

COMMISSION RECOMMENDATION on making State financial support to undertakings in the Union conditional on the absence of links to non-cooperative jurisdictions

DG TAXUD – Unit D1: Company Taxation Initiatives

Brussels, 15 September 2020

Outline

- Rationale
- Subject-Matter & Scope
- Legal Aspects
- « Negative » Conditions
- Additional Restrictions
- Carve-outs

Implementation, enforcement & follow-up



Why this Recommendation?

- Commission: clear stance against tax havens in recent years
- Unprecedented action at national and Union level to support MS' economies and facilitate recovery
- State Aid under the Temporary Framework
- Action to prevent misuse of public financing (due to the volume of financial support)
- Solutions in a coordinated fashion to tackle tax avoidance, fraud and discrepancies



Subject-Matter & Scope

- Any type of State financial assistance available to all undertakings or selective measures that amount to State Aid within the Temporary Framework (2020)
- Applies within groups of controlled entities; test for control to be determined under national law
- No limitation to specific sectors of the economy



Legal Aspects

- Recommendation: autonomous Act of the Commission
- Legal base: Article 292 TFEU
- Addressed to all Member States
- No legally binding effect
- Joint initiative with DG.COMP
- Refers always to latest update of Annex I (EU List)



« Negative » Conditions for receiving Financial Support

The undertaking should **not**:

- ✓ Be tax resident in, or incorporated under the laws of, a listed jurisdiction;
- Be, directly or indirectly, controlled by shareholders up to the beneficial owner – at least one of which in listed jurisdictions;
- Have in its direct or indirect control subsidiaries or permanent establishments in listed jurisdictions;
- ✓ Be under common ownership with undertakings in EU listed jurisdictions.



« Additional » Disqualifying Restrictions

- Possible additional grounds for refusing financial support:
- The undertaking (or its owners) have been convicted by final judgment to any of the crimes laid down in the Public Procurement Directive;
- The undertaking (or its owners) have been found, by final judgment or administrative decision, in breach of obligations relating to the payment of taxes or social security contributions



Carve-outs

• MS may disregard the existence of links with a listed jurisdiction where:

- The undertaking pays tax at an adequate level in the MS granting the support over a period of time; or
- The undertaking makes legally binding commitments to remove its ties to EU listed jurisdictions within a short timeframe and subject to sanctions.
- MS should disregard the existence of such links where the undertaking has substantial economic presence and performs substantial activity.
- Carve-outs to be refused if: no EOIR and lack of Cooperation



Implementation & Enforcement

- Member States should lay down **reasonable requirements** for evidencing entitlement:
 - Self-certifications to be complemented with enhanced audits/controls and use of available tools (CbCR, BO info, CRS)
 - ✓ Effective, proportionate and dissuasive sanctions, including the recovery of unduly granted support (as a minimum)
 - ✓ In case of carve-outs, enhanced verification





- MS to inform the Commission about measures that they took if any to address the Recommendation
- Commission to publish Report on the application by 14 July 2023



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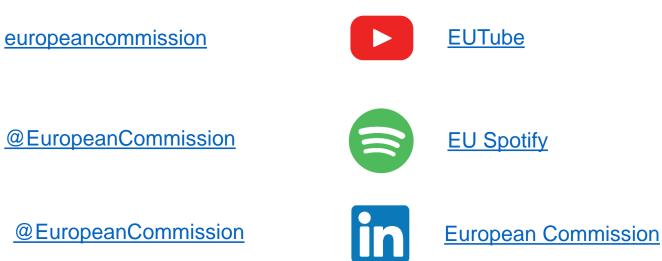
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