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Delegations will find attached the partially declassified version of the above-mentioned document.



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NOTE

From:	Commission services
To:	Delegations
Subject:	Future beneficial ownership criterion for the EU listing process

The annex to the Council conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes, adopted by the ECOFIN Council on 8 November 2016, included the following reference:

I. Criteria for screening jurisdictions with a view to establishing an EU list of non-cooperative jurisdictions

1. Tax transparency criteria

[...] 1.4 Future criterion: in view of the initiative for future global exchange of beneficial ownership information, the aspect of beneficial ownership will be incorporated at a later stage as a fourth transparency criterion for screening

1. Background

To date, the initiative for global exchange of beneficial ownership information has not been put in place. The criterion for assessing a jurisdiction's compliance with the transparency requirements on beneficial ownership should therefore be based on the current international standards on beneficial ownership. In this context, the term beneficial owner should be interpreted in a manner consistent with the Financial Action Task Force (FATF)¹ international standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (FATF Recommendations).

FATF defines the term “beneficial owner” as the natural person who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement. Reference to ultimate ownership or control and ultimate effective control refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.

The FATF Recommendations of February 2012 (updated in 2017) set out a framework of measures which countries should implement in order to combat money laundering and terrorist financing. Out of the 40 FATF Recommendations, three (10, 24 and 25) regarding transparency and beneficial ownership of legal persons and legal arrangements are relevant from a tax perspective, as they aim at jurisdictions making sure that the beneficial owners are identified and that the information is available:

- Recommendation 10 on Customer due diligence and its accompanying interpretative note, in particular, regarding the method of identifying the beneficial ownership of a legal person or arrangement set out in 5(b)(i) and (ii) of Recommendation 10;
- Recommendation 24 on Transparency and beneficial ownership of legal persons and its accompanying interpretative note;
- Recommendation 25 on Transparency and beneficial ownership of legal arrangements and its accompanying interpretative note.

¹ The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 to set standards and promote effective implementation of measures to combat money laundering, terrorist financing and other related threats to the international financial system.

In 2016, G20 called on the FATF and the Global Forum on Transparency and Exchange of Information for Tax Purposes to improve the implementation of the international standards on transparency, including on the availability of beneficial ownership information, and its international exchange. The FATF and the Global Forum have since been working to reinforce each other's work to improve the effective implementation of international standards in this area.

The FATF concept of beneficial owner, as well as recommendations 10, 24 and 25 have been incorporated into elements A.1, A.3 and B.1 of the OECD 2016 Terms of Reference to monitor and review progress towards transparency and exchange of information on request for tax purposes.

The 2016 Terms of Reference include:

A.1.1. Jurisdictions should ensure that information is available to their competent authorities that identifies the owners of companies and any bodies corporate. Owners include legal owners and beneficial owners (including, in any case where a legal owner acts on behalf of any other person as a nominee or under a similar arrangement, that other person), as well as persons in an ownership chain.

A.1.3. Jurisdictions should ensure that information is available to their competent authorities that identifies the partners in, and the beneficial owners of, any partnership that (i) has income, deductions or credits for tax purposes in the jurisdiction, (ii) carries on business in the jurisdiction or (iii) is a limited partnership formed under the laws of that jurisdiction.

A.1.4. Jurisdictions should take all reasonable measures to ensure that beneficial ownership information is available to their competent authorities in respect of express trusts (i) governed by the laws of that jurisdiction, (ii) administered in that jurisdiction, or (iii) in respect of which a trustee is resident in that jurisdiction

A.1.5. Jurisdictions that allow for the establishment of foundations should ensure that information is available to their competent authorities for foundations formed under those laws to identify the founders, members of the foundation council, and beneficiaries (where applicable), as well any beneficial owners of the foundation or persons with the authority to represent the foundation.

For each of these requirements, a rating of “non-compliant”, “partially compliant”, “largely compliant” or “compliant” is assigned.²

² <http://eoi-tax.org/#default>

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