



# Euro Tax Flash from KPMG's EU Tax Centre



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## **Updates to the EU list of non-cooperative jurisdictions**

[Council of the EU – Code of Conduct Group – EU list – Non-cooperative jurisdictions – Tax transparency – Automatic Exchange of Information – Harmful tax regimes – Real economic activity – Country-by-Country Reporting](#)

On February 24, 2022, the Council of the EU adopted [conclusions](#) on the state of play with respect to commitments taken by cooperative jurisdictions to implement tax good governance principles (Annex II – so called “grey list”).

The Council agreed to add the Bahamas, Belize, Bermuda, the British Virgin Islands, Israel, Monserrat, the Russian Federation, Tunisia, Turks and Caicos Islands and Vietnam to the grey list.

Following this latest revision, the grey list includes the following twenty-five jurisdictions: Anguilla, the Bahamas, Barbados, Belize, Bermuda, Botswana, the British Virgin Islands, Costa Rica, Dominica, Hong Kong, Israel, Jamaica, Jordan, Malaysia, Montserrat, North Macedonia, Qatar, Seychelles, Thailand, Tunisia, Turkey, Uruguay, Russian Federation, Turks and Caicos Islands, Vietnam.

No jurisdictions were added to or removed from the list of non-cooperative jurisdictions (Annex I).

## **Background**

The EU list of non-cooperative jurisdictions, first adopted in the Council conclusions of December 5, 2017, is part of the EU's efforts to clamp down on tax avoidance and harmful tax practices.

Out of the ninety-two jurisdictions initially chosen for screening, seventeen jurisdictions were placed on the list in December 2017. Since then, in light of commitments made by listed jurisdictions to comply with the EU's criteria, both Annex I (the EU list of non-cooperative jurisdictions) and Annex II / the EU grey list (jurisdictions whose commitments to comply with EU standards are being monitored) to the Council conclusions were amended several times. Please refer to [Euro Tax Flash issue 457](#) for details of the state of play following the previous revision of the lists (October 5, 2022).

As regards tax regimes that facilitate offshore structures which attract profits without real economic activity (criterion 2.2), the Council agreed, in its conclusions of December 9, 2020, that the Commission services should work with the Secretariat of the OECD Forum on Harmful Tax Practices (FHTP) for a coordinated monitoring under the FHTP global standard on substantial activities for no/nominal tax jurisdictions. The global standard requires mobile business income in a low tax jurisdiction to be linked to core business functions being carried out from that jurisdiction. Furthermore, the global standard ensures that the jurisdictions of the parent entities and beneficial owners are informed about the identity, activities and ownership chain of entities established in no or only nominal tax jurisdictions that are either non-compliant with substance requirements or engage in intellectual property or other high-risk activities through a regular information exchange (for more information please refer to [E-News issue 129](#)).

In its conclusions of December 7, 2021 (for previous coverage please refer to [Euro Tax Flash issue 461](#)), the Council approved the preparatory work done by the CoCG with respect to the assessment of relevant jurisdictions for compliance with CbCR requirements (criterion 3.2) in view of the February 2022 update of the list of non-cooperative jurisdictions. The general approach for the assessment comprises 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 Double Tax Convention / Tax Information Exchange Agreement that provides for the automatic exchange of tax information).
- Jurisdictions should have been assessed positively in the BEPS Action 13 peer review report by the OECD BEPS Inclusive Framework (IF).

### **Annex I of the EU list of non-cooperative jurisdictions**

On February 24, 2022, the Council agreed that the assessment of the previously listed jurisdictions remains unchanged. As a result, the EU list of non-cooperative jurisdictions (Annex I) continues to include the following nine jurisdictions: American Samoa, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu.

As regards the assessment for compliance with CbCR requirements under criterion 3.2, the Council conclusions further note that Panama and Trinidad and Tobago committed to address the IF recommendations on the implementation of CbCR in order to be reflected in the peer review report on BEPS Action 13, which is to be released in autumn 2023.

In addition, the conclusions note that Vanuatu has not received a rating of at least "Largely Compliant" by the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) in respect of the Exchange of Information on Request. Previously, it was noted that Vanuatu was waiting for a supplementary review by the Global Forum.

## February 2022 update to the “grey list”

The following conclusions with regard to Annex II were adopted based on the CoCG [report](#) to the Council:

- **Turkey** remains in section 1.1 of Annex II. The report notes that the progress made by Turkey is still not fully in line with the commitments required in connection with the exchange of information with all Member States (Turkey does not currently exchange data with Cyprus) and that there are ongoing contacts between some Member States’ and Turkey’s competent authorities to resolve outstanding technical issues.
- **Thailand** was removed from section 1.3 of Annex II, following its ratification of the OECD Multilateral Convention on Mutual Administrative Assistance (MAC) on December 22, 2021. Thailand remains on the grey list due to the assessment in light of criterion 3.2 (see below).
- The **Russian Federation** was added to section 2.1 of Annex II, following a commitment to amend its "International Holding Companies" (Special Administrative Regions) regime by December 31, 2022. The regime was assessed as overall harmful by the CoCG at its meeting of May 19, 2021 (please refer to [Euro Tax Flash issue 461](#)).
- **Anguilla, the Bahamas, Barbados, Bermuda, Turks and Caicos Islands** were added to section 2.2 of Annex II as a result of commitments to implement the FHTP’s global standard on substantial activities. The report notes that the CoCG agreed to refer to the FHTP assessment to the extent that the EU criterion 2.2 and the FHTP standard overlap in terms of scope and jurisdictions covered. In light of the FHTP assessment, the CoCG sent letters to these jurisdictions requesting a commitment to remedy failures of meeting one or more of the requisite standards within the timeline agreed in the context of the FHTP assessment.
- **The Bahamas, Barbados, Belize, the British Virgin Islands, Israel, Monserrat, Thailand, Tunisia and Vietnam** were added to section 3.2 of Annex II. Based on the IF peer review report of October 2021, in November and December 2021, the CoCG sent letters to these jurisdictions – as well as to Panama and Trinidad and Tobago, which are included in Annex I – requesting a commitment to address any IF general recommendations on time to be reflected in the IF peer review reports in 2023 and, where necessary, to activate exchange relationships with EU Member States in due time. Updates to Annex II reflect commitments made by these jurisdictions as a result.

Following this latest revision, the grey list now contains the following twenty-five jurisdictions: Anguilla, The Bahamas, Barbados, Belize, Bermuda, Botswana, British Virgin Islands, Costa Rica, Dominica, Hong Kong, Israel, Jamaica, Jordan, Malaysia, Montserrat, North Macedonia, Qatar, Seychelles, Thailand, Tunisia, Turkey, Uruguay, Russian Federation, Turks and Caicos Islands, Vietnam.

## Next steps according to the CoCG work program

The revision will take effect from the day of publication in the Official Journal of the European Union of the revised Annexes I and II.

According to its [work program](#) under the French Presidency of the Council (first semester of 2022), the CoCG will continue monitoring jurisdictions covered by the current geographical scope in order to update the list of non-cooperative jurisdictions for tax purposes with respect to the

existing criteria concerning tax transparency, fair taxation and the implementation of anti-BEPS measures.

In relation to the EU list of non-cooperative jurisdictions, the work program further notes that the CoCG will continue working on:

- updating criterion 1.1 in line with the evolution in the Global Forum peer review process for the Automatic Exchange of Financial Account information (AEOI);
- the future criterion 1.4 on the exchange of beneficial ownership information which was already approved by the Council in November 2016 but not yet applied by the CoCG due to limited capacity as a consequence of the COVID-19 pandemic (see [Euro Tax Flash issue 461](#));
- the monitoring of jurisdictions concerned by criterion 2.2 under consideration of FHTP assessments; and
- the coordination of defensive measures towards non-cooperative jurisdictions (for an update on the tax defensive measures implemented by European states please refer to this [article](#)).

In addition, the work program notes that the CoCG will start discussing possible impacts of the OECD Pillar Two solution for a Global Minimum Tax on its work, including on the EU listing criteria.

The next revision of the EU list of non-cooperative jurisdictions is scheduled for October 2022.

### EU Tax Centre comment

Members of the European Parliament (MEPs) adopted a [resolution](#) on October 21, 2021 calling the EU list of non-cooperative jurisdictions a “blunt instrument” and requesting a reform in terms of broader and stricter listing criteria (for more details please refer to Euro Tax Flash issues [440](#) and [461](#)). As resolutions adopted by the European Parliament are not binding on the Council of the EU and the European Commission, the request on reforming the EU list of non-cooperative jurisdictions and the work performed by the CoCG in that regard remains at the discretion of the two institutions and is subject to an unanimous agreement by all Member States.

The latter, however, may prove to be challenging, as previously seen in the meeting of the ECOFIN Council on December 7, 2021, where Member States were not able to unanimously agree on a proposal for a revised Code of Conduct (for more information please refer to see [Euro Tax Flash issue 461](#)). The proposed revision of the Code of Conduct would have expanded the definition of harmful tax regimes to cover features of tax systems that have general application and that may have harmful effects, where they create opportunities for double non-taxation or that can lead to the double or multiple use of tax benefits. According to the revised Code, such effects may occur by virtue of any relevant feature of a national tax system that leads to lower tax liability, including no tax liability (other than the nominal tax rate or a distribution tax system).

The expansion of the definition of harmful tax regimes would have also impacted the assessment of third-country jurisdictions in respect of the criterion 2.1 to promote fair taxation. However, based on the work program, it appears that the CoCG will not focus on amendments to the previously proposed Code revision in the first half of 2022 under the French Presidency of the Council. This is in line with a [statement](#) made by the Director of Direct Taxation in DG Taxud (European Commission) - Benjamin Angel - during a meeting of the European Parliament sub-

committee on tax matters (FISC) where he indicated that the Commission will resume its work on the reform of the Code of Conduct and the reform of the EU list of non-cooperative jurisdictions once the discussions on the EU implementation of the OECD Pillar Two solution for a Global Minimum Tax are completed.

Should you have any queries, please do not hesitate to contact [KPMG's EU Tax Centre](#), or, as appropriate, your local KPMG tax advisor.



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