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REPORT

From: General Secretariat of the Council

To: Delegations

Subject: Code of Conduct Group (Business Taxation)
- Report to the Council

COMPLIANCE WITH 2016 GUIDELINES ON THE CONDITIONS AND RULES FOR THE ISSUANCE OF TAX RULINGS

A. RELEVANT DOCUMENTS:

1. Questionnaire (WK 12422/2019 REV 1)
2. Compilation of the Member States' responses (WK 2873/2020 REV1 COR1 ADD1)
3. Overview table - Member States' replies (WK 2871/2020 REV2)

B. BACKGROUND AND SOME GENERAL REMARKS

1. The Code of Conduct Group agreed on a questionnaire to be sent to all Member States, to verify whether the *2016 Guidelines*¹ have been implemented correctly. The initial deadline for reply to the questionnaire was set for 29 February 2020.
2. Two documents with the replies received were circulated (*Compilation of responses* and *Overview table*) and constitute the basis for the below preliminary assessment.
3. As a general remark, the Commission services recall that the monitoring exercises are a **peer review process** and that the preliminary assessment is based exclusively on the information provided by Member States in their replies to the questionnaire.

¹ Guidelines on the Conditions and Rules for the Issuance of Tax Rulings

C. OUTCOME OF THE MONITORING

4. The Commission services have analyzed the information inserted in the responses. Annex 1 below reflects our work in view of drafting our preliminary assessment. Some replies were completed or amended by the delegations either following the circulation of a preparatory document asking for further clarifications or after the clarifications brought in the VC meeting of 8 July 2020. These changes are reflected in room documents WK 2871/2020 REV2 and WK 2873/2020 REV1 COR1 ADD1.
5. When it agreed the Questionnaire (see Guidelines on monitoring compliance²), the Group did not decide to attach a different weight to the various obligations stemming from the agreed guidance, according to their importance and/or nature.
6. Therefore, for the purpose of the assessment of the compliance with the 2016 Guidelines, all the provisions in the Guidelines are equal and the non or insufficient implementation of any of them would lead mechanically to a *partly non-compliant* assessment.
7. Regarding the question under Point A, letter k) on the application of EU guidelines in the area of transfer pricing: while the large majority responded by a ‘yes’ without any further comments, a few Member States responded ‘yes’ or did not respond and/or inserted a comment referring to the implementation of the OECD Guidelines or JTPF practices and not the 2007 Communication. We considered this implementation to be sufficient implementation.
8. We followed the same approach in respect of two other questions. Some MS answered to Point B on Reporting changes or to Point D on Publication with inserting an explanatory comment which led to inconsistencies with the given answers. After the discussions in COCG meeting on 8 July 2020 and several bilateral contacts, these inconsistencies were settled and the relevant changes are reflected in the Overview table.

² 14784/17 FISC 300 - Guidelines on setting working methods for an effective monitoring of Member States' compliance with agreed guidance (Procedural Guidelines)

D. PRELIMINARY ASSESSMENT

Based on the information made available so far, it is the Commission's services **preliminary assessment** (summarized in Annex 2) as follows:

All **Member States** replied either in the affirmative to the relevant questions or that they do not grant rulings as defined by the Guidelines. They have been assessed *compliant* with the 2016 Guidelines.

Implementation of the specific provisions of the 2016 Guidelines				
	Provisions where MSs gave a <u>negative answer</u> or <u>no answer</u> .	Answer	Detailed text of the provisions in the Guidelines	Commission preliminary assessment
Austria	None	-	-	Compliant
Belgium	None	-	-	Compliant
Bulgaria	None	[BG does not grant rulings as defined by the Guidelines]	-	Compliant
Cyprus	None	-	-	Compliant
Czech Republic	None	-	-	Compliant
Germany	None	-	-	Compliant
Denmark	None	-	-	Compliant
Estonia	None	-	-	Compliant
Greece	None	-	-	Compliant
Spain	None	-	-	Compliant
Finland	None	-	-	Compliant
France	None	-	-	Compliant
Croatia	None	-	-	Compliant
Hungary	None	-	-	Compliant
Ireland	None	-	-	Compliant
Italy	None	-	-	Compliant
Latvia	None	-	-	Compliant
Lithuania	None	-	-	Compliant
Luxembourg	None	-	-	Compliant
Malta	None	-	-	Compliant
Netherlands	None	-	-	Compliant
Poland	None	-	-	Compliant
Portugal	None	-	-	Compliant
Romania	None	-	-	Compliant
Sweden	None	-	-	Compliant
Slovenia	None	-	-	Compliant
Slovak Republic	None	-	-	Compliant

	Preliminary assessment
Austria	Compliant
Belgium	Compliant
Bulgaria	Compliant
Cyprus	Compliant
Czech Republic	Compliant
Germany	Compliant
Denmark	Compliant
Estonia	Compliant
Greece	Compliant
Spain	Compliant
Finland	Compliant
France	Compliant
Croatia	Compliant
Hungary	Compliant
Ireland	Compliant
Italy	Compliant
Latvia	Compliant
Lithuania	Compliant
Luxembourg	Compliant
Malta	Compliant
Netherlands	Compliant
Poland	Compliant
Portugal	Compliant
Romania	Compliant
Sweden	Compliant
Slovenia	Compliant
Slovak Republic	Compliant