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## REPORT

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From: General Secretariat of the Council  
To: Permanent Representatives Committee

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Subject: Code of Conduct Group (Business Taxation)  
- Report to the Council  
= Approval

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### I. BACKGROUND

1. On 1 December 1997, the Council and the representatives of the Governments of the Member States, meeting within the Council, adopted a resolution on a Code of Conduct for business taxation. This resolution provides for the establishment of a group within the framework of the Council to assess tax measures that may fall within the Code, which was established on 9 March 1998.<sup>1</sup> It also provides that the Code of Conduct Group (hereafter "COCG" or "Group") "*will report regularly on the measures assessed*" and that "*these reports will be forwarded to the Council for deliberation and, if the Council so decides, published*" (paragraph H).

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<sup>1</sup> ST 6619/98.

2. In its conclusions of 8 December 2015,<sup>2</sup> the Council expressed the wish to improve the visibility of the work of the COCG and agreed "*that its results, in particular its 6-monthly reports, are systematically made available to the public*" (paragraph 16).
3. In its conclusions of 8 March 2016,<sup>3</sup> the Council furthermore called "*for having more substantial 6-monthly Group reports to ECOFIN, reflecting the main elements and views, which were discussed under specific items and reporting also on the monitoring concerning (non-) compliance with agreed guidance*" (paragraph 16).
4. This report from the COCG encompasses the work of the Group in the first half of 2021 during the term of the Portuguese Presidency of the Council.

## **II. GENERAL ASPECTS**

### **1. Organisation of work**

5. In the first half of 2021, the COCG has continued to fulfil its mandate in accordance with the agreed work programme.
6. No physical meetings of the COCG took place. Instead, the COCG held informal videoconferences of the main Group on 1 February, 23 March and on 19 May; informal videoconferences of the subgroup on internal/external issues on 9 February, 9 March, 13 April and 11 May 2021. In addition, fiscal attachés met upon a mandate from the COCG delegates on 26 January, 3 February, 8 February, 15 February, 20 April and 14 June 2021 in order to discuss EU-RESTRICTED documents related to the EU list of non-cooperative jurisdictions for tax purposes and to finalise the bi-annual EU list update.

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<sup>2</sup> ST 15148/15.

<sup>3</sup> ST 6900/16.

7. At the COCG videoconference on 1 February 2021, following the completion of the written procedure, Ms. Lyudmila Petkova, Director of the Tax Policy Directorate at the Ministry of Finance of Bulgaria, was re-appointed as Chair of the COCG for a 2-year period from 5 February 2021. Ms. Ana Lebre Branco (Portugal) and Ms. Katarina Žnidaršič (Slovenia) were confirmed respectively as the first and the second Vice-Chairs for the period up to the end of the Portuguese Presidency.
8. At the same meeting, the Group approved a work programme until the end of the Portuguese Presidency as set out in doc. 6004/21.

### **III. MANDATE REVISION**

9. In the Council conclusions of 27 November 2020 on fair and effective taxation in times of recovery, on tax challenges linked to digitalisation and on tax good governance in the EU and beyond<sup>4</sup> Finance Ministers reiterated the importance of the principles of tax good governance in the EU and beyond and the continuation of the successful work undertaken in the context of the Code of Conduct, welcomed the discussion on the revision of the mandate which started during the German Presidency and agreed that the ongoing discussion on the reform of the scope of the mandate should also cover features of tax systems that have general application and that may have harmful effects.
10. The informal videoconference of the COCG on 1 February 2021 mandated the subgroup on internal matters to discuss the revision of the mandate. The subgroup met via videoconference on internal/external issues on 9 February, 9 March, 13 April and 11 May 2021 and reported to the COCG on 19 May 2021.

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<sup>4</sup> ST 13350/20.

11. In coordination with the Chair of the COCG, the Portuguese Presidency continued the technical discussion during the meetings of the subgroup, facilitated by technical notes prepared by the Commission. The Presidency, together with the Commission, prepared a draft revised text of the mandate<sup>5</sup> for the videoconference of 13 April; the Presidency presented a subsequent draft revised text for the videoconference on 11 May<sup>6</sup>. The discussion focused particularly on clarifying of the concept of features that have general application within the meaning of the Code of Conduct and its limitations. More specifically, the subgroup discussed the effect-based approach that could apply to the assessment of features of tax systems with general application. The Group also discussed the potential interaction of the Code of Conduct with Pillar 2 and the negotiations in the OECD. The Group agreed to further analyse and discuss the Code of Conduct mandate revision in the upcoming months.

#### **IV. STANDSTILL AND ROLLBACK REVIEW PROCESSES**

12. A call for standstill and rollback notifications of new preferential tax measures enacted by the end of 2020 was launched in mid-November 2020: the results were presented at the COCG meeting of 1 February 2021.

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<sup>5</sup> WK 4651/2021.

<sup>6</sup> WK 6037/2021.

13. The following new regimes were identified<sup>7</sup>:

- Croatia: Reduction of the tax rate for small and mid-sized taxpayers (HR015);
- Croatia: Reduction of withholding tax rate on dividends and profit sharing (HR016);
- Croatia: Determination of tax-deductible expenses of credit institutions for write-offs of receivables from citizens and entrepreneurs (HR017);
- Croatia: Extension of the scope of application related to non-authentic arrangements (HR018);
- Croatia: Newly introduced tax incentive for investment projects in the manufacturing industry (HR019);
- Italy: Introduction of tax credit to the Budget law (IT022);
- Lithuania: New corporate income tax for companies implementing large projects (LT009);
- Romania: Reduction of the corporate income tax due (RO009);
- Romania: Exemption from payment of the tax for the taxpayers carrying out specific activities in the HORECA sector (RO010);
- Romania: Tax measures to support the maintenance/increase of own capitals (RO011).

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<sup>7</sup> See updated compilation in doc. 8602/20 REV 1.

## 1. Standstill review process

14. The following decisions were reached by the Group:

1. Croatia's reduction of the tax rate for small and mid-sized taxpayers (HR015) does not need to be assessed by the COCG.<sup>8</sup>
2. Croatia's reduction of withholding tax rate on dividends and profit sharing (HR016) does not need to be assessed by the COCG.<sup>9</sup>
3. Croatia's determination of tax-deductible expenses of credit institutions for write-offs of receivables from citizens and entrepreneurs (HR017) does not need to be assessed by the COCG.<sup>10</sup>
4. Croatia's extension of the scope of application related to non-authentic arrangements (HR018) does not need to be assessed by the COCG.<sup>11</sup>
5. Romania's reduction of the corporate income tax due (RO009) falls outside the scope of the Code of Conduct.<sup>12</sup>
6. Romania's exemption from payment of the tax for the taxpayers carrying out specific activities in the HORECA sector (RO010) does not need to be assessed by the COCG.<sup>13</sup>

15. At its meeting of 23 March 2021, the Group reviewed the state of play presented by the Commission concerning Poland's notional interest deduction regime (PL011)<sup>14</sup>. The conclusion was that the recent changes would not impact the initial assessment<sup>15</sup>.

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<sup>8</sup> See ADD 1.

<sup>9</sup> See ADD 2.

<sup>10</sup> See ADD 3.

<sup>11</sup> See ADD 4.

<sup>12</sup> See ADD 5.

<sup>13</sup> See ADD 6.

<sup>14</sup> See ADD 7.

<sup>15</sup> The regime continues to be monitored, as decided by the Group when the regime was initially assessed (PL011).

16. The standstill review of Romania's profit tax exemption for companies with innovation and R&D activities (RO008) is kept on hold until the relevant national legislation is adopted: this regime is currently not applied because the subsequent administrative acts have so far not been adopted.
17. The standstill review of the HR019, IT022, LT009 and RO011 measures were postponed to the 2nd semester of 2021 following the COVID-19 crisis.

## **2. Rollback review process**

18. At its meeting of 19 May 2021, the Group reviewed the state of play concerning the rollback of Lithuania's holding company regime (LT008) and concluded that the rollback is complete, and therefore the Lithuanian tax rules are compliant with the 2000 Guidance on Standstill and rollback.<sup>16</sup>
19. The rollback review process on Poland's Investment Zone (PL013) is still ongoing, pending the adoption of the necessary amendment.

## **V. COCG GUIDANCE NOTES**

20. On 29 October 2020 the Group agreed on the questionnaire for monitoring the implementation of the 2017 Guidance on tax privileges related to special economic zones presented at the COCG subgroup on internal issues meeting on 23 October 2020. Responses from the Member States were requested by 31 March 2021<sup>17</sup>. Based on these responses, the Group will continue monitoring the implementation of this guidance during 2021.

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<sup>16</sup> See ADD 8.

<sup>17</sup> WK 5161/2021 + ADD 1-10.

## **VI. THE EU LIST OF NON COOPERATIVE JURISDICTIONS FOR TAX PURPOSES**

### **1. Revision of the EU list of non-cooperative jurisdictions for tax purposes**

21. In its conclusions of 27 November 2020,<sup>18</sup> the ECOFIN Council requested the Code of Conduct Group to continue its work in the context of the EU list of non-cooperative jurisdictions, which has led to concrete results based on a cooperative approach with third countries and jurisdictions.
22. The COCG continued interactions and dialogue with the relevant jurisdictions to assess recent developments and the implementation of their commitments, with a view to the revision of the EU list.
23. Following the meeting of the Group on 1 February 2021 to take stock of developments, Fiscal Attachés met on 3, 8 and 11 and 15 February 2021 to examine the revised EU list in its totality and reached an agreement on all points. The revised EU list of non-cooperative jurisdictions was approved by the Council on 22 February 2021 and published in the Official Journal on 26 February 2021.<sup>19</sup>
24. As a result of this revision, one jurisdiction (Dominica) was added to the EU list of non-cooperative jurisdictions for tax purposes for having received a "Partially Compliant" rating during the Round 2 of the Global Forum's international peer-review process with regard to the Exchange of Information on Request (Criterion 1.2 of the EU list), one jurisdiction was removed (Barbados), whilst 11 jurisdictions remained listed (American Samoa, Anguilla, Fiji, Guam, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, US Virgin Islands and Vanuatu), keeping the total number of jurisdictions on the EU list to 12 jurisdictions.

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<sup>18</sup> ST 13350/20.

<sup>19</sup> OJ C 66 26.2.2021 p. 40-45.



25. Three jurisdictions were removed from Annex II for having met their commitments. Namibia ratified the OECD Multilateral Convention on Mutual Administrative Assistance (MAC) and abolished its harmful regimes and was removed from Annex II for criteria 1.3 and 2.1. Saint Lucia and Morocco amended harmful features of their tax regimes and were removed from Annex II for criterion 2.1.
26. Barbados was moved from Annex I to Annex II after the Global Forum accepted its request to launch a Supplementary Review, with a view to achieving an upgrade of its "Partially Compliant" rating received in the Round 2 of the Global Forum's peer review process. Barbados will remain on Annex II pending the outcome of such Supplementary Review. One jurisdiction, Jamaica, was added to Annex II after having committed to reforming a preferential tax regime that was deemed harmful by the OECD Forum for Harmful Tax Practices.
27. Deadlines have been extended for jurisdictions that were due to deliver on their commitment by the end of December 2020. This concerns Australia, Jordan, Maldives and Turkey. These changes are reflected in Annex II. Other deadlines remain unchanged.
28. Turkey stays in Annex II with deadlines to commit at a high political level by 31 May 2021, to effectively activate Turkey's relationships for automatic exchange of financial account information under the Common Reporting Standard (CRS) with all 27 Member States by 30 June 2021, and to effectively carry out automatic exchanges of information with all 27 EU Member States for the fiscal year 2019 by 1 September 2021, and the information for fiscal years 2020 and 2021 no later than by, respectively, 30 September 2021 and 30 September 2022, according to the timeline referred to in paragraph 6 of the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes.<sup>20</sup>
29. The Chair of the group received a letter from Turkey dated 19 May 2021.

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<sup>20</sup> OJ, C 66, 26 February 2021, p.40-45

## 2. Monitoring the implementation of commitments taken by jurisdictions

### General overview

30. As of February 2021, the implementation of a total of 12 commitments<sup>21</sup> taken at a high political level by 9 jurisdictions<sup>22</sup> remains to be monitored by the Group. These are recorded in Annex II of the revised Council conclusions:

Criterion	Number of jurisdictions committed
1.1	1
1.2	3
1.3	5
2.1	3

31. Furthermore, a total of 12 harmful tax regimes<sup>23</sup> remain to be rolled back under criterion 2.1, 9 of which are under monitoring by the COCG<sup>24</sup> and 3 by the OECD FHTP<sup>25</sup>. A detailed overview may be found in the compilation<sup>26</sup> of preferential regimes and measures examined by the COCG under criteria 2.1 and 2.2.

The Commission Services continued to keep the COCG informed and reported in particular developments concerning Australia, Jordan, Eswatini, Panama, Samoa and Seychelles.

### Procedural and political aspects of the monitoring process

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<sup>21</sup> This figure adds up the number of jurisdictions committed under each criterion (see table).

<sup>22</sup> Australia, Botswana, Eswatini, Jamaica, Jordan, Maldives, Saint Lucia, Thailand and Turkey.

<sup>23</sup> These figures don't include the harmful tax regimes of the US Virgin Islands (3) and Samoa (1), for which no sufficient high-level commitments to be monitored have been received yet.

<sup>24</sup> Regimes FJ001, FJ002, FJ003, LC005, NA001, NA002, SC010, SC011 and TT001.

<sup>25</sup> Regimes AU001, JO002 and JM001.

<sup>26</sup> ST 7915/21.

32. The Chair of the COCG continued to conduct political and procedural dialogue with relevant international organisations and jurisdictions, where necessary.
33. On 19 April 2021, the Chair, following an invitation of the Chair by the FISC subcommittee of the European Parliament, accepted to inform the members on the ongoing work and the ongoing discussion on revision of the mandate of the Code of Conduct.
34. The Chair participated in the virtual FHTP meeting on 27-April 2021 and intervened in order to provide an overview of the COCG recent work.
35. The Chair received a number of letters from jurisdictions and also held telephone conferences at a political level with a number of them. Delegations were kept informed about these interactions, and response letters signed by the Chair were agreed by the Group.

#### **4. Screening and scoping issues**

##### Future criterion 1.4 (beneficial ownership)

36. The EU listing criteria approved by the ECOFIN Council in November 2016 (doc. 14166/16) included the following reference: "*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*".
37. Due to COVID-19 it was not possible to have further discussions on this and the Group will need to come back on this point at a later stage.

##### Assessment of regimes under criterion 2.1

38. Information on the follow-up to the OECD meeting of the Forum on Harmful Tax Practices (27 April 2021) was provided at the COCG videoconference on 19 May 2021. Member States decided to send commitment letters to Jordan, North Macedonia and Qatar and request that these jurisdictions formally respond to the COCG in order to commit to abolish or amend their respective preferential regimes with the aim to comply with criterion 2.1.
39. At its meeting of 19 May 2021, the COCG formally endorsed the assessment of the tax regime "International Holding Companies" (Russia, Special Administrative Regions) as overall harmful, instructing the Chair to contact the jurisdiction before proceeding with a request for a commitment from the competent Russian authorities.

#### Foreign source income exemption regimes

40. The ECOFIN Council approved guidance on foreign source income exemption (FSIE) regimes in the framework of the EU listing exercise (criterion 2.1) in October 2019. This guidance acknowledges that FSIE regimes are a legitimate approach to prevent double taxation but identifies potentially harmful elements that could be present in such regimes.
41. In December 2019, the COCG Chair wrote to thirteen jurisdictions to inform them that a regime of this kind was identified in their jurisdiction. The Commission services followed up with a questionnaire to nine jurisdictions in February 2020 with a deadline of 20 March 2020 to reply. It was agreed to screen four jurisdictions at a later stage. It is worth recalling that four other jurisdictions' FSIE regimes were already assessed in 2019 and that the dialogue is still ongoing with two of them on this regime.
42. All the jurisdictions that have been contacted responded to the questionnaire. The Commission services analysed the replies and followed up where necessary. On this basis, the Commission services prepared an overview of the work carried on so far in and country specific progress reports.

43. On 19 May 2021, the COCG agreed to send letters to jurisdictions from which the COCG would seek commitments to repeal or amend their harmful FSIE regimes.

#### Follow-up scoping issues under criterion 2.2

44. In December 2019, the ECOFIN Council endorsed the activity-based approach for partnerships under criterion 2.2, set out in the annex to the Group's 6-month report, as well as a common approach for activating exchange of information with jurisdictions under criterion 2.2.
45. In December 2019, the Commission services wrote to the 2.2 jurisdictions concerned to inform them of this decision and share with them the questionnaire. Jurisdictions were asked to reply by 15 February 2020. All jurisdictions replied, and the Commission services sent follow-up questions where needed.
46. On 21 September 2020 the Fiscal Attachés examined a progress report on partnerships under criterion 2.2 and agreed on the way forward.
47. The Member States concluded that Anguilla, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man and Jersey should extend their economic substance requirements to all relevant partnerships which were identified to fall out of the scope of existing legislation.

48. It was also agreed that this was already covered by the commitment of the jurisdictions concerned to comply with the scoping paper for criterion 2.2. and a new commitment was not required. The following timeline should apply to the eight relevant jurisdictions to adopt and put into effect the necessary amendments to their legal framework so that this could be taken into account in the October 2021 listing update:

(a) by 30 June 2021 for the adoption of necessary amendments;

(b) by 1 July 2021 for the entry into force with a maximum 6-month transition period for existing entities.

49. On 19 May, the COCG discussed, on the basis of an interim report, the state of play of the ongoing dialogue on partnerships with the jurisdictions concerned.

#### Implementation of the new criterion 3.2

50. In 2019, the COCG agreed on a general approach for assessing compliance with criterion 3.2 on country-by-country reporting (CbCR), in particular for jurisdictions that joined the Inclusive Framework before the end of 2017. The assessment would comprise two main elements:

- Jurisdictions should have arrangements (multilateral or bilateral qualifying competent authority agreement) in place to exchange CbCR reports with all Member States with whom they already have an international agreement in effect (MAC or bilateral DTC/TIEA that provides for the automatic exchange of tax information) by the end of 2019.
- Jurisdictions should be assessed positively in the Inclusive Framework's Phase 3 peer reviews, due in the second half of 2020.

51. In January and February 2021, the COCG discussed the findings of the Phase 3 peer review reports by the Inclusive Framework and agreed to inform the jurisdictions which received general recommendations on the implementation of the Country by Country Reporting minimum standard that the COCG will seek commitments later in 2021 if these jurisdictions receive general recommendations as part of the peer review reports by the Inclusive Framework in 2021.
52. In April and May 2021, the COCG further discussed a new framework for the assessment of the effectiveness of Country by Country Reporting exchanges with third country-jurisdictions.

#### Review of the economic data used for selecting jurisdictions

53. In March 2019 the ECOFIN Council recalled "*the extensions of the geographical scope of the EU screening exercise to other jurisdictions agreed in 2018*"<sup>27</sup> and invited "*the Code of Conduct Group to review the economic data used for selecting jurisdictions in 2020, for application as from 2021*". This invitation was reiterated in February 2020 with a view "*to focus on the most relevant jurisdictions, having regard to the agreed work on the extended geographical scope as identified in 2018*".
54. An exchange of views on this issue was organized at the COCG meeting of 2 March 2020. On this occasion, the Commission Services confirmed that they would present an update of the 2016 Scoreboard to assist this discussion in the second half of 2020.

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<sup>27</sup> ST 14364/21

55. At the informal videoconference of 23 March 2021, the COCG discussed the prioritization table prepared by the Commission Services (WK 3681/21). At the meeting of 20 April 2021, the Fiscal Attachés had an exchange on a possible revision of the geographical scope of the EU list, taking into account the prioritization table prepared by the Commission (WK 3681/21) and a note by the Chair and the Presidency (WK 4460/2021). Further work will be necessary on this issue, in order to decide the approach to be used for selecting jurisdictions for the geographical scope of the EU screening exercise.

#### Defensive measures vis-à-vis third country jurisdiction

56. In line with the Guidance on defensive measures agreed in December 2019 by ECOFIN, the COCG resumed the work on defensive measures. On 1 February 2021 the COGC agreed that Member States should update the COCG on the state of play as regards defensive measures that they apply towards non-cooperative jurisdictions for tax purposes. To this end, a questionnaire was circulated, to which the Member States agreed to reply by 31 March 2021. On 11 May 2021, the Commission Services presented an overview of the replies received by the Member States.

#### Interaction between EU and Member States' lists of jurisdictions

57. On 23 March 2021, the COCG discussed a note prepared by the Commission services regarding the interaction between EU and Member States' lists of non-cooperative jurisdictions and how to enhance the EU listing process based on Member States' experience at a national level. The note focused in particular on the geographical scope of the national vs the EU listing process and the criteria applied. Further discussions will take place on this issue.