a few note their intention to apply and dis-apply defensive measures immediately following the changes to the EU list.

9. Application of certain defensive measures linked with certain deficiencies of the listed jurisdictions

A limited number of Member States were in a position to comment on this question and they noted that the effectiveness of defensive measures could be enhanced by establishing links with the criteria that the jurisdictions do not meet. Other Member States note that this issue is still part of their considerations.

10. Any other comment

Some Member States note that the work on coordinating defensive measures should be pursued at EU level and one Member States observes that the publication of the EU list has in itself already created consequences and called for analysing first the effects of the measures.

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