



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 6 June 2014
(OR. en)**

10608/14

LIMITE

**FISC 95
ECOFIN 586**

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 2014 under the Hellenic Presidency.
4. In accordance with the Procedural Aspects of the Group (16410/08 FISC 174), the Group should maintain to aim at a (broad) consensus to reflect the positions of the Member States in the Group in its reports to ECOFIN, to avoid losing the effectiveness of the Group, while respecting the principle of unanimity as laid down in the Council conclusions of 9 March 1998 concerning the establishment of the Code Group. In the case broad consensus cannot be reached, the Group's reports can express the various views mentioned.

PROGRESS OF WORK

5. The Code of Conduct Group met on 27 January, 18 March and 3 June 2014 under the Hellenic Presidency.
6. At the meeting of 27 January 2014 the Group confirmed a programme of work under the Hellenic 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 VICE CHAIRS

7. Ms. Evgenia Kokolia (Greece) and Mr. Pierluigi Sorrentino (Italy) were confirmed as respectively the first and the second Vice-Chairs for the period up to the end of the Hellenic Presidency.

STANDSTILL

8. Member States have made commitments not to introduce new tax measures that would be harmful within the meaning of the Code. The Group's work programme for the Hellenic Presidency identified the following measures where further discussion under standstill was required:

- *Croatia*
- *Patent boxes*

Croatia

9. The Group had to consider Croatia's tax measures following its accession to the Union. The Commission presented the agreed description of eight Croatian tax measures. The Group did not identify any harmful elements in these measures. Subsequently Croatia notified the Group of changes made to a number of tax measures. After discussing those changes in the meeting on 3 June 2014 the Group considered the measures as not harmful.

Patent boxes

10. In December 2013 ECOFIN invited the Group to analyse the third criterion of the Code of Conduct by the end of June 2014 and to assess all patent boxes in the EU, including those already assessed by the end of the year, taking into account international developments, including those in relation to the OECD BEPS initiative.
11. Therefore, in co-ordination with developments at the OECD, the Group has considered three different approaches to identifying harmful aspects of patent boxes under criterion 3. The first approach was the value creation approach which did not have any support in the Group. The second approach was the transfer pricing approach which was supported by some Member States. The third approach was the modified nexus approach which was favoured by a majority of Member States.
12. The Group therefore agreed to continue its discussions of criterion 3 with a view to reaching a broad consensus. In order to clarify the compatibility of the modified nexus approach with EU law, the Group requested an opinion of the Council Legal Service. In order to ensure that it is able to complete its assessment of all EU patent boxes by the end of the year, the Group asked the Commission Services to prepare draft assessments of those measures with regard to criteria 1, 2, 4 and 5 of the Code based on the descriptions which were agreed at the meeting on 3 June 2014. As to criterion 3 the draft assessment will be finalised only once the Group has agreed on how it should be interpreted.

ROLLBACK

13. To facilitate the Code Group's work on the implementation of rollback, each Member State was asked to provide written information on developments since the last round of rollback returns in spring 2013 concerning the implementation of rollback of the measures in its name which appear in:
- Annex C of SN 4901/99; or
 - in the case of the ten Member States which acceded on 1 May 2004, the Annex to the Enlargement Group (Tax Experts) report of October 2003 (13213/03 ELARG 94 FISC 138); or
 - in the case of the two Member States which acceded on 1 January 2007, the Annex to the report from the Working Party on Enlargement of June 2006 (10879/06 ELARG 66 FISC 96).
14. At its meeting on 18 March 2014, the Group was provided with information on all developments since January 2013 on the implementation of rollback.

UK: Gibraltar – Income Tax Act 2010

15. The European Commission (DG Competition) opened a formal state aid investigation procedure in order to investigate certain aspects of Gibraltar's Income Tax Act 2010 on 16 October 2013.
16. Spain reiterated the need to examine other aspects of the Gibraltar tax regime not covered by the state aid procedure and provided the Group with information on other potentially harmful parts of the Gibraltar tax regime. At the meeting on 18 March 2014, the Commission circulated a paper presenting the information provided by Spain and the UK's comments on it. Aspects identified included inbound profit transfers and 'shell companies'.

17. With regard to inbound profit transfers the Group agreed to consider Gibraltar's compliance in conjunction with other Member States and their associated territories.
18. As regards shell companies the UK and Gibraltar will provide relevant information in order to further examine their tax treatment during the Italian Presidency.

WORK PACKAGE

19. The Group continued its work on the Work Package 2011 under the Hellenic Presidency.

Anti-Abuse – Mismatches

20. Technical work on Mismatches was continued in a Code of Conduct Sub-Group, which met on 22 January and 16 May 2014. At the meeting on 3 June 2014 the Hellenic Presidency presented a report on the work of the Sub-Group, where the focus was on mismatch situations of hybrid entities and hybrid permanent establishments in the EU. It was agreed that further work on this subject is required.

Monitoring the implementation of agreed guidance on Inbound Profit Transfers

21. Regarding Inbound Profit Transfers the Group will consider the anti-abuse measures of all Member States after the presentation of the Commission analysis based on the tool box approach.

Preparation of guidance or application notes

22. The preparation of guidance and application notes requires further work which shall be carried out after the outcome of the Group's considerations on the patent boxes.

Administrative Practices

23. The Group agreed on a model instruction for the spontaneous exchange of information on advance interpretations of legal provisions in cross border situations ("rulings") and in the area of transfer pricing.

Links to third countries

24. As asked by the Council (ECOFIN) on 22 June 2012 (10905/12 FISC 78), the Commission continued discussions with Switzerland with the aim of reaching agreement to apply the principles and criteria of the Code. The Group was informed of the progress in the dialogue at the meetings on 27 January, 18 March and 3 June 2014. The Group approved the text of a Memorandum of Understanding to be endorsed by the Member States, meeting within the Council.