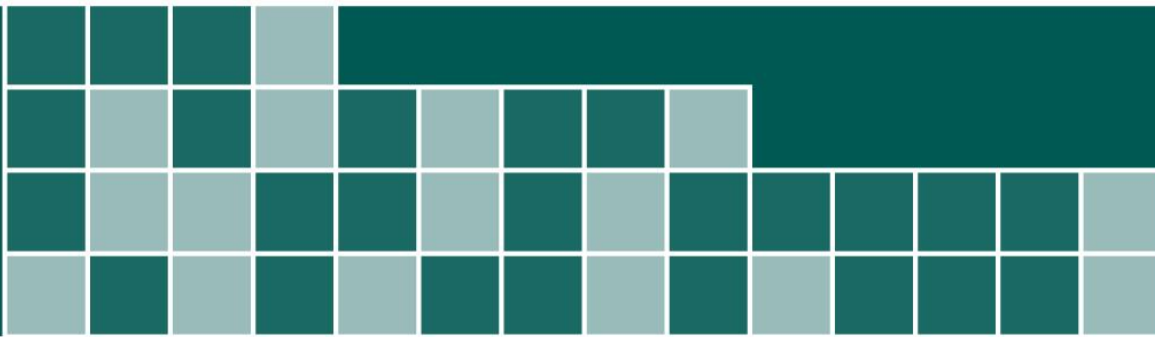


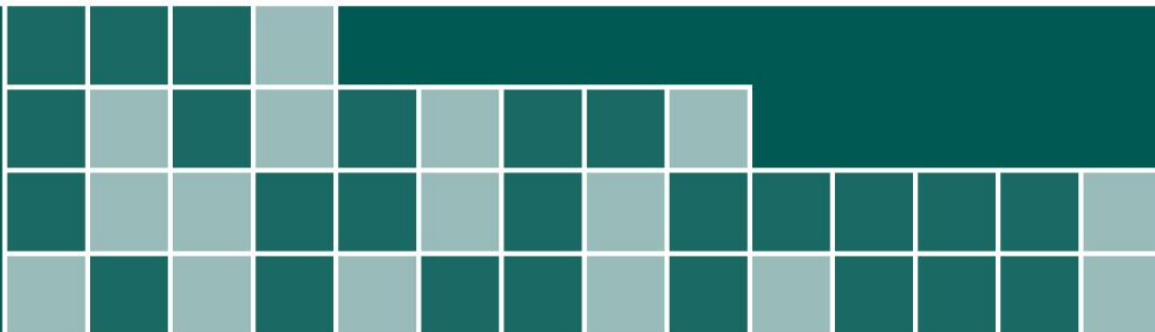
**Ana Paula Dourado**  
**University of Lisbon/Intertax**

**The Reform of the Code of Conduct**  
**Group Criteria and Process**



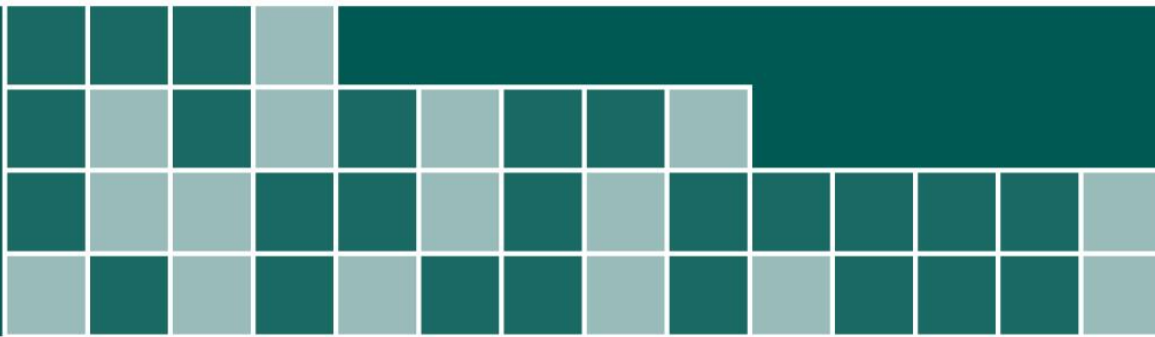
## The Code of Conduct Group

- Relevant role taking into account the difficulties in direct tax harmonization
- Forerunner in soft law
- Forerunner in multilateral good tax governance
- There are limits to the role it plays



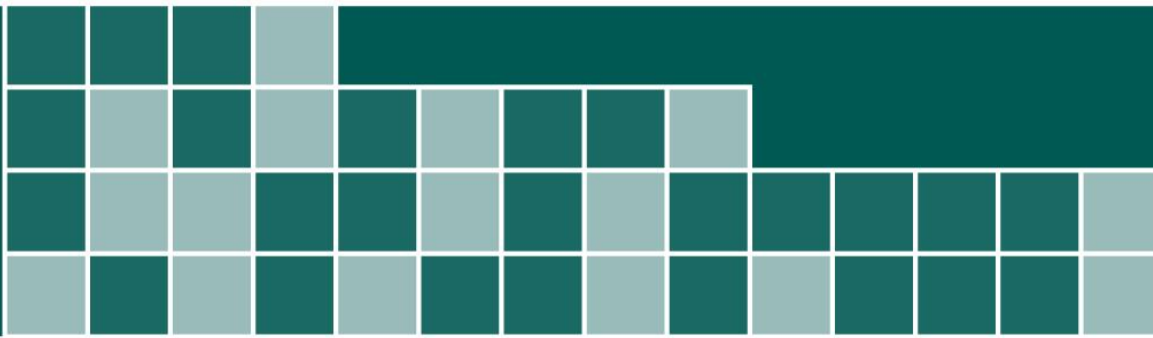
## Critical Analysis of the Criteria put forward in the 2020 Communication to the EP

- Brussels, 15.7.2020 COM(2020) 313 final COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Tax Good Governance in the EU and beyond
- *Reviewing the scope and criteria of the Code*
- It makes sense to expand the analysis to further types of regimes and general aspects of the national corporate tax systems:
- It will prevent harmful competition related to gaps
- Increase neutrality
- Increase a substance over form approach
- This requires expanding general features beyond rate



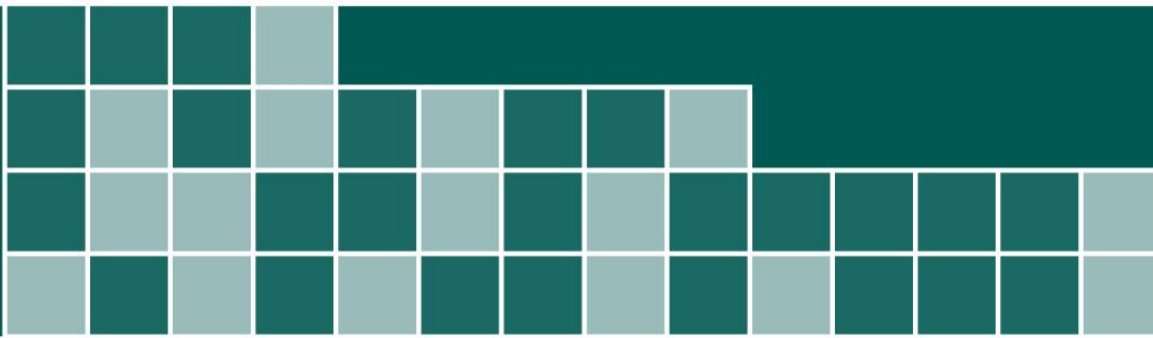
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- *Reviewing the scope and criteria of the Code*
- In respect of third countries, expanding tax good governance analysis beyond the current Code of Conduct criteria, and beyond rates, is a questionable interference with third countries' sovereignty:
- the BEPS project measures and Pillar 2 should be sufficient
- Monitoring and improving application of TP and CFC Rules and other anti BEPS/ATAD measures in the EU could be a target for the Code of Conduct



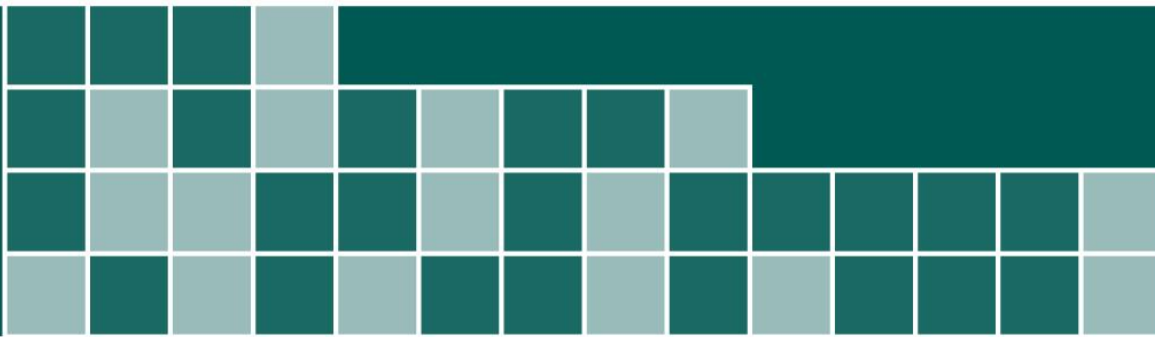
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- **EU listing process**
- Current 3 criteria are adequate in general
- However:
- (1) transparency and exchange of information should be complemented by an analysis on the rule of law: freedom of expression, independent courts, corruption and financial criminality index, building capacity of public authorities, tax secrecy
- (2) preferential tax regimes (OK)
- and (3) no corporate income tax or zero (or nearly zero) income tax rate: insufficient and submitted to developments in respect of minimal tax rate
- Same criteria applicable to EU Member States
- Member States Lists: EU listing should work as a minimum standard
- Member States Lists are important for those not capable of applying CFC rules efficiently



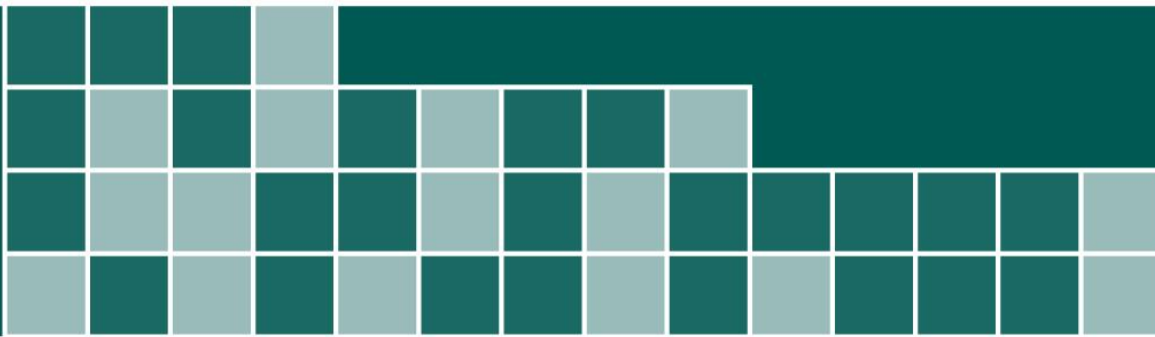
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- **Timing** for the Reform of the Code of Conduct Group:
- No need to wait for a multilateral outcome, if restricted to EU Member States
- In respect of third countries, it could be wise to wait for a multilateral outcome on Pillar 2
- If there is no global consensus, application of a minimum EU tax rate as a good governance clause/listing process makes sense, as long as it is high enough and the EU Member States comply with it



## Critical Analysis of the Criteria put forward in the 2020 Communication to the EP

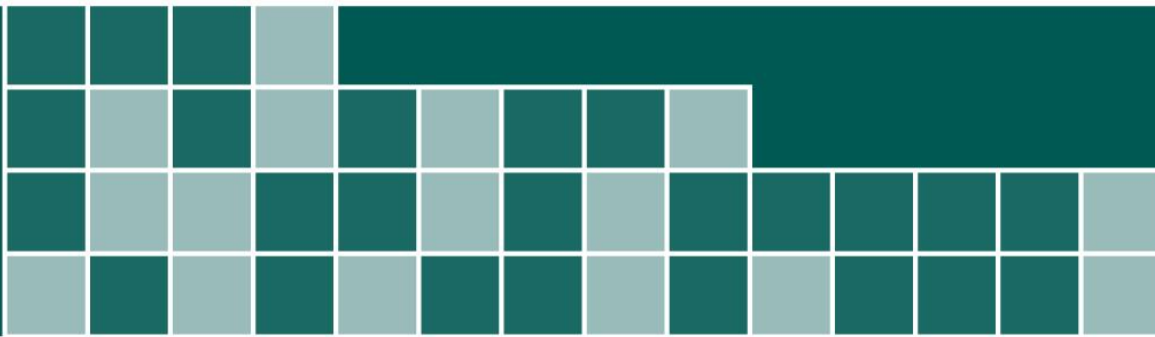
- Brussels, 15.7.2020 COM(2020) 313 final COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Tax Good Governance in the EU and beyond
- **Extending the Code of Conduct Measures to Other Taxes (Personal income tax)?**
- Not adequate for the following reasons:
- Voting with the feet is not to criticize as long as it leads to the genuine exercise of the TFEU fundamental freedoms and the movement is genuine and is not abusive
- EU taxes/own resources do not play a redistributive role, since they are insufficient to compensate for national budgetary constraints
- The internal market is a market decentralized economy, in which efficiency, different economic problems and constraints in Member States, different ageing problems, brain drain have to be taken care by Member States



## Critical Analysis of the Criteria put forward in the 2020 Communication to the EP

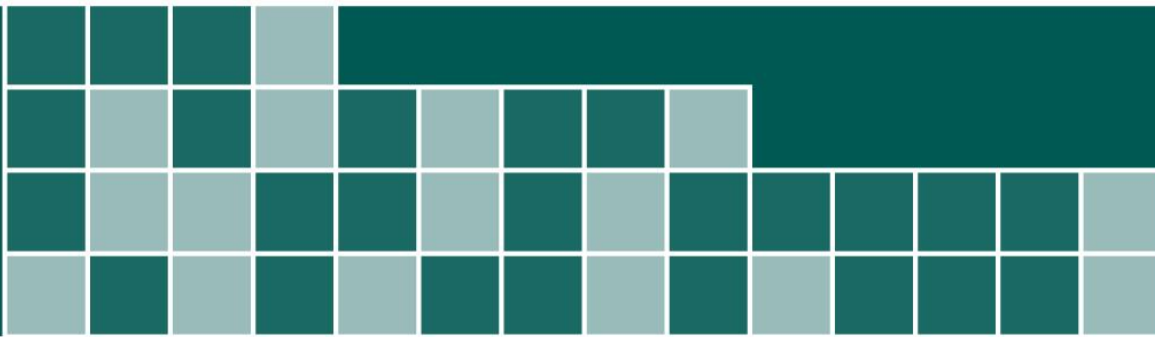
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- Extending the Code of Conduct Measures to Other Taxes?
- Targeting non-residents will bring investment and employment
- If there are high property taxes, these will compensate income tax lower rates
- It may contribute to economic development
- It may be more beneficial than tourism, by creating links and a genuine EU citizenship
- It may prevent or compensate for brain drain
- Problems can be solved by adopting anti-avoidance unilateral measures or renegotiating tax treaties in case of abuse
- Adding a nationality residual tax could be a solution





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- Extending the Code of Conduct Measures to Other Taxes?
- Existing GAARs, switch-over rules, substance over form rules can be applied if residence is not genuine
- Steerings and joint audits could be applied
- Extending the Code of Conduct to other taxes could have an equivalent effect to exit taxes,
- and prevent movement from richer EU Member States (north/west) towards poorer EU Member States (south/east)



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- The Code of Conduct Group Process:
- More transparency on the agenda and work related to Member States
- A more relevant role to be played by the European Commission