



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 21 November 2000 (23.11)**

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from : Belgian delegation  
date of receipt : 20 November 2000  
to : Code of Conduct Group (Business Taxation)  
Subject : Code of Conduct (Business Taxation)  
– the Group's draft report to the Council

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Delegations will find attached a letter from the Belgian delegation on the draft report, plus Annex, from the Code of Conduct Group to the ECOFIN Council, which the Group examined at its meeting on 14 November 2000.

MINISTRY OF FINANCE



Department of  
Fiscal Affairs

Brussels, 20 November 2000

Tour Finances  
Bd. du Jardin Botanique 50 - bte 52  
1010 Brussels

Tel: 02 210 23 48  
Fax: 02 210 33 07

Your references: -  
Our references: AAF/2000/1435-1  
Contact: Jacques Gombeer  
Tel: 02 210 65 94  
Ann.: -

Ms PRIMAROLO  
Chair of the Code  
of Conduct Group  
c/o Sue Babiker

Madam,

Please find below my comments on the draft report and its Annex, which were examined at the meeting on 14 November 2000.

**I. General remarks**

With one or two – to my mind all too rare – exceptions, the report and its Annex make no reference to points of disagreement between the Member States or to the reasons for disagreement, thus giving an incomplete picture of the discussions which took place at the meetings. I think it is essential, so that the Finance Ministers and Heads of Government do not have to read between the lines, to do as the French document on savings did and specifically mention each point on which one or more Member States expressed dissenting views, together with the reasons given for those views. Should you feel unable to amend the report along those lines, I think it would be preferable for it to be labelled as a Presidency report and not from the Group.

The report should also be amended on two points:

- the German document on rollback and standstill is not mentioned in the report and only one aspect of it has been incorporated into the Annex: transparency, which is dealt with in paragraph 13 of the Annex. There are, however, other considerations in that document, which opened up very interesting avenues. For that reason, the Belgian and Netherlands delegations supported the German initiative. The report should at least mention the German document and the reasons for not adopting the German approach;

- paragraph 4 of the report refers to the appointment of Ms PARLY, State Secretary at the Ministry of Finance (France), and Mr LJUNGH, State Secretary at the Ministry of Finance (Sweden), as first and second Vice-Chairs of the Group. I should like to include the fact that your tenure as Chair of the Group was extended in May 2000.

Both the report and the Annex make frequent reference to "the Group". Since the points made in these documents were only rarely agreed unanimously, I requested at the meeting on 14 November that it be indicated in the report and the Annex whether the views expressed were shared by all the Member States or by a majority of them, and that dissenting views, and the names of the Member States expressing them, also be included. You then reminded me that point 30 of the report of 23 November 1999 contains a definition of "the Group" which, in your view, addresses my concerns. I would like point 30 to be quoted verbatim in the report.

## **2. The report**

Paragraphs 2 and 3 of the report contain references to the report of 23 November 1999 (SN 4901/99) and ECOFIN's report to the Feira Council on 19 and 20 June 2000 (9034/00 FISC 75). The Belgian delegation has formal reservations on such references, since those reports have not been approved, discussed or even examined.

Paragraph 7(ii) Refers to "assessments made by the Group". Here, too, the Belgian delegation has formal reservations, since the Member States concerned had many reservations on these assessments. I would point out that Belgium contested the assessment of two of the five Belgian measures listed, because they are not in breach of any of the criteria of the Code of Conduct of 9 March 1998.

As regards the rollback timetable referred to in paragraph 11, I would emphasise that the timetable adopted by the Feira Council for another component of the tax package – the savings Directive – differed from that initially approved in December 1997. Since the two most important components of the tax package need to be treated in the same way, the timetable given in paragraph 7 should also be open to amendment. I therefore request that the following text be inserted:

*"It should be noted that this timetable set in 1997, when the decision of principle on the tax package was taken, was reviewed and substantially amended by the Feira Council in relation to another component of the package: taxation of savings."*

Lastly, as regards paragraph 18, you told me that Belgian's position is reflected in points (vi) and (vii). For the sake of clarity, I would like points (i) to (vii) of paragraph 18 to indicate the names of the Member States to which they allude.

## **3. The Annex**

The text of paragraph 8 of the report, indicating the existence of reservations, and the footnotes to the report of 23 November 1999 should also appear in the Annex.

On the subject of finance branches, holding companies and headquarters companies, I refer to the points made in my letter of 12 October 2000. For the sake of clarity, I summarise below my

requested amendments to the features described as harmful in each of these three systems.

A. Finance branches

The first feature should state that the allocation of profits to the Head Office has to be at considerably less than the "arm's length" rate and that this practice has to be automatic and a product of the actual features of the system.

The second feature (exemption of branch profits) should be deleted. If that is not possible, I propose that the end of the sentence read as follows "*... significantly lower than the lowest level of taxation of any Member State*" to ensure that all Member States apply a uniform criterion.

B. Holding companies

The reference to anti-abuse or countermeasures should be deleted for the reasons given in our letter of 13 October 2000.

The second indent should read: "General asymmetrical measures where capital ..."

C. Headquarters companies

The third point of the second indent should read: "*the advantages are restricted in accordance with the wording of paragraphs B1 or B2 of the Code*", so that it is clear that the reference is to the text of paragraphs B1 and B2 of the Code and not to the very loose interpretation which some Member States subsequently tried to make of these paragraphs.

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I request that the above comments and the reasons for them given in my letter of 12 October 2000 be mentioned in the report or in the Annex, as appropriate.

(Complimentary close).

Paul HATRY  
Personal Representative of the Minister for Finance  
to the EU  
Former Minister  
Honorary Senator