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## DECLASSIFICATION

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Subject: Draft conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes  
– *Adoption*

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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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Brussels, 8 March 2019  
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RESTREINT UE/EU RESTRICTED

FISC 151  
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**NOTE**

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From:	General Secretariat of the Council
To:	Council
Subject:	Draft conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes – <i>Adoption</i>

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1. On 5 December 2017, the ECOFIN Council adopted Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes<sup>1</sup>. More specifically it endorsed the 'EU list of non-cooperative jurisdictions for tax purposes' (Annex I), noted with satisfaction the meaningful commitments made at high political level by other jurisdictions (Annex II), recommended some defensive measures against non-cooperative jurisdictions (Annex III) and determined the Guidelines for further work in this area (Annex IV).
2. Furthermore, the Council conclusions of 5 December 2017 confirmed that "*a decision on modification of the list will be taken by the Council, on the basis of the relevant factual information made available to the Council by the Code of Conduct Group*" (paragraph 24).

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<sup>1</sup> Official Journal of the European Union, C 438 2017 pages 5-24.

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3. On 23 January<sup>2</sup>, 13 March<sup>3</sup>, 25 May<sup>4</sup>, 2 October<sup>5</sup>, 6 November<sup>6</sup> and 4 December<sup>7</sup> 2018, the ECOFIN Council subsequently adopted several amendments/updates to Annexes I and II of the Council conclusions of 5 December 2017.
4. A more significant revision of the Council conclusions of 5 December 2017 at the beginning of 2019 appeared to be necessary considering the end 2018 deadline for the implementation of most commitments taken by jurisdictions at the end of 2017. The Code of Conduct Group therefore mandated its subgroup on third countries to prepare draft Council conclusions and assess what the 58 jurisdictions concerned had implemented by the agreed deadline.
5. The subgroup examined successive Presidency compromise texts of Council conclusions and reviewed the Commission services' draft assessments of what individual jurisdictions had implemented by end 2018 at its meetings of 14 November 2018, 18 January 2019 and 25 January 2019, as well as at a Fiscal Attachés meeting on 11 December 2018, whilst the Code of Conduct Group and the High Level Working Party on tax issues (HLWP) reviewed the remaining open issues, in relation to both the draft Council conclusions and draft assessments, at their meetings of 30-31 January and 27-28 February 2019.
6. At the Code of Conduct Group meeting of 30 January 2019, delegations agreed to seek commitments from six jurisdictions (Barbados, Belize, Curaçao, Mauritius, Saint Lucia and Seychelles) that had replaced harmful preferential tax regimes by measures of similar effect – mostly concerning exemptions of foreign income – to amend or abolish these new regimes by 31 December 2019, and set a deadline for a response to 15 February 2019.

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<sup>2</sup> Official Journal of the European Union, C 29 2018 page 2.

<sup>3</sup> Official Journal of the European Union, C 100 2018 pages 4-5.

<sup>4</sup> Official Journal of the European Union, C 191 2018 pages 1-3.

<sup>5</sup> Official Journal of the European Union, C 359 2018 pages 3-5.

<sup>6</sup> Official Journal of the European Union, C 403 2018 pages 4-6.

<sup>7</sup> Official Journal of the European Union, C 441 2018 pages 3-4.

## RESTREINT UE/EU RESTRICTED

7. As a consequence, the Group agreed to wait until the 12 March 2019 ECOFIN to revise the EU list and set an internal cut-off date (24 February 2019<sup>8</sup>) for any new factual developments to be considered by the Group ahead of its meeting of 27 February. A similar approach had been followed by the Group at its meeting of 30 January 2019, which took into account factual developments that occurred throughout January 2019.
8. The letters seeking commitment sent to these six jurisdictions by the Chair of the Code of Conduct Group were made public<sup>9</sup> and consent was sought to publish the commitment letters received in response on the Council's website<sup>10</sup>: only two of these jurisdictions (Barbados and Saint Lucia) refused consent.
9. The six commitment letters received were examined by the Code of Conduct Group meeting of 27 February 2019 and the Group agreed on this occasion that the commitment letter received from Barbados<sup>11</sup> is not sufficient. The last two remaining reservations on the inclusion of Barbados in Annex I were lifted at the Coreper meeting of 8 March 2019.
10. In respect of Bermuda, all delegations agreed at the Code of Conduct Group meeting of 27 February 2019 that the measures it enacted by the above-mentioned cut off date were not sufficient to meet its commitment on criterion 2.2. The last two remaining reservations on the inclusion of Bermuda in Annex I were also lifted at the Coreper meeting of 8 March 2019.

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<sup>8</sup> In practice developments occurring until 26 February 2019 were taken into account.

<sup>9</sup> Doc. 5981/19 FISC 95 ECOFIN 98.

<sup>10</sup> Doc. 6097/19 FISC 99.

<sup>11</sup> Doc. 6097/19 ADD 4 EU RESTRICTED.

## RESTREINT UE/EU RESTRICTED

11. The last draft assessment on which no consensus could be found in the Code of Conduct Group on 27 February 2019 concerns the United Arab Emirates (UAE). Most delegations held the view that the constitutional reason put forward by the UAE to justify the delay in complying with criterion 2.2, i.e. the complexity of its federal system, is not justified and that the UAE should therefore be included in Annex I. Two reservations on this conclusion were lifted at the Coreper meeting of 8 March 2019 but two others were kept (see square brackets). One of the two delegations that maintained a reservation is in favour of granting a deadline extension to the UAE until end 2019 and for its inclusion in Annex II rather than Annex I.
12. The main considerations taken into account by most delegations for concluding that the UAE should be included in Annex I were the following:
  - The only genuine institutional or constitutional issues that were so far acknowledged by the Group are the constitutional necessity of a referendum (Switzerland) or the absence of government during several months following elections (Cook Islands, Maldives), neither of which apply to the UAE;
  - It is the UAE's choice and responsibility to have engaged very late in the cooperation process with the EU: it has committed to criterion 2.2 in February 2018 but the first "concept paper" on how they intended to comply with this criterion was only received on 17 December 2018, whilst the first draft legislation was only received by the Commission services on 12 February 2019;
  - Taking into account mere procedural (non constitutional) delays would risk reopening the conclusion already agreed at technical level to list other jurisdictions (e.g. Aruba, Dominica) that faced a similar delay but were not granted a deadline extension.

**RESTREINT UE/EU RESTRICTED**

13. In respect of the wording of the draft Council conclusions set out in annex to the present note, a consensus was found among delegations at the meeting of the High Level Working Party on tax issues (HLWP) on 28 February 2019, and the last remaining reservation (on section 2.2 of Annex II) was lifted at Coreper on 8 March 2019.
14. The ECOFIN Council on 12 March 2019 is therefore invited to:
- verify that the last remaining reservation on the issue in square brackets (related to the UAE) can be lifted;
  - adopt the draft Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes set out in annex to the present note,
  - agree on their publication in the Official Journal.

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**(draft) COUNCIL CONCLUSIONS**

**on the revised EU list of non-cooperative jurisdictions for tax purposes**

The Council:

1. RECALLS the Council Conclusions of 25 May 2016 on an external taxation strategy and measures against tax treaty abuse, the Council Conclusions of 8 November 2016 on the criteria for and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes, and the Council Conclusions of 5 December 2017 on the EU list of non-cooperative jurisdictions for tax purposes;
2. WELCOMES the work that the Code of Conduct Group on Business Taxation (“Code of Conduct Group”), supported by the General Secretariat of the Council and with the assistance of the European Commission services, has carried out in monitoring the implementation of commitments taken by jurisdictions to implement tax good governance principles and in taking stock of the work achieved by the relevant OECD fora;
3. WELCOMES the fact that most of these jurisdictions have engaged in an open and constructive way with the Code of Conduct Group and resolved the deficiencies that had been identified in the areas of tax transparency, fair taxation and implementation of anti-BEPS standards by enacting the necessary measures within the agreed deadline;
4. REGRETS at the same time that a number of jurisdictions have not enacted by the end of 2018 all the measures to which they had committed, whilst some jurisdictions have not committed to implement any or some of the tax good governance principles for which it was determined that they are not compliant;
5. ENDORSES, accordingly, the revised EU list of non-cooperative jurisdictions for tax purposes set out in Annex I;

## RESTREINT UE/EU RESTRICTED

6. CONSIDERS that reasons put forward by some jurisdictions for not fully enacting all of the measures to which they had committed, despite tangible efforts, could in some cases be viewed as justified and AGREES therefore that the deadline for meeting their commitments should be extended as set out in Annex II;
7. TAKES THE VIEW, in particular, that:
  1. certain developing countries should be given more time to reform their harmful preferential tax regimes covering manufacturing activities and similar non-highly mobile activities considering the heavier economic impact of these reforms on such countries;
  2. jurisdictions that faced genuine institutional or constitutional issues that prevented them from fulfilling their commitments in 2018 should also be given a reasonable deadline extension to complete their reforms subject to the jurisdiction having provided adequate draft legislation;
  3. jurisdictions that evidenced litigation risks in relation to the abolition of certain harmful preferential tax regimes should be granted an extended grandfathering period;
  4. jurisdictions that are rated as partially compliant for exchange of information on request and are waiting for a supplementary review by the Global Forum should be granted an extension until the revised rating is available;
8. EXPRESSES its satisfaction that many jurisdictions under criterion 2.2 have enacted the required reforms in 2018 and are therefore removed from Annex II, but ASKS the Code of Conduct Group to monitor the proper enactment of their legislative and enforcement provisions on an annual basis;



9. ACKNOWLEDGES that further work will be needed to define acceptable economic substance requirements for collective investment funds under criterion 2.2 and INVITES the Group to continue the dialogue and provide further technical guidance to the jurisdictions concerned by mid 2019;
10. NOTES WITH CONCERN the replacement of harmful preferential tax regimes by measures of similar effect in certain jurisdictions, REGRETS that one of these jurisdiction has not taken a sufficient commitment to amend or abolish these measures by the end of 2019 and STRESSES that no further replacement with measures of similar effect or delays will be accepted when assessing at the beginning of 2020 whether the requested commitments will have been implemented;
11. NOTES the Code of Conduct Group will continue seeking commitments from the jurisdictions that have not yet committed to address the deficiencies identified;
12. NOTES that the Code of Conduct Group will continue monitoring the effective implementation by end 2019 of the commitments made by developing countries without a financial centre in respect of tax transparency and implementation of anti-BEPS minimum standards, as well as the implementation of the relevant transparency and anti-BEPS minimum standards in jurisdictions that cannot or do not wish to join the Global Forum or OECD BEPS Inclusive Framework;
13. WELCOMES the work of the Code of Conduct Group in reviewing newly identified preferential regimes in some jurisdictions and in monitoring the commitments taken by these jurisdictions to remove the harmful features of these regimes;
14. ENDORSES the state of play with respect to commitments taken by cooperative jurisdictions to implement tax good governance principles, as set out in Annex II;

## RESTREINT UE/EU RESTRICTED

15. INVITES the Code of Conduct Group and its Chair, supported by the General Secretariat of the Council and with the technical assistance of the Commission services, to continue the interactions and dialogues with the relevant jurisdictions, including with respect to the end of the general "two out of three" approach at the end of June 2019;
16. CONFIRMS that the Code of Conduct Group can recommend to the Council at any time to update, at least once a year but as from 2020 no more than twice a year, leaving sufficient time, where appropriate, for Member States to amend their domestic legislation, the EU list set out in Annex I, as well as the state of play set out in Annex II on the basis of any new commitment taken or of the implementation thereof;
17. RECALLS the extensions of the geographical scope of the EU screening exercise to other jurisdictions agreed in 2018 and INVITES the Code of Conduct Group to review the economic data used for selecting jurisdictions in 2020, for application as from 2021;
18. CONFIRMS the start of application of criterion 3.2 (implementation of the country by country reporting – CbCR minimum standard), and REITERATES its invitation to the Code of Conduct Group to finalise discussions in respect of future criterion 1.4 (transparency of ultimate beneficial ownership);

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19. WELCOMES the fact that Annex I of these Council conclusions is being taken into account by the European Commission in the implementation of EU financing and investment operations, as well as the agreements reached in respect of coordinated defensive measures in the non-tax area vis-à-vis the non-cooperative jurisdictions since the Council conclusions of 5 December 2017<sup>12</sup>;
20. REITERATES at the same time its invitation to the Code of Conduct Group to finalise discussions on further coordinated defensive measures, without prejudice to Member States' obligations under EU and international law;
21. INVITES the EU institutions and Member States, as appropriate, to take the revised EU list of non-cooperative jurisdictions for tax purposes set out in Annex I into account in foreign policy, economic relations and development cooperation with the relevant third countries, to strive for a comprehensive approach as regards to the issue of compliance with the Criteria, without prejudice to the respective spheres of competence of the Member States and of the Union as resulting from the Treaties;
22. REITERATES that the Code of Conduct Group, supported by the General Secretariat of the Council and with the technical assistance of the European Commission services, should continue to conduct and oversee the EU screening, listing and monitoring processes, in coordination with the High Level Working Party on tax issues (HLWP).

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<sup>12</sup> Regulation (EU) 2017/2402 on a general framework for securitisation, Regulation (EU) 2017/2396 on the European Fund for Strategic Investments, Regulation (EU) 2017/2396 on the European Fund for Strategic Investments and on the European Investment Advisory Hub, Decision (EU) 2018/412 on granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the EU, and Regulation (EU, Euratom) 2018/1046 on the financial rules applicable to the EU general budget.

**The EU list of non-cooperative jurisdictions for tax purposes****1. American Samoa**

American Samoa does not apply any automatic exchange of financial information, has not signed and ratified, including through the jurisdiction they are dependent on, the OECD Multilateral Convention on Mutual Administrative Assistance as amended, did not commit to apply the BEPS minimum standards and did not commit to addressing these issues.

**2. Aruba**

Aruba has not yet amended or abolished one harmful preferential tax regime.

**3. Barbados**

Barbados has replaced a harmful preferential tax regime by a measure of similar effect and did not commit to amend or abolish it by the end of 2019.

**4. Belize**

Belize has not yet amended or abolished one harmful preferential tax regime.

Belize's commitment to amend or abolish its newly identified harmful preferential tax regime by the end of 2019 will be monitored.

## 5. Bermuda

Bermuda facilitates offshore structures and arrangements aimed at attracting profits without real economic substance and has not yet resolved this issue.

Bermuda's commitment to addressing the concerns relating to economic substance in the area of collective investment funds by the end of 2019 will be monitored.

## 6. Dominica

Dominica does not apply any automatic exchange of financial information, has not signed and ratified the OECD Multilateral Convention on Mutual Administrative Assistance as amended, and has not yet resolved these issues.

## 7. Fiji

Fiji has not yet amended or abolished its harmful preferential tax regimes.

Fiji's commitment to comply with criteria 1.2, 1.3 and 3.1 by the end of 2019 will continue to be monitored.

## 8. Guam

Guam does not apply any automatic exchange of financial information, has not signed and ratified, including through the jurisdiction they are dependent on, the OECD Multilateral Convention on Mutual Administrative Assistance as amended, did not commit to apply the BEPS minimum standards and did not commit to addressing these issues.

## 9. Marshall Islands

Marshall Islands facilitates offshore structures and arrangements aimed at attracting profits without real economic substance and has not yet resolved this issue.

Marshall Islands' commitment to comply with criterion 1.2 will continue to be monitored: it is waiting for a supplementary review by the Global Forum.

## 10. Oman

Oman does not apply any automatic exchange of financial information, has not signed and ratified the OECD Multilateral Convention on Mutual Administrative Assistance as amended, and has not yet resolved these issues.

## 11. Samoa

Samoa has a harmful preferential tax regime and did not commit to addressing this issue.

Furthermore, Samoa committed to comply with criterion 3.1 by the end of 2018 but has not resolved this issue.

## 12. Trinidad and Tobago

Trinidad and Tobago has a “Non-Compliant” rating by the Global Forum on Transparency and Exchange of Information for Tax Purposes for Exchange of Information on Request.

Trinidad and Tobago's commitment to comply with criteria 1.1, 1.2, 1.3 and 2.1 by the end of 2019 will be monitored.

**[13. United Arab Emirates**

United Arab Emirates facilitates offshore structures and arrangements aimed at attracting profits without real economic substance and has not yet resolved this issue.]

**14. US Virgin Islands**

US Virgin Islands does not apply any automatic exchange of financial information, has not signed and ratified, including through the jurisdiction they are dependent on, the OECD Multilateral Convention on Mutual Administrative Assistance as amended, has harmful preferential tax regimes, did not commit to apply the BEPS minimum standards and did not commit to addressing these issues.

**15. Vanuatu**

Vanuatu facilitates offshore structures and arrangements aimed at attracting profits without real economic substance and has not yet resolved this issue.

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**State of play of the cooperation with the EU with respect to commitments taken to implement tax good governance principles**

**1. Transparency**

*1.1 Commitment to implement the automatic exchange of information, either by signing the Multilateral Competent Authority Agreement or through bilateral agreements*

The following jurisdictions are committed to implement automatic exchange of information by end 2019:

**Palau and Turkey**

*1.2 Membership of the Global Forum on transparency and exchange of information for tax purposes ("Global Forum") and satisfactory rating in relation to exchange of information on request*

The following jurisdictions, which committed to have a sufficient rating by end 2018, are waiting for a supplementary review by the Global Forum:

**Anguilla and Curaçao.**

The following jurisdictions are committed to become member of the Global Forum and/or have a sufficient rating by end 2019:

**Jordan, Namibia, Palau, Turkey and Vietnam.**



*1.3 Signatory and ratification of the OECD Multilateral Convention on Mutual Administrative Assistance (MAC) or network of agreements covering all EU Member States*

The following jurisdictions are committed to sign and ratify the MAC or to have in place a network of agreements covering all EU Member States by end 2019:

**Armenia, Bosnia and Herzegovina, Botswana, Cabo Verde, Eswatini, Jordan, Maldives, Mongolia, Montenegro, Morocco, Namibia, North Macedonia, Palau, Serbia, Thailand and Vietnam.**

**2. Fair Taxation**

*2.1 Existence of harmful tax regimes*

The following jurisdictions, which committed to amend or abolish their harmful tax regimes covering manufacturing activities and similar non-highly mobile activities by end 2018 and demonstrated tangible progress in initiating these reforms in 2018, were granted until end 2019 to adapt their legislation:

**Costa Rica and Morocco.**

The following jurisdictions, which committed to amend or abolish their harmful tax regimes by end 2018 but were prevented from doing so due to genuine institutional or constitutional issues despite tangible progress in 2018, were granted until end 2019 to adapt their legislation:

**Cook Islands, Maldives and Switzerland.**

The following jurisdiction is committed to amend or abolish the identified harmful tax regimes by 9 November 2019:

**Namibia.**

The following jurisdictions are committed to amend or abolish harmful tax regimes by end 2019:

**Antigua and Barbuda, Australia, Curaçao, Mauritius, Morocco, Saint Kitts and Nevis, Saint Lucia and Seychelles.**

The following jurisdictions are committed to amend or abolish harmful tax regimes by end 2020:

**Jordan.**

*2.2. Existence of tax regimes that facilitate offshore structures which attract profits without real economic activity*

The following jurisdictions, which committed to addressing the concerns relating to economic substance in the area of collective investment funds, have engaged in a positive dialogue with the Group and have remained cooperative, but require further technical guidance, were granted until end 2019<sup>13</sup> to adapt their legislation:

**Bahamas, British Virgin Islands and Cayman Islands.**

### **3. Anti-BEPS Measures**

*3.1 Membership of the Inclusive Framework on BEPS or commitment to implementation of OECD anti-BEPS minimum standards*

The following jurisdictions are committed to become member of the Inclusive Framework on BEPS or implement OECD anti-BEPS minimum standards by end 2019:

**Albania, Bosnia and Herzegovina, Eswatini, Jordan, Montenegro, Morocco and Namibia.**

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<sup>13</sup> This deadline may be reviewed depending on the technical guidance to be agreed by the Group and ongoing dialogue with the jurisdictions concerned.

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The following jurisdictions are committed to become member of the Inclusive Framework on BEPS or implement OECD anti-BEPS minimum standards if and when such commitment will become relevant:

**Nauru, Niue and Palau.**

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