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COUNCIL OF
THE EUROPEAN UNION

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REPORT

from:	Code of Conduct Group (Business Taxation)
to:	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).

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

3. This report from the Code Group encompasses the work of the Code Group in 2012 under the Danish 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.

<u>PROGRESS OF WORK</u>

5. The Code of Conduct Group met on 7 February, 17 April and 4 June 2012 under the Danish Presidency.

6. At the meeting of 7 February 2012 the Group confirmed a programme of work under the Danish Presidency, agreeing to take forward work in the following areas:

   (a) new round of rollback notifications;
   (b) new round of standstill notifications;
   (c) continue existing work on standstill;
   (d) start work on the various aspects of the Group's Work Package 2011.

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Appointment of Vice-Chairs

7. Mr Ivar Nordland (Deputy Permanent Secretary in the Ministry of Finance of Denmark) and Mr Georg Poufos (Director of Inland Revenue, Ministry of Finance of Cyprus) were confirmed as the first and the second Vice-Chairs for the period up to the end of the Danish Presidency.

Rollback

8. 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 2011 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).

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9. At its meeting on 17 April 2012, the Group was provided with information on all developments since January 2011 on the implementation of rollback.

10. As regards the following measures for which a transitional period applied till 31 December 2011, it was confirmed that no beneficiaries exist any longer as of that date:

PL1	Special Economic Zones (Poland)
B6	Madeira Free Zone (Portugal)
F47	International Business Companies (Jersey)
F23	Captive Insurance (Netherlands Antilles)

Existing work on Standstill

11. 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 Danish Presidency identified the following measures where further discussion under standstill was required:

- *UK: Guernsey - Zero-Ten Corporate Tax Regime*
- *UK: Gibraltar- Income Tax Act 2011*

12. As regards UK: Guernsey – Zero-Ten Corporate Tax Regime, in its meeting on 7 February 2012 the Group was presented with the agreed description of this measure. After discussion on the description and an exchange of views with those concerned, the Group invited the Commission to prepare a draft evaluation. The Group discussed this draft evaluation in its meeting on 17 April 2012 and agreed that the Guernsey regime is harmful under the criteria of the Code.

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Guernsey has informed the Group about the proposed legislative amendments to its legislation with a view to removing any harmful elements. The Group welcomed this development and agreed to review Guernsey's legislative amendments when discussing the rollback of this harmful regime under the Cypriot Presidency.

13. With respect to UK: Gibraltar – Income Tax Act 2011, the Group agreed the description of this measure in its meeting on 7 February 2012. Additional information relevant for the assessment of this measure under the Code has been requested. The request has been satisfied partially. The Group encouraged the UK to ensure that the requested information is provided and confirmed its willingness to perform assessment of this measure as soon as possible during the Cypriot Presidency.

New round of Standstill notifications

14. Member States have made commitments not to introduce new tax measures that would be harmful within the meaning of the Code. In view of this ongoing commitment, each Member State was invited - in accordance with the Group's established practise - to assist the Group in its work by notifying any new measures, which potentially fall within the scope of the Code of Conduct and which have been enacted in the twelve months to end-January 2012.

15. In this respect, at its meeting on 17 April 2012, the Group was provided with information on all developments since January 2011. The Commission is examining this information. No new measures were notified to the Group.

Work Package 2011

16. The Group started its work on the Work Package 2011 under the Danish Presidency.

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Anti-abuse

17. Regarding **Profit Participating Loans,** the Commission reported to the Code Group on the analysis performed by the Commission's Working Group of the different solutions for implementation of the guidelines contained in the Code Group's Report to ECOFIN Council on 7 December 2010 (16766/10 FISC 139, par. 17). The Group decided that the issue required further consideration and agreed to come back to it under the Cypriot Presidency.

18. The Group started its work on other **Mismatches**. The Group agreed to take into account the OECD discussions in this area in order to avoid duplication of work. The Commission presented a summary of the OECD work with a view to identifying further Code Group work in this area. The Group agreed that priority for further work is given, as a first step, to hybrid entities and permanent establishments. The Group will continue its work on this issue under the Cypriot Presidency.

Administrative practices

19. The Group started monitoring developments in administrative practices of Member States in parallel with the annual round of standstill and rollback notifications. The Group also reviewed developments in MS's transparency of procedures for providing advance certainty and the publication of individual rulings suitable for horizontal application. With a view to stimulating spontaneous exchange of information in relation to specific cross border rulings, the Group looked at the Member States' internal framework for the spontaneous exchange of information and suggested that the Commission's Committee on Administrative Cooperation for Taxation analyse this matter further, with a view to a possible development of a "Model Instruction" that could be used as a reference by the Member States for internal application and follow-up.[1]

[1] While supporting the conclusions by the Group, Italy reiterates the view expressed in its footnote to paragraph 35 of doc. 10033/10 FISC 47 and considers that the exercise should also properly address the issue of how to ensure substantial reciprocity in the exchange of information.

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Monitor the implementation of agreed guidance

20. The Group agreed to start monitoring actions undertaken by Member States to implement guidance agreed on inbound profit transfers (doc. 16766/10 FISC 139, par. 16). To this end the Group agreed to collect necessary information from the Member States and invited delegations to respond to a questionnaire prepared by the Commission. The Group agreed to continue its work in this area under the Cypriot Presidency.

Preparing guidance or application notes

21. The Group discussed an overview of regimes previously reviewed by the Group providing beneficial treatment for interest, royalties, intermediate companies and free zones, including the characteristics and elements that were critical for these regimes. While noticing that past assessments should not be affected, the Group invited the Commission to link these characteristics and elements to the Code criteria with a view to developing general guidance or application notes for future use. The Group agreed to continue its work in this area under the Cypriot Presidency.

Investment funds

22. On the basis of practical experience presented by the UK delegation, the Group discussed potential issues and policy responses related to harmful tax planning through the use of special tax regimes for investment funds.

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Links to third Countries

23 Continuing the work undertaken under the Polish Presidency, the Group discussed further developments related to the promotion of the Code principles and criteria towards third countries at its meetings on 7 February, 17 April and 4 June 2012.

24. As regards Switzerland, the Group took note of the state of discussions and reiterated that the aim is for Switzerland to apply the principles and criteria of the Code (doc. 10595/10 FISC 57). In that context, the Group encouraged the Commission to intensify the dialogue with Switzerland and to report back on the progress achieved at each of the meetings of the Group, starting in September 2012. If a satisfactory result in this dialogue is not achieved by the end of the Cypriot Presidency, the Group will follow alternative approaches, including the unilateral assessment of the regimes.

25. With regard to Liechtenstein's tax system, the Group confirmed its intention to address the following issues:

- Full exemption for dividends and capital gains;

- Exemption for capital gains combined with a tax deductible write down / value adjustment for participations decreasing in value;

- Special regime for Private Asset Structures.