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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 criteria – Implementation of anti-BEPS measures

I. BACKGROUND

1. 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:

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

3. Implementation of anti-BEPS measures

[...] 3.2 Future criterion that a jurisdiction should fulfil in order to be considered compliant as regards the implementation of anti-BEPS measures (to be applied once the reviews by the Inclusive Framework of the agreed minimum standards are completed):

- the jurisdiction should receive a positive assessment¹ for the effective implementation of the agreed OECD anti-BEPS minimum standards

¹ *Once the methodology is agreed, the wording of the criterion will be revised by the Council accordingly*

2. According to the Explanatory Statement of the 2015 Final Reports of the OECD/G20 BEPS Project², *"all OECD and G20 countries commit to consistent implementation in the areas of preventing treaty shopping, Country-by-Country reporting, fighting harmful tax practices and improving dispute resolution"*. This means that for four BEPS actions there is a commitment by the jurisdictions which are part of this exercise to implement these standards in line with the recommendations included in the relevant BEPS final reports. These reports are³:

Action 5 – *"Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance"*

Action 6 – *"Preventing the Granting of Treaty Benefits in Inappropriate Circumstances"*

Action 13 – *"Transfer Pricing Documentation and Country-by-Country Reporting"* and

Action 14 – *"Making Dispute Resolution Mechanisms More Effective"*

3. For the purpose of monitoring the implementation of these standards the Explanatory Statement clarified that: *"The monitoring will consist of an assessment of compliance in particular with the minimum standards in the form of reports on what countries have done to implement the BEPS recommendations. It will involve some form of peer review which will have to be defined and adapted to the different Actions, with a view to establishing a level playing field by ensuring all countries and jurisdictions implement their commitments so that no country or jurisdiction would gain unfair competitive advantages."*

² <http://www.oecd.org/ctp/beps-explanatory-statement-2015.pdf>

³ <http://www.oecd.org/ctp/beps-2015-final-reports.htm>

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