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Subject:	Future criterion 3.2 for the EU listing process
	– Implementation of anti-BEPS minimum standards

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



**Brussels, 24 May 2018
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NOTE

From:	Bulgarian Presidency
To:	Delegations
Subject:	Future criterion 3.2 for the EU listing process – Implementation of anti-BEPS minimum standards

Delegations will find attached a document in view of the meeting of the Code of Conduct Group (Business Taxation) of 31 May 2018.

Future criterion 3.2 for the EU listing process**Implementation of anti-BEPS minimum standards****I/ BACKGROUND**

1. The EU listing criteria approved by the ECOFIN Council of 8 November 2016 (doc. 14166/16) included the following reference:

" 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 jurisdictions should receive a positive assessment for the effective implementation of the agreed OECD anti-BEPS minimum standards"
2. A footnote to this future criterion 3.2 furthermore provided that *"once the methodology is agreed, the wording of the criterion will be revised by the Council accordingly"*.
3. The COCG meeting of 14 February 2018 mandated the subgroup on third countries to prepare a proposal, with a view to starting to apply as soon as possible this new criterion 3.2 to jurisdictions that have been reviewed and rated by the Inclusive Framework for their implementation of agreed anti-BEPS minimum standards. It also noted that in the absence of ratings, the COCG, assisted by the Commission services, could proceed to the assessment on the basis of the Inclusive Framework on BEPS (IF) recommendations.
4. This mandate was reiterated at the COCG meeting of 12 April 2018.
5. At the subgroup meeting of 16 March, delegations agreed that, at this stage, only the assessment of the implementation of the BEPS minimum standard on Country-by-country reporting (CBCR – BEPS action 13) is sufficiently advanced to deserve a parallel consideration by the EU within its listing exercise: the IF has indeed already agreed the first peer review reports on BEPS Action 13 for 95 jurisdictions.

6. At the subgroup meeting of 4 May 2018, the Commission services presented a preliminary analysis of the outcome of these reports as relevant for the future criterion 3.2 and proposed terms for implementing this criterion (doc. 8385/18 EU RESTRICTED).
7. Delegations supported the proposed way forward but raised the following comments:
- a. One delegation suggested to underline that the jurisdiction should have arrangements in place to be able to exchange with all interested MS;
 - b. Some delegations noted that EU Member States should comply with the requirements before that the new criterion 3.2 is imposed to jurisdictions in the context of the EU listing exercise: 5 MS have indeed received one recommendation, 6 MS have received two recommendations;
 - c. Some delegations considered furthermore that the wording according to which recommendations by the IF on the implementation of the requirements "will be taken into account" is too vague.

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