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REPORT

From:	Code of Conduct Group (Business Taxation)
To:	Permanent Representatives Committee/Council
Subject:	Code of Conduct (Business Taxation) - Report to the Council

INTRODUCTION

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. In its report to the Feira European Council on 19 and 20 June 2000, the ECOFIN Council agreed that work should be pursued with a view to reaching agreement on the tax package as a whole, according to a parallel timetable for the key parts of the tax package (taxation of savings, Code of Conduct (business taxation) and interest and royalties).

2. On 9 March 1998, the Council confirmed the establishment of the Code of Conduct Group. The Group reports regularly on the measures assessed and these reports are forwarded to the Council for deliberation.

3. This report from the Code Group encompasses the work of the Code Group in 2015 under the Latvian Presidency.

PROGRESS OF WORK

4. The Code of Conduct Group met on 4 February, 7 April and 2 June 2015 under the Latvian Presidency.

5. At the meeting of 4 February 2015 the Group confirmed a programme of work under the Latvian Presidency, agreeing to take forward work in the following areas:

   (a) continue its work on rollback;
   (b) continue existing work on standstill;
   (c) continue work on the various aspects of the Group's Work Package 2011.

APPOINTMENT OF CHAIR

6. Mr. Wolfgang Nolz (Austria) was confirmed Chair for a period of two years at the meeting of 4 February 2015.

APPOINTMENT OF VICE CHAIRS

7. Mr. Andrejs Birums (Latvia) and Mrs. Pascale Toussing (Luxembourg) were appointed Vice-chairs at the meeting of 4 February 2015.

ROLLBACK

UK: Gibraltar – Income Tax Act 2010

8. With regard to the ‘asset holding companies’ the Group invited the Commission for an agreed description of the regime. The UK and Spain will provide further information.

STANDSTILL

Patent Box

9. Member States have made commitments not to introduce new tax measures that would be harmful within the meaning of the Code. A main issue in this respect in 2014 were patent box regimes. In November 2014 the Group agreed, in co-ordination with developments at the OECD, on the modified nexus approach as the appropriate method to identify harmful aspects of patent boxes. The Group agreed that the EU patent box regimes that had been subject to examination by the Group are not compatible with the modified nexus approach as adapted by the compromise. As a consequence, these EU patent boxes should be changed in line with the compromise and within the agreed timeline. The Group started a discussion in relation to the specifics of grandfathering arrangements and how such specifics will apply.

10. In late 2014 Italy introduced a new patent box regime which was discussed by the Group during its meeting on 7 April 2015 and the Commission was asked for an agreed description of the regime. The Group noted that the Italian regime has not yet been implemented through a decree. The Group agreed that this regime, if it were to enter into force, as it is set out in the agreed description, would not be compatible with the compromise on modified nexus approach for IP regimes, as set out in Annex 1 of doc. 16553/1/14 REV 1.[1]

WORK PACKAGE

11. The Group continued its work on the Work Package 2011 under the Latvian Presidency.

[1] Italy has a reservation on the statement by the Group on its patent box regime. Italy reaffirms that such regime is modelled on the modified nexus approach as adapted by the compromise. Therefore, Italy does not accept a declaration of incompatibility which does not acknowledge the overall compliance of its regime with the modified nexus approach.

Anti-abuse: Hybrid PEs – Mismatches

12. At the end of 2014 the Group had agreed on a guidance on intra-EU hybrid entities. Under the Latvian Presidency technical work on Mismatches in connection with Hybrid PEs was continued in a Code of Conduct SubGroup, which met on 8 April 2015. The Group agreed on guidance notes with regards to hybrid permanent establishments as set out in Annex 1. The Group invites the Subgroup to continue its work regarding further cases of hybrid mismatches.

Monitoring the implementation of agreed guidance on Inbound Profit Transfers

13. In 2014 the Commission presented a check list as a basis for assessing the extent to which MS rules comply with the agreed guidance on inbound profit transfers. Member States were invited to send their comments on the check list. After the presentation of the Commission's analysis based on the tool box approach in January 2015, it was agreed that further work is required.

Administrative practices – Model instruction

14. A questionnaire was circulated to the MS to receive information on measures taken concerning the agreed Model instruction for spontaneous exchange of cross-border rulings and unilateral APAs. The responses show that some Member States have not yet started with the implementation of the Model instruction. The Group emphasised the need to ensure effective implementation of the approved Model instruction by the end of the year.

Links to third countries

Liechtenstein

15. The Commission continued the dialogue with Liechtenstein and the Group agreed at their meeting of 9 April 2015 on inviting Liechtenstein to one of the following meetings of the Group.

FUTURE OF THE CODE OF CONDUCT GROUP

16. The Group agreed on contributing to the debate on the future of the Group, with the aim of enabling the ECOFIN to discuss strengthening the role of the Group. Up to now five proposals have been presented. The Chair reported to the HLWP on 16 April 2015. No agreement has been reached so far. Further work will focus on: making better use of the existing mandate of the Code; examining the possibilities to extend the mandate and to update the criteria; the need to adjust the governance of the Code accordingly. The Group decided to dedicate the next meeting of the Code of Conduct Group, preferably in July, to the future of the Code of Conduct. The five proposals are annexed to the report (Annex 2).

Guidance on Hybrid Permanent Establishment Mismatches Concerning Two Member States

1. For the purposes of this Guidance, which applies to the extent that a mismatch situation concerns two Member States

   1.1. a *permanent establishment* is treated as *hybrid* where the business activities of an enterprise:

      1.1.1. are not recognised as carried on through a permanent establishment in the Member State where those activities are carried on (the Member State of source) but are recognised as carried on through a permanent establishment in the Member State where the enterprise is a resident (the Member State of residence), or

      1.1.2. are recognised as carried on through a permanent establishment in the Member State where those activities are carried on (the Member State of source) but are not recognised as carried on through a permanent establishment in the Member State where the enterprise is a resident (the Member State of residence);

   1.2. a *mismatch situation* for two Member States, in relation to a hybrid permanent establishment, is where the mismatched treatment by the two Member States of business activities of an enterprise as carried on through the permanent establishment is relevant to the treatment for tax purposes of profits from business activities of the enterprise;

   1.3. *non-taxation without inclusion* arises where the profits from business activities are not taxed in the Member State of source as such activities are treated as not being carried on through a permanent establishment, while those profits are exempt from tax in the Member State of residence as profits attributable to a permanent establishment;

   1.4. a *double deduction* arises where a deduction or other tax relief is given in each of two Member States for the same payment, expense or loss attributed to a hybrid permanent establishment, insofar as that payment, expense or loss is deducted from or relieved against income that is not attributed to the hybrid permanent establishment;

2. Where as a result of a mismatch situation for two Member States, in relation to a hybrid permanent establishment:

2.1. a non-taxation without inclusion would otherwise arise, then, for the purpose of preventing the non-taxation without inclusion, the two Member States concerned should treat the business activities concerned as if they were not being carried on through a permanent establishment, or

2.2. a double deduction would otherwise arise, then, for the purpose of preventing the double deduction, the two Member States concerned should treat the business activities concerned as if they were not being carried on through a permanent establishment

notwithstanding the treatment of such activities or amount that would otherwise apply.

3. Paragraph 2 of this Guidance should apply only to the extent that is necessary for the purpose of preventing a non-taxation without inclusion or a double deduction that would otherwise arise, and not for any other purpose. In no case shall the application of this paragraph result in asymmetrical treatment of income and expenses and in double taxation.

Explanatory Notes on the Guidance on Hybrid Permanent Establishment Mismatches Concerning Two Member States

These notes are arranged in the order of the relevant paragraphs of the text of draft guidance.

- ***General comment on format of the draft text***

Paragraph 1 and its four subparagraphs set out the meaning of certain terms for the purposes of the guidance. *Paragraph 2* does the main work of the guidance - specifying an alignment of treatments of hybrid permanent establishment ("HPE") where mismatched treatments would otherwise result in non-taxation without inclusion or a double deduction. *Paragraph 3* ensures that this alignment cannot be used to achieve unintended results: it is solely to prevent *non-taxation without inclusion and double deduction* and is applied for dealing with mismatch situations, to the extent that they are not tackled otherwise.

- ***Paragraph 1 - introductory line***

> **1. For the purposes of this Guidance, which applies to the extent that a mismatch situation concerns two Member States**

These introductory words serve the following purposes:

They signal that the meanings of terms set out in the *paragraph 1* and *its subparagraphs* are for the purposes of the guidance only and are not intended to have any wider significance.

They also signal that the application of the guidance, in addressing mismatched treatments, is limited to situations only involving two Member States thereby excluding situations in which the State where the business activities of an enterprise are carried on (the State of source) or the State where the enterprise is a resident (the State of residence) is a non-EU State.

If an aggressive tax planning arrangement would involve more than one mismatch situation the guidance would apply to each mismatch situation separately.

- ***Subparagraph 1.1***

> **1.1. a *permanent establishment* is treated as *hybrid* where the business activities of an enterprise are:**

The meaning of a permanent establishment ("PE") being treated as hybrid is the cornerstone of the draft guidance.

The pre-condition for the existence of a HPE is that an enterprise resident in one Member State carries on business activities in another Member State. The Guidance identifies the following two types of HPE.

1.1.1. not recognised as carried on through a permanent establishment in the Member State where those activities are carried on (the Member State of source) but are recognised as carried on through a permanent establishment in the Member State where the enterprise is a resident (the Member State of residence), or

The first type of HPE refers to inconsistent treatment of business activities carried on in a Member State by an enterprise resident in another Member State.

This definition deals with a situation where the business activities are recognised as carried on through the PE only in the Member State where the enterprise is a resident.

1.1.2. are recognised as carried on through a permanent establishment in the Member State where those activities are carried on (the Member State of source) but are not recognised as carried on through a permanent establishment in the Member State where the enterprise is a resident (the Member State of residence), or

The second type of HPE refers to the inconsistent treatment of business activities carried on in a Member State by an enterprise resident in another Member State. This definition deals with a situation where the business activities are recognised as carried on through a PE only in the Member State where those activities are carried on. This can give rise to a double deduction in certain circumstances.

- ***Subparagraph 1.2***

1.2. a *mismatch situation* for two Member States, in relation to a hybrid permanent establishment, is where the mismatched treatment by the two Member States of business activities of an enterprise as carried on through the permanent establishment is relevant to the treatment for tax purposes of profits from business activities of the enterprise

As definitions provided in *subparagraph 1.1.* limit the scope of the guidance to the hybrid nature of the PE, the term “a mismatch situation” serves to determine a condition for *paragraph 2* to apply. The mismatch situation would thus arise where an inconsistent treatment of business activities would lead to the undesirable results defined in *subparagraphs 1.3 and 1.4*.

- ***Subparagraph 1.3***

  1.3. ***a non-taxation without inclusion*** **arises where the profits from business activities are not taxed in the Member State of source as such activities are treated as not being carried on through a permanent establishment, while those profits are exempt from tax in the Member State of residence as profits attributable to a permanent establishment**

This paragraph defines a specific type of double non-taxation, i.e. *a non-taxation without inclusion* resulting from inconsistent treatment of business activities by two Member States (the one of residence and the one of source - *Example 1*).

This definition suggests that *non-taxation without inclusion* could only arise where a Member State of residence of an enterprise eliminates double taxation of profits from business activities carried on in another Member State by the exemption method.

Employment of the credit method would not exclude any profits from business activities from tax in the Member State of residence and therefore this type of effect would not arise.

- ***Subparagraph 1.4***

  1.4. a double deduction arises where a deduction or other tax relief is given in each of two Member States for the same payment, expense or loss attributed to a hybrid permanent establishment, insofar as that payment, expense or loss is deducted from or relieved against the income that is not attributed to the hybrid permanent establishment;

This paragraph defines another type of double non-taxation, i.e. *a double deduction* resulting from an inconsistent treatment of business activities by two Member States (the one of residence and the one of source – *Example 2*).

Unlike in the example of double non-taxation set out in subparagraph 1.3, a double deduction can arise if the enterprise's Member State of residence eliminates double taxation with either the credit or exemption methods. This is because the residence state does not recognize the existence of a PE.

- ***Paragraph 2***

  2. Where as a result of a mismatch situation for two Member States, in relation to a hybrid permanent establishment

  > **2.1. a non-taxation without inclusion would otherwise arise, then, for the purpose of preventing the non-taxation without inclusion, the two Member States concerned should treat the business activities concerned as if they were not being carried on through a permanent establishment, or**
  >
  > **2.2. a double deduction would otherwise arise, then, for the purpose of preventing the double deduction, the two Member States concerned should treat the business activities concerned as if they were not being carried on through a permanent establishment**

  notwithstanding the treatment of such activities or amount that would otherwise apply.

Paragraph 2 contains the text that prevents the mismatched treatment of HPE by Member States from resulting in *non-taxation without inclusion or double deduction*.

To do so, it draws upon the terms set out in *paragraph 1* to identify the elements that must be present for the guidance to apply, i.e.

- a *mismatch situation* involving two Member States,
- in relation to a *HPE*,
- resulting in *non-taxation without inclusion or double deduction.*

Where these elements are present, *paragraph 2* prescribes the following solutions to prevent the mismatch situation that results in *non-taxation without inclusion or double deduction*:

- in the case of *non-taxation without inclusion,* the alignment is for both Member States to treat relevant business activities as if they were <u>not carried on through a PE</u>;
- in the case of a *double deduction*, the alignment is for both Member States to treat the relevant business activities as if they were <u>not carried on through a PE</u>;

These approaches are adopted as pragmatic solutions to address harmful effects of mismatch situations.

In order to underline that the solutions provided for in *paragraph 2* will be used only to address harmful effects of mismatch situations, its text has been expressed in fictional form ("as if"). In addition, this wording reconfirms that the guidance shall not affect the provisions of double taxation conventions between the source and the residence Member State. Where the guidance results in taxation not in line with the provisions of a double taxation convention, the Member States concerned shall endeavour to solve the issue by mutual agreement, if applicable. In this context, it would be useful to consider relevant modifications of double taxation conventions, where appropriate.

- ***Paragraph 3***

> **3. Paragraph 2 of this Guidance should apply only to the extent that is necessary for the purpose of preventing non-taxation without inclusion or a double deduction that would otherwise arise, and not for any other purpose. In no case shall the application of this paragraph result in asymmetrical treatment of income and expenses and in double taxation.**

Paragraph 3 serves the following purposes:

- it is intended to prevent any manipulation or abuse of the proposed guidance. It should also ensure that no more than necessary is done to prevent HPE mismatches delivering *non-taxation without inclusion or double deductions*;

- it clarifies that the guidance is applied only when other means (e.g. national rules) are not sufficient to prevent *non-taxation without inclusion or double deductions*;

- it clarifies that the guidance shall not apply to the extent that it would result in asymmetrical treatment of income and double taxation, if this effect would arise as a result of the application of the credit method for the elimination of double taxation.

Examples

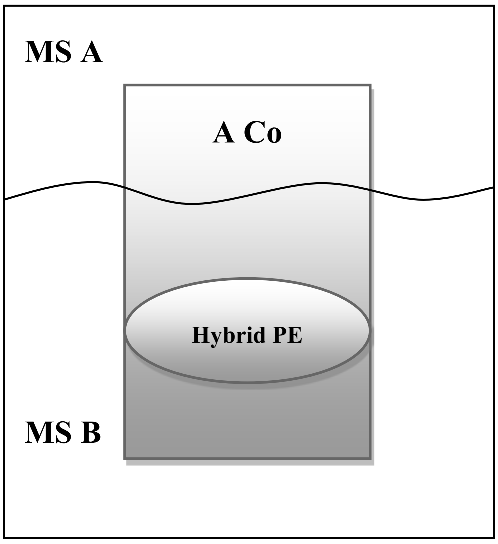
Example 1

hybrid PE is

- recognised as PE for MS A tax purposes;
  MS A exempts profits of A Co
  attributable to PE in MS B;
- not recognised as PE for MS B tax purposes;
  MS B does not tax profits
  attributable to PE

non-taxation without inclusion arises

- *paragraph 2.1* of the guidance applies:
  MS A and MS B do not recognise PE;
  MS A taxes profits from activities in MS B



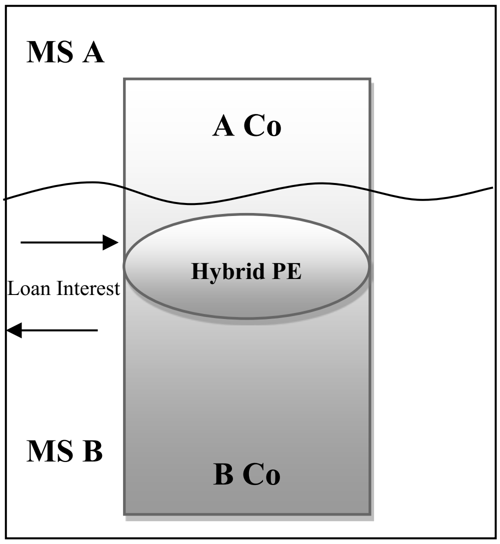
Example 2

hybrid PE is

- not recognised as PE for MS A tax purposes;
  It pays interest on a loan;
  The interest is set off by A Co against other income;
- recognised as PE for MS B tax purposes;
  It has no other income in MS B;
  The loss (the interest) is offset against B Co's profits
  in MS B.

double deduction arises

- *paragraph 2.2* of the guidance applies:
  MS A and MS B do not recognise PE;
  MS A taxes; single deduction in MS A.



Compilation of the proposals on the future of the Code of Conduct

Reform of the Code of Conduct Group: Irish Paper

Strengthening the EU Code of Conduct Group (Business Taxation)

This paper is drafted in line with the call by the European Council in May 2013 to strengthen the EU Code of Conduct Group (Business Taxation). This paper offers a revised approach to the selection of the Chair and a new arrangement for the appointment of Vice-Chairs and the operation of the preparatory group.

It is recalled that the work of the Code of Conduct Group is accorded political importance and this should be reflected in the appointment by each Member State and the Commission of a high level representative and a deputy member. The Member States and the Commission may also appoint up to two alternates who may stand in for the high-level representative or deputy if either is unable to attend a meeting of the Group.

Overview of current rules on appointment of Chair and Vice-Chairs

Paragraph H of Council Conclusions of 1 December 1997 established the procedure for the examination of measures within the ambit of the Code of Conduct Group on Business Taxation.

Building on paragraph H, Council Conclusions of 9 March 1998 further elaborated the mechanism for the appointment of the Chair, Vice-Chairs, the working of the preparatory group and the Group itself.

Current Composition of Preparatory Group

Paragraph 10 of the Council Conclusions of March 1998 call for a preparatory group composed of the Chair, two Vice-Chairs, Commission and with assistance from the Council Secretariat. The role of the group is to help facilitate the work of the Code Group.

Proposal for a revised method for the appointment of Chair and Vice-Chairs

The May 2013 European Council noted that "*it is important to continue work within the EU on the elimination of harmful tax measures. To that end, work should be carried out on the strengthening of the Code of Conduct on business taxation on the basis of its existing mandate….*"

Within this overall mandate from the European Council it is proposed to revise and strengthen the preparatory capacity of the Code Group. This paper proposes that the Chair and Vice Chairs of the Code of Conduct Group would be appointed by Ministers in Council (ECOFIN), on the advice of the Code of Conduct Group.

Appointment of Chair, Vice-Chairs and preparatory Group

1. The Chair will be appointed by Ministers in Council (ECOFIN) on the advice of the Code of Conduct Group from among the Member States and will serve for two years from the date of appointment.

2. Two Vice Chairs will also be appointed by Ministers in Council (ECOFIN) on the advice of the Code of Conduct Group from among the Member States and will serve for two years from the date of appointment.

3. In addition to the Chair and two Vice-Chairs appointed by Ministers in Council (ECOFIN) the composition of the preparatory group would also include a person designated from among the representatives of the Member States holding the Presidency of the Council for the duration of its term of office as a Vice-Chair and another Vice-Chair will be designated by the delegation who is next to hold the Presidency of the Council, for the six month period prior to the commencement of its term of office. Representatives from the European Commission and from the General Secretariat of the Council would also be members of the preparatory group.

   Accordingly the preparatory group would be composed of the Chair, two elected Vice-Chairs, two Vice-Chairs one each from the current and incoming Presidency, plus representatives from the European Commission and General Secretariat of the Council.

Role of the Preparatory Group

The mandate of the preparatory group would be to ensure the correct application of the principles of the Code of Conduct within the context of the agreed work programme and its existing mandate. Furthermore the preparatory group would be responsible for the preparation and coordination of the draft work programme, plenary agenda items for the Code of Conduct Group and the preparation of draft reports for Council (ECOFIN).

The General Secretariat of the Council would be responsible for the secretariat function as the Code of Conduct Group operates within the framework of the Council. The European Commission would provide technical assistance to the members of the preparatory group and the Code of Conduct Group. The members of the preparatory group will meet as appropriate and liaise closely with each other to develop a collaborative approach to ensure an efficient and effective working relationship.

Review

This revised approach would be reviewed two years after the date of appointment of the first Chair of the Group under this revised approach.

Reform of the Code of Conduct Group: Commission Paper

Background

1. This document is being circulated in response to a request for comments from all Member States and the Commission Services by the Chair of the Code of Conduct Group following the discussions at the last Code of Conduct meeting regarding the future of the Code. Delegates should note the Commission's formal views in its recent Communication on tax transparency to fight tax evasion and avoidance.[2] This paper does not prejudge the outcome of the Commission's reflections on this matter.

2. The Communication outlined how the Code of Conduct on Business Taxation has been an important tool for challenging harmful tax regimes. Despite its voluntary and inter-governmental nature, the Code has been effective in the past in eliminating certain harmful tax practices in the Member States. However recent work including that on patent boxes has highlighted limitations in the scope of the Code and weaknesses in the mandate of the Code Group.

3. The Commission view is that tackling complex challenges to fair taxation and safeguarding tax transparency requires more decisive action by the Code Group, and more rigorous monitoring to ensure that Member States respect their commitments. The Commission is reflecting on ways the Code and the Group can be improved and will submit these to Member States and these reflections will feed into the Action Plan on Corporate Taxation, to be adopted before the summer. In order to assist the Code Group in its own current review the Commission Services outlines below some points for the Code Group to consider.

Purpose of document

4. The purpose of this document is to explore the future of the Code of Conduct specifically in the context of the EU BEPS Roadmap.[3] The review of the Code Group's mandate and the reinforcement of its role are one of the work areas included in the Roadmap.

5. A number of issues mentioned in the Roadmap are already under discussion in the Code Group. These include patent boxes, mismatches and low effective taxation (in the context of inbound profit transfers). The Commission Services believe that the Code Group should continue to discuss these issues and that at least some of the other issues identified in the Roadmap should be dealt with in the Code Group.

6. The future of the Code Group is therefore inseparable from a discussion of its future work programme.

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[2] COM(2015) 136 final of 18 March 2015.

[3] Working Party on Tax Questions (Direct Taxation), room document 1 of 21 January 2015 and High Level Working Party on Tax Questions room document 1 of 5 February 2015.

7. The Commission Services view is that some elements of the current work programme will need to continue in the future, i.e. the monitoring of standstill and rollback and the ongoing dialogue with third countries. ECOFIN has also already asked the Code Group to monitor the rollback of existing patent box regimes in line with the compromise agreement reached in December 2014.[4] However, some of the existing work (such as the preparation of guidance or application notes) may need to be reviewed and taken forward on a different basis.

8. It is clear that the new work program will be challenging and the Commission Services believe that it should include a timescale for its completion or at least for its key elements.

Rules of Procedure

9. The Code Group's procedure is governed by the Council Conclusions of 9 March 1998.[5] Delegates have already discussed a proposal to revise and strengthen the preparatory capacity of the Code Group through the appointment of two additional vice-chairs. The enlarged preparatory group would therefore be composed of the Chair, two elected Vice-Chairs, two Vice-Chairs (one each from the current and incoming Presidency), plus representatives from the European Commission and General Secretariat of the Council.

10. In view of the likelihood that the future work programme of the Code Group will be heavier than recent ones, and in line with its view that it should have a fixed timescale, the Commission Services believe that Member States need to give serious thought to adopting an arrangement along these lines.

11. The pace of the Code Group's work could also be improved by reconsidering the guidance agreed in 2008 on the meaning of "broad consensus".[6] Currently, the Code Group's reports to the Council should reflect either a unanimous opinion or the various opinions expressed in the course of the discussion.[7] In practice, the Code Group tries to reach a "broad consensus" in its reports (effectively a unanimity rule) tempered by the option for Member States to express disagreements through footnotes to the reports.

12. Clearly the Code Group could operate on the basis of a formal majority voting system. Alternatively the Code Group could consider reviewing the meaning of "broad consensus" set out in 2008. For example, it could be amended by increasing the number of objections that are required to prevent a consensus being reported. The reports could then describe the areas where agreement has been reached as well as the reasons why some Member States continue to have reservations. Reports written on this basis would more clearly show what progress had been made.

13. In situations where progress is not being made the Chair could, at any time, be able to send a note to ECOFIN setting out the different positions and seeking political guidance.

14. The Code Group should also consider whether it would be more efficient to increase the number of technical subgroups or even if most work should be done in subgroups.

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[4] Document 16553/1/14 FISC 225.
[5] OJ 98/C 99/01.
[6] Document 16410/08 FISC 174.
[7] OJ 98/C 99/01, paragraph 14.

15. If the number of subgroups is to be expanded, some thought could be given as to their governance. The Code Group has previously agreed that the anti-abuse subgroup will be chaired by the representative of the Member State holding the Presidency of the Council.[8] If several subgroups were operating at the same time it might be better if the chairs were chosen by the main Group and served for a fixed period or until the expiry of the deadline for the completion of the work.

16. The Commission Services believes that any changes made to the preparatory capacity of the main Group could be mirrored in the governance of subgroups, e.g. through the appointment of additional vice-chairs (although these need not represent the same Member States as hold the equivalent positions in the main Group).

Amendment of the criteria in paragraph B of the Code

17. Whilst it is clear that the assessment process is not a scientific exercise the main difficulty is how the existing criteria apply to particular regimes. Amending the criteria would not necessarily seem to address this problem, because they need to be reasonably broad as they need to cover many different types of national rules. Criteria 1, 2 (ring fencing) and 5 (transparency) of the Code have worked well and do not present many problems.

18. Regarding criterion 3 (substance) the Commission Services think that the Code Group should develop specific solutions for particular types of preferential measure, such as interest regimes, in the same way as has been done for patent boxes. Analysing the Code with respect to specific types of regimes would be a significant amount of work and would represent a logical continuation of the recent work.

19. With regard to criterion 4 (internationally accepted principles) the discussion on patent boxes showed a different understanding within the group. It was unclear whether under criterion 4 the arm's length principle should be applied by analogy to situations other than transactions between associated enterprises.

20. The BEPS project has also highlighted the underlying problems with criterion 4 to the extent that transfer pricing rules need to be improved in order to put more emphasis on value creation in highly integrated groups, e.g. by tackling the use of intangibles to shift profits. The key issue is the outcome of the work on points 7 to 10 of the BEPS Action Plan which aim to counter the division of economic activities from the income they generate. As with criterion 3, the answer may be to develop guidance as to how criterion 4 might apply to particular regimes or where the application of transfer pricing rules continues to have potentially harmful effects.

21. The Code Group could also consider extending the "gateway criterion" in the Code. At the moment the Code applies to measures which provide for a significantly lower effective level of taxation than that which applies generally in a Member State. This could be expanded to include measures which provide for a level of taxation below a particular effective rate.

[8] Document 16233/09 FISC 163.

Extending the Code Group's mandate

22. The standstill and rollback obligations in the Code have proved very effective in combatting harmful tax competition within the EU. However these obligations have so far only been applied to the assessment of individual tax measures, although the Code Group has increasingly worked to agree guidance on general issues such as cross-border rulings and inbound profit transfers. The Commission Services think that it is essential that the scope of the Code be changed to make it clear that the Code Group must effectively implement and monitor the outcome of such work.

23. Whatever the issue at stake, it must be clear that the Code commits Member States to re-examining their existing laws and established practices to ensure that they comply with the agreed approach (rollback) and that they will not introduce new tax measures which contravene them (standstill). In the light of the issues included in the Roadmap this could involve a wide-ranging review of Member States' rules and practices similar to that undertaken between 1998 and 2003. Any such future review would be based on the guidance agreed by the Group as well as the criteria in paragraph B of the Code.

Geographical extension of the Code

24. Paragraph M of the Code says that it is advisable that principles aimed at abolishing harmful tax measures should be adopted on as broad a geographical basis as possible. Clearly the main work here has been in relation to Member States' dependent and associated territories. Beyond that the focus has been on Switzerland and Liechtenstein. The Commission Services believe that the Code Group could systematically review third country regimes more widely, initially to identify where potentially harmful regimes may exist.

Reform of the Code of Conduct Group: G5 Position Paper

Introduction

There is a general consensus within the EU of the need to review the Code of Conduct Group (CoCG). This Position Paper on the scope and timetable for the review is being proposed by the G5 as a basis for further discussion and action by EU Member States and the European Commission.

Overview

The Code Group has operated within the EU since 1998, as a Working Group of Council (ECOFIN), based on a mandate agreed by Member States in 1997. The mandate and operation of the CoCG has not been reviewed since the Group was formed. In the context of the ongoing G20/OECD Base Erosion and Profit Shifting (BEPS) project, and the need to implement the outcomes of this consistently within the EU, as well ongoing work at EU level, it is timely to review the role and operation of the CoCG. The G5 propose that this review should consider the following areas:

- **Mandate**: the remit of the CoCG, covering harmful tax practices, and the implementation of BEPS outcomes in the EU and EU-level measures;
- **Governance**: the CoCG needs effective leadership and organisation of its work, including planning future work programmes, and better co-ordination between the Group and other high level bodies working on taxation at EU level;
- **Representation**: the membership of the CoCG, to ensure that high level representatives of Member States are engaged in the work of the Group; and
- **Ways of Working**: to ensure that the Group is able to take forward work effectively, through processes for monitoring, reviewing and reporting on actions in Member States, and avoiding excessive delays.

The review should lead to proposals being made to the High Level Working Party (HLWP) and ECOFIN covering all of these areas by the end of the Luxembourg Presidency.

Background

On 1 December 1997, ECOFIN adopted a Resolution on the Code of Conduct for business taxation. This set out the benefits of fair tax competition, but recognised that some tax measures could unduly affect the location of mobile business activity. The Resolution sets out the criteria for identifying potentially harmful tax measures (which can include laws, regulations and administrative practices). The Resolution also provides for the establishment of the CoCG within the framework of the Council to assess tax measures that may fall within the Code and to report to the Council every 6 months.

The Code is not a legally binding instrument, although it has proved effective (e.g. work on hybrid instruments and in relation to the Parent-Subsidiary Directive, as well as securing changes to individual tax policy measures assessed as harmful). By adopting the Code, Member States (MS) commit to re-examining their existing laws and established practices, amending such laws and practices as necessary with a view to eliminating any harmful tax measures, and not introducing new tax measures which are harmful within the meaning of the Code. These are known as rollback and standstill respectively.

If a tax measure has the potential to fall within the definition of a harmful tax measure given in the Resolution, MS are required to inform the CoCG. MS can also request the opportunity to discuss and comment on a tax measure of another MS that may fall within the scope of the Code. The exchange of such information is facilitated by the Commission.

Mandate

The current mandate of the CoCG, agreed in 1997, is focused on identifying and assessing potentially harmful tax practices based on the following criteria in the Code of Conduct:

- a significantly lower effective level of taxation, or zero taxation, than the general level of taxation in the country concerned;
- tax benefits reserved for non-residents, or transactions with non-residents;
- tax incentives for activities which are isolated (ring-fenced) from the domestic economy and therefore have no impact on the national tax base;
- granting of tax advantages even in the absence of any real economic activity;
- the basis of profit determination for companies in a multinational group departs from internationally accepted rules, in particular those approved by the OECD; and
- lack of transparency, including where legal provisions are relaxed at administrative level in a non-transparent way.

These are similar to, but not the same as, those agreed by the OECD Forum on Harmful Tax Practices (FHTP), which are currently being reviewed as part of Action 5 of the BEPS project. In addition, the CoCG and its Sub-Groups have taken forward work on a number of specific issues, such as amending the Parent Subsidiary Directive (PSD) and working to secure the elimination of harmful regimes in Switzerland, based on specific mandates from ECOFIN.

<u>Proposals for a Revised Mandate</u>

A new mandate for the CoCG could include:

- a remit to consider <u>tax practices that undermine the functioning of the Single Market</u>. This would include work on defining fair tax competition within the EU and, where a coordinated approach is relevant, on providing guidance on horizontal issues linked to the functioning of the internal market. The role of the Group would be to identify and analyse these, and then make recommendations to the HLWP and ECOFIN to address these;
- ongoing remit to <u>assess potentially harmful tax practices</u> within the EU against the current criteria, then revised Code Criteria where an improvement could be made on the basis of the revised criteria agreed in the Forum on Harmful Tax Practices (FHTP) as part of the BEPS project;

- review the existing gateway criterion, which currently applies to measures which provide for a significantly lower effective level of taxation than that which applies generally in a Member State;

- implementation of EU BEPS initiatives and other measures; and

- engagement with third countries in relation to harmful tax practices when specific mandates are agreed by ECOFIN.

Governance and Representation

Paragraph 10 of the Council Conclusions (March 1998) establishes a Preparatory Group composed of a Chair, two Vice-Chairs, and Commission, with assistance from the Council Secretariat. The Chair is elected by common accord (or by a majority vote of the high-level representatives, if necessary) and serves for a renewable two year term, with the next election due in 2017. The first and second vice chairs are elected for a sixth-month term by the delegates holding the current and incoming Presidency, respectively. Paragraph 3 of the Council Conclusions (March 1998) establishes that MS should appoint a high-level representative, and deputy member, along with two alternatives to stand in place of the high-level representative or the deputy if they are unable to attend. The term high level representative is not defined, and is left to the discretion of individual MS. Currently, the Code Group's reports to ECOFIN should reflect either a unanimous opinion or the various opinions expressed in the course of the discussion.

Proposals for Revised Governance Arrangements

Revised governance arrangements for the Group could include:

- A new structure, with a political Chair appointed by Ministers in ECOFIN and having a strong political experience in a Member State or in an EU institution, assisted by a technical expert acting as Deputy Chair, in addition to the Vice-Chairs. This would provide the CoCG with high level political leadership and a link to ECOFIN. The political Chair would present the biannual Code Group Report if this was being discussed, or attend relevant meetings. The number of Vice-Chairs and the process for appointing these could also be considered;

- This structure would require a reorganisation of the work of the Group, with a more structured approach to meetings, focusing these on strategic issues and reporting to ECOFIN (with the Chair present) and more technical meetings to consider and resolve detailed issues (Chaired by the Deputy);

- The Chair and Deputy would have responsibility for developing a new mandate for the CoCG, and revising this periodically, as well as proposing to ECOFIN that the Group should take responsibility for work in specific areas;

- Member States should commit to ensuring that they are represented at an appropriate level on the Code of Conduct Group, and to seek to ensure that this representation is consistent;

- The guidance agreed in 2008 on the meaning of "broad consensus" within the Group could be reviewed; and

- Consider whether to publish the biannual report of the Group once it has been adopted by ECOFIN.

Operation of the CoCG

The way in which the CoCG operates has strengths and weaknesses. In general, the consensus approach has been successful. However, the pace of the work can be very slow, and existing transparency mechanisms rely on MS discretion as to what tax measures to notify to the CoCG and when this should happen. There are also no formal mechanisms for evaluating whether MS have abided by their commitments in relation to implementing or changing tax measures, or for gathering information about tax regimes that may be harmful.

<u>Proposals for Improving the Operation of the Code Group</u>

Proposals for improving the operation of the Code of Conduct Group:

- A <u>review of the relationships between the CoCG and other high level bodies</u> with an interest in direct tax issues, to clarify the relationships between them and establish how work can be co-ordinated across them, would be useful;

- Since its inception, the Code Group has relied on the voluntary disclosure of new tax measures or other practices by Member States. These <u>rules should be reviewed, with a view to their clarification</u>;

- Similarly, it would be useful to <u>review the reporting mechanisms to the Group</u>, and to consider how Member States should report on the implementation of Code Group decisions in relation to tax measures in their jurisdictions. These could also include information from Member States about their implementation of measures resulting from the BEPS project or other EU initiatives;

- The Group should also <u>consider the need for mechanisms whereby it can seek information from Member States</u> about potentially harmful tax practices that are not regimes, but relate to corporate tax; and

- The Group should also consider <u>whether it could make more effective use of technical Sub-Groups</u>, including the establishment and oversight of these, in order to ensure the Code Group is able to focus on more strategic issues.

Process and Timetable

A process and timetable for conducting the review needs to be agreed by the HLWP on the basis of the contribution from the CoCG before being submitted to ECOFIN for decision. The G5 would propose the following:

- **April-May** – discussions of the scope and timetable for the review in the CoCG and HLWP.

- **June 2015** – agree the scope of the review and a detailed project plan and timetable, and propose this to ECOFIN for agreement.

- **December 2015** – conclude the review and seek ECOFIN endorsement of these conclusions by the end of the Luxembourg Presidency.

Reform of the Code of Conduct Group: Austrian Paper

Future of the Code of Conduct Group

We very much support the intentions to intensify the work on EU level regarding necessary future tax coordination and harmonisation issues. Of course this must be prepared by a (high level) working group (Commission or Council group) before presenting the issue to ECOFIN.

Certainly the Code Group is one of various potential groups that can be mandated with this task.

However, the main task of the group at present - which is the standstill and rollback procedure - must definitely not be impaired by this additional task. Nevertheless, we think that the current standstill and rollback procedure has some weak spots which should be improved in order to make the peer review more effective:

- In order to speed up procedure it would make sense that if the Commission considers an agreed description as necessary it should be obligatory, irrespective of the opinion of the concerned Member State (or other Member States). This should not weaken the decisive role of Member States, since the assessment as harmful or not harmful shall of course remain competence of the group exclusively. In the past, too often the decision whether the assessment procedure should be initiated was based on insufficient knowledge of the particular regime. Additionally, Commission is the only unbiased participant of the CoC group.
- Already today the preparation of the meeting involves Commission, Secretariat of the Council and vice chairs.
- Setting up a secretariat similar to the one in the OECD would not improve the procedure, since Commission already performs this task at EU level. Having such a secretariat would make procedures and decisions even more burdensome and lengthy.
- The ECOFIN should deal more with Code issues in order to push forward the peer review procedure. In the past this has worked only unsatisfactory. This was partly caused by the high requirements put on the Group by the procedural rules agreed in the December ECOFIN 2008. In order to be able to report as "the Group" all Member States minus the one concerned must share the opinion. Naturally this has mostly been very difficult to reach. Thus, it would make sense that the common opinion of a certain amount of Member States ("18"? number to be agreed) could be used in reports (to the ECOFIN) as "the great majority".
- The agenda of the last ECOFIN of the respective presidency is extremely full most of the time which makes a discussion on the reports nearly impossible. A solution to this problem could be to issue preliminary report (e.g. regarding urgent matters) to ECOFIN also during the presidency.
- Involvement of ECOFIN on substance seems more important than involvement in procedure (like appointment of the Chair).

Strengthening the EU Code of Conduct Group (Business taxation)
Position of the Luxembourg delegation

Luxembourg has always been and remains fully committed to the Code of Conduct (business taxation), which Member States agreed upon in 1997 under Luxembourg Presidency.

With regard to the ongoing reflections on strengthening the Code, the Luxembourg delegation would like to stress the following issues:

1. Context

The European Council in its conclusions of 23 May 2013 stressed the importance "*to take effective steps to fight tax evasion and tax fraud, particularly in the current context of fiscal consolidation, in order to protect revenues and ensure public confidence in the fairness and effectiveness of tax systems*". In that context, the Council called for rapid progress notably with regard to the ongoing work within the EU on the elimination of harmful tax measures and considered that "*[t]o that end, work should be carried out on the strengthening of the Code of Conduct on business taxation on the basis of its existing mandate*".

The Luxembourg delegation shares this analysis and thus agrees to the strengthening of the role of the Code of Conduct.

2. Strengthening of the governance

While agreeing with the strengthening of the role of the Code of Conduct (cf. 3), the Luxembourg delegation is, at this stage, not convinced that there is a real need to modify procedural aspects as contained in paragraph H of Council Conclusion of 1 December 1997 and in Council Conclusions of 9 March 1998.

The Luxembourg delegation considers the current mechanisms as elaborated by the Council Conclusion of 9 March 1998 where notably the chair of the Group is appointed from among the representatives of the Member States and serves for a period of two years to be adequate. The same consideration applies for the appointment of two vice-chars, where it has been agreed in 1998 that the first vice-chairman will be designated from among the representatives of the Member States by the delegation holding the Presidency of the Council, for the duration of its term of office, and that a second vice-chairman will be designated by the delegation who is next to hold the Presidency of the Council, for the six-month period prior to the commencement of its term of office. It is also of the view that the preparatory group in its current composition facilitates the work of the Group and could also do so if its role was strengthened.

The Luxembourg delegation is therefore of the firm opinion that the Code in its current structure, assisted by the preparatory group, is in a position to efficiently deliver beneficial results even in the context of an extended role.

However, given the multiplication of new and complex issues of corporate taxation, we would propose to consider the establishment of supplementary sub-groups that would assist the Group to effectively carry out an extended work program.

3. Strengthening of the role

We agree that the role of the Code of Conduct should be strengthened in the light of international developments in the area of corporate taxation.

There is a need for a new impetus to be given to the current work of the Code of Conduct Group.

Therefore, within its existing mandate the Group should consider actions specifically addressing "*base erosion profit shifting*", taking thereby into account the ongoing OECD works.

For example, in order to fight abuse and to prevent mismatches, there have been and there still are discussions in the anti-abuse-subgroup on hybrid entities and hybrid permanent establishment. Further work on other cases of mismatches should also be considered.

In the light of international developments in the area of corporate taxation, the Group should concentrate its work on the elaboration of common solutions that are compliant with EU law.

In its analyses and assessments it shall also carefully take into consideration how activities or transactions are effectively taxed throughout the Community (§ G). Unfortunately, this paragraph has never been applied in the past.

There may be different types of results in this respect:

- 1) Some solutions agreed by the Group can be implemented by Member States via soft law.

  Other solutions agreed by the Group may need to be implemented via EU legislation (for the reasons notably of level playing field, clarity and enforceability).

- 2) Some solutions may require as a first step a common approach on some more general aspects relating to corporate taxation (tax rate, tax base, effective tax, ...) in which case a legislative action of the Commission would be needed (without prejudice to the Commission's right of initiative).

Actions and solutions taken within the Code should be promoted on the largest possible geographical scale (§ M).

4. Additional reflections

The Luxembourg delegation would also like to add some further comments:

Should an extension of the mandate be considered to be necessary to address BEPS issues, the Luxembourg delegation would very much prefer to have a broader debate on tax policy at the Council, both on the substance and on the way how to take such a discussion forward.

On substance, the Luxembourg delegation would like to underscore that the discussion on strengthening the Code needs to be seen in the context of the wider considerations of fair tax competition and that it might be premature to finally conclude on this before upcoming initiatives such as the Commission Action Plan. Should there be a need, the incoming Luxembourg Presidency is prepared to put the related issues as priority items on the agenda.

With regard to the form, and more specifically to the Group or Committee where such more general work could take place, the Luxembourg delegation deems appropriate to reiterate its proposal on a "Fiscal Committee" as submitted in 2005 (Annex: FISC 40, 7910/05).

The Luxembourg delegation supports the creation of such a committee as it would allow a more horizontal discussion on tax issues within the European Union under a longer term perspective.

It would be the appropriate forum to allow for a broad discussion on new challenges of tax policy within the framework of European law due notably to BEPS issues and the consolidation of the competitiveness of the European Union towards third countries.

The Group Code of Conduct could be integrated in the Fiscal Committee and pursue his work on standstill and rollback.

CONSEIL DE L'UNION EUROPÉENNE

Bruxelles, le 20 avril 2005

7910/05

LIMITE

FISC 40

NOTE DE TRANSMISSION

de :	Présidence
Objet:	Copie de lettre de la Présidence concernant une "Note de réflexion de la Présidence luxembourgeoise sur la mise en place d'un comité fiscal"

Lettre de la Présidence aux délégations

Suite à la réunion informelle organisée par la Présidence néerlandaise en novembre 2004 à La Haye et après discussions avec la Présidence sortante néerlandaise, la Présidence future anglaise, la Commission et la Présidence du groupe code de conduite, la Présidence luxembourgeoise, sous sa seule responsabilité, a élaboré une note de réflexion portant sur la mise en place d'un Comité fiscal.

Il a toujours été entendu que la Présidence luxembourgeoise ne soumettrait ce papier à une discussion qu'à condition qu'il existe une disponibilité de tous les acteurs de s'engager constructivement dans une telle discussion.

Il s'est toutefois avéré que la Commission a clairement fait savoir que la note de réflexion ci-dessous ne constituerait pas une base de discussion considérant qu'une telle initiative ne serait ni souhaitable ni nécessaire, l'organisation actuelle du dialogue et de la discussion en matière fiscale étant à ses yeux pleinement satisfaisante.

La Présidence luxembourgeoise respecte cette position de la Commission tout en la regrettant.

Partant, la Présidence luxembourgeoise renonce à soumettre la note de réflexion à une discussion entre Etats membres et entre Etats membres et la Commission et se limite à la distribuer à toutes les parties concernées.

Gaston Reinesch
Directeur général du
Ministère des Finances

ANNEX

Note de réflexion de la Présidence luxembourgeoise sur la mise en place d'un comité fiscal

1) Introduction

Les discussions menées dans le passé et tout récemment à l'initiative de la Présidence néerlandaise lors de la réunion informelle de haut niveau qui a eu lieu en novembre 2004 à La Haye ont montré que la plupart des délégations considèrent qu'il y a un besoin de se parler régulièrement et à haut niveau en matière fiscale.

Lors de ladite réunion, la délégation luxembourgeoise a indiqué être disposée à organiser dans les enceintes du Conseil de l'Union européenne une réunion à ce sujet sous sa Présidence et à préparer, ensemble avec les Services de la Commission, l'ancienne Présidence néerlandaise, la future Présidence britannique et la Présidence du Groupe Code de Conduite, un document relatif à cette problématique.

La présente note de réflexion se situe dans ce contexte et se base sur les orientations dégagées des débats entre les trois Présidences successives du Conseil, les Services de la Commission et le Secrétariat Général du Conseil de l'Union européenne.

Elle part de l'hypothèse qu'il serait dans l'intérêt aussi bien des Etats membres, pris individuellement et dans leur ensemble, que de la Commission de mieux structurer le dialogue fiscal à travers la mise en place d'un Groupe fiscal de haut niveau (ci-après « Comité fiscal »).

2) Rôle du Comité fiscal

Il est proposé de créer un Comité fiscal basé sur une structure mixte Commission/Conseil en vue de discuter des problématiques fiscales et des orientations à prendre individuellement et collectivement en matière de fiscalité directe et indirecte.

Le Comité en question n'affecterait pas les droits et obligations des Etats membres ni les compétences respectives des Etats membres et de la Communauté telles qu'elles découlent du traité. En particulier, le droit d'initiative de la Commission demeurerait inchangé.

L'objectif est de disposer d'une enceinte au sein de laquelle les représentants personnels des Ministres des Finances des Etats membres et la Commission auraient la possibilité de réfléchir et de discuter d'une manière horizontale, le cas échéant dans une perspective de plus long terme, de tous les sujets en relation avec la politique fiscale ; ceci à l'exclusion des travaux de préparation directement en relation avec le Conseil, qui suivraient leur voie normale, y compris la possibilité pour les Présidences successives de réunir, si elles le jugent utile, le Groupe de haut niveau ad hoc du Conseil dont le mandat serait à revoir.

Les voies actuelles en ce qui concerne la discussion des propositions de directives ainsi que la préparation des décisions juridiques à prendre par le Conseil seraient donc respectées et maintenues.

Parmi les sujets susceptibles d'être abordés dans le Comité fiscal, il y a lieu de relever à titre illustratif le rôle de la politique fiscale dans le cadre de la stratégie de Lisbonne, la consolidation de la compétitivité de l'Union européenne vis-à-vis des pays tiers sur le plan fiscal et les répercussions de la jurisprudence de la Cour de Justice des Communautés européennes.

Par ailleurs ce groupe rendrait possible de créer des liens entre les personnes en charge de la fiscalité dans les Etats membres, liens qui entre autres permettraient de mieux contribuer à la compréhension par chacun de l'organisation et de l'orientation fiscale dans ces Etats membres.

Les travaux du Comité fiscal ne déboucheraient pas sur des résultats juridiquement contraignants.

En effet, la qualification des résultats de ces discussions serait variable en fonction du domaine sous revue.

Différents types de résultats seraient envisageables:

- ceux pour lesquels le suivi relève de la compétence des Etats membres,
- ceux pour lesquels le suivi relève de la Commission, sans préjudice du droit d'initiative de la Commission,
- ceux pour lesquels un rapport pourrait ou devrait être adressé au Conseil. Dans ce cas, le dossier serait transmis au Conseil sans préjudice des dispositions institutionnelles.

Le Comité reposerait sur un double pilier constitué par une Présidence assurée par un membre du Comité relevant d'un Etat membre et un Secrétariat assuré soit par la Commission soit par le Secrétariat général du Conseil, étant entendu que dans l'un ou l'autre cas la Commission et le Secrétariat général du Conseil assumeront cette tâche en étroite collaboration. La Commission serait également membre du Comité fiscal.

Le Comité fiscal pourrait se doter de sous-groupes pour examiner des questions déterminées.

Il est proposé d'intégrer le Groupe Code de Conduite (fiscalité des entreprises) dans le Comité fiscal. Un sous-groupe pourrait être chargé des travaux en relation avec le gel et le démantèlement.

3) <u>Statuts du Comité fiscal</u>

Le Comité fiscal pourrait se doter d'un règlement intérieur sujet à révision.

Une importance politique serait à accorder aux travaux du Comité fiscal. Cela devrait se traduire par la désignation par chaque Etat membre d'un représentant personnel de haut niveau et d'un suppléant, la Commission étant représentée par le Commissaire en charge de la fiscalité et de deux suppléants.

Le Président du Comité fiscal serait désigné parmi les représentants des Etats membres. Il exercerait son mandat pendant une durée de deux ans à compter de la date de sa désignation. Le mandat ne serait pas renouvelable. Le Président serait désigné de préférence d'un commun accord. Au besoin, le Président serait élu à la majorité des représentants de haut niveau du Comité. Le Commissaire en charge de la fiscalité participerait à l'élection du Président.

L'Etat membre dont le représentant serait désigné comme Président disposerait, pendant la durée du mandat de ce dernier, de deux représentants au sein du Comité.

Le premier vice-président serait désigné parmi les représentants des Etats membres par la délégation assumant la présidence du Conseil, pendant la durée de son mandat, et un deuxième vice-président serait désigné par la délégation qui assumerait la prochaine présidence du Conseil, pendant une période de six mois précédant le début de son mandat.

Si l'Etat membre du Président exerce la présidence du Conseil ou s'apprête à le faire, il ne pourrait désigner un vice-président pendant la durée du mandat du Président et le Comité ne disposerait de ce fait que d'un seul vice-président pendant cette période.

Le Comité serait assisté d'un secrétariat placé sous la direction d'un secrétaire. Le secrétaire et le personnel nécessaire pour le secrétariat seraient mis à disposition soit par la Commission soit par le Secrétariat général du Conseil. Dans le premier cas, le secrétaire serait nommé par la Commission après consultation du Comité et le secrétariat du Comité œuvrerait en étroite collaboration avec le Secrétariat général du Conseil de l'Union européenne, dont un représentant pourrait également assister aux réunions du Comité.

Le Comité fiscal se réunirait au moins une fois par semestre, sans préjudice du nombre des réunions qu'il devrait assurer sous le mandat “Code de Conduite”. Les réunions du Comité seraient convoquées par le Président du groupe sur sa propre initiative ou à la demande d'au moins un tiers des membres du Comité.

Les travaux du Comité fiscal seraient confidentiels conformément aux règles en vigueur.

Les rapports du Comité fiscal refléteraient soit l'avis unanime de ses membres, soit les différents avis exprimés au cours de la discussion.

4) Mise en place du Comité fiscal

La mise en place du Comité fiscal se ferait sur la base de conclusions politiques communes des représentants des gouvernements des Etats membres réunis au sein du Conseil et de la Commission. Simultanément, il y aurait lieu d'actualiser le mandat du Groupe ad hoc à haut niveau au sein du Conseil.