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REPORT

From :	Code of Conduct Group (Business taxation)
to :	ECOFIN Council
on :	2 December 2008
Subject :	Code of Conduct (Business Taxation) = Report to the ECOFIN Council

I. 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 reported regularly on the measures assessed and these reports have been forwarded to the Council for deliberation.

3. Two interim reports of the Code of Conduct Group were presented to the ECOFIN Council on 1 December 1998 and 25 May 1999 respectively (12530/98 FISC 164 and 8231/99 FISC 119). Subsequently, the Group reported to ECOFIN on 25 November 1999 setting out the results of the Group's work (SN 4901/99) on the assessment of 271 tax measures under the Code where the Group considered 66 measures harmful.

4. On 13 October 2003, the Council welcomed a report by the Working Party on Enlargement (Tax Experts) (13213/03 ELARG 94 FISC 138) establishing a list of 30 measures found harmful under the Code in the Member States that acceded on 1 May 2004. The Council also agreed on the adequacy of the rollback measures envisaged or already undertaken for 27 of these measures.

5. On 11 July 2006, the Council took note of a report by the Working Party on Enlargement (10879/06 ELARG 66 FISC 96) establishing a list of 8 measures found harmful under the Code in the two Member States (Bulgaria and Romania), which acceded on 1 January 2007.

6. This report from the Code Group encompasses the work of the Code Group in 2008 under the French Presidency.

7. As required by the ECOFIN Conclusions of 9 March 1998, the Group's reports reflect either the unanimous opinion of the members of the Group or the various opinions expressed in the course of discussion.

<u>PROGRESS OF WORK</u>

8. The Code of Conduct Group met on 9 September and 18 November 2008 under the French Presidency.

9. At the meeting on 9 September the Group also confirmed a programme of work under the French Presidency, agreeing to take forward work in the following areas:
   (a) standstill;

(b) further discussion on the future of the Code of Conduct, based on the reflections of the Member States following the discussion of this issue at the ECOFIN Council on 3 June 2008.

Appointment of Vice-Chairs

10. At the meeting on 9 September, Mr Christian Comolet-Tirman (Director for European Affairs and International Relations in the French Tax Policy Directorate) and Mr Peter Chrenko (Deputy Minister of Finance in the Finance Ministry of the Czech Republic) were confirmed as the first and second Vice-Chairs respectively for the period up to the end of the French Presidency.

Resignation of Chair

11. On 12 November 2008, Mrs Jane Kennedy, previously Financial Secretary to the UK Treasury, and now Minister of State at the UK Department for Environment, Food and Rural Affairs, tendered her resignation as Chair of the Code of Conduct Group. In accordance with the Council conclusions of 9 March 1998, which govern the Group's procedures, a process was initiated to select a new Chair.

Standstill

12. 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 French Presidency identified the following measures where further discussion under standstill was required:

- *Belgium – Profit Participating Loan*
- *Belgium – Patents Regime*
- *Luxembourg – Intellectual Property Regime*
- *Portugal - Madeira Free Zones*

- *Slovakia – Investment Aid Tax Credit*
- *Spain – Intangible Assets Regime*
- *UK: Jersey – Zero-Ten Corporate Tax Regime*
- *UK: Guernsey – Zero-Ten Corporate Tax Regime*
- *UK: Isle of Man – New Tax Legislation*

13. The Group discussed the Belgium – *Profit Participating Loan* measure. The Group agreed that the measure should be assessed against the Code criteria. Subsequently, the Group noted that the draft assessment provided by the Commission Services for the meeting of 18 November 2008 included an analysis of the interaction of the Belgian PPL with the regime of another Member State. The Group agreed that further information from the Commission services, including on the interaction of the Belgian PPL with the regimes of other Member States, and where appropriate information from other Member States, would be welcome to allow the Group at its meeting in January 2009, to finalise its views. It was noted that concerns raised by disparities between the systems of the Member States, should be addressed in the framework of the coordination exercise.

14. The Group discussed the Belgium – *Patents Regime*. The Group agreed that there was no need for this measure to be assessed against the Code criteria.[1]

15. The Group discussed the Luxembourg – *Intellectual Property Regime.* The Group agreed that there was no need for this measure to be assessed against the Code criteria.[1]

16. The Group discussed the Portugal – *Madeira Free Zones*. The Group agreed that there was no need for this measure to be assessed against the Code criteria.

[1] The German delegation considers that it is necessary to assess the following measures:
- Belgium: Patents Regime;
- Spain: Intangible Assets Regime;
- Luxembourg: Intellectual Property Regime.

As stated under letter G in the Code of Conduct, the effect of a tax measure on other Member States is central in answering the question of whether a measure is harmful, in which case the measure must be abolished or may not be introduced. However, the effect on other Member States can only be assessed once data about the actual use of a measure by non-resident companies have been provided.

17. The Group also discussed the Slovakia – *Investment Aid Tax Credit*. The Group invited the Slovak Republic to present by 12 January 2009, in accordance with normal procedure, a written note setting out full information concerning the Slovak measure, including the eligibility criteria for benefiting from the measure in question, so as to allow for a more detailed assessment by the Group at its meeting in January 2009.

18. Spain's *Intangible Assets Regime* was also discussed. The Group agreed that there was no need for this measure to be assessed against the Code criteria.[1]

19. With regard to the UK, the Group discussed the Jersey and Guernsey *Zero-Ten Corporate Tax Regimes* and the new tax legislation in the Isle of Man. The Group agreed that further quantitative information would be supplied by the UK delegation by 12 January 2009, in particular as regards the percentage of taxed investors that would qualify for the zero tax, so as to allow for a more detailed assessment by the Group at its meeting in January 2009.