



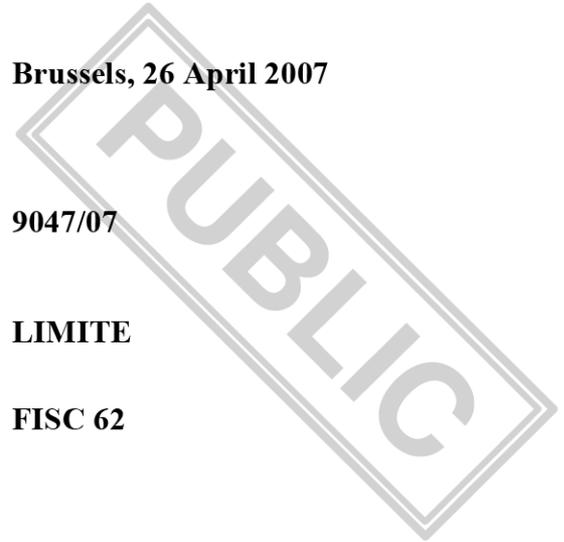
**COUNCIL OF
THE EUROPEAN UNION**

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REPORT

from : Code of Conduct Group (Business Taxation)
to : ECOFIN Council
on : 5 June 2007

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

INTRODUCTION

1. The Council and the Representatives of the Governments of the Member States, meeting within the Council, adopted on 1 December 1997 a Resolution on a Code of Conduct for business taxation which 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).¹

¹ Belgium considers that the 1997 *triptyque* resulted in the directives 2003/48 on the taxation of savings and 2003/49 on interest-royalties on the one hand and in continuing work by the Code of Conduct Group on the other hand, so that the term "parallel calendar" is no longer appropriate.

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 66 measures were considered harmful by the Group.
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 states which 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 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 2007 under the German Presidency.
7. As required by the ECOFIN Conclusions of 9 March 1998, the Group's report to the 29 November 1999 ECOFIN Council reflected either the unanimous opinion of the members of the Group or the various opinions expressed in the course of discussion. References to 'the Group' in that report reflected the broad consensus where unanimity was not achieved and alternative views were shown in the notes as appropriate. Consistent with the Group's report to the 29 November 1999 ECOFIN, references to 'the Group' in this and other reports should be construed in the same way.²

² Belgium considers that the terms "broad consensus" have no clear meaning as they have never been the subject of an agreed definition by the Group.

PROGRESS OF WORK

8. The Code of Conduct Group met on 13 February 2007 and 17 April 2007 under the German Presidency.

9. At the meeting on 13 February, Mr Florian Scheurle, Director General of the Tax Directorate at the German Federal Ministry of Finance, and Mr José Gomes Santos, Tax Counsellor of the Centre for Fiscal Studies in the Directorate for Taxation at the Portuguese Ministry of Finance, were confirmed as the first and second Vice-Chairs respectively for the period up to the end of the German Presidency. The Group also confirmed a programme of work under the German Presidency, agreeing to take forward work in the following areas:
 - (a) implementation of rollback;
 - (b) standstill;
 - (c) further discussion on the future of the Code of Conduct, focusing on extending the work of the Code of Conduct Group within the existing mandate of the Code.

Implementation of rollback

10. 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 April 2006 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).

11. At its meeting on 17 April, the Group was provided with information on all developments since April 2006 on the implementation of rollback.

12. The Group was informed that:

- in line with the rollback description in Annex to 14361/03 FISC 173, F024 (Free Zones - Netherlands Antilles) had been abolished by the State Ordinance of 11 December 2006 (P.B. 2006 no. 98);
- Malta's International Trading Companies measure (ML4) had been rolled back with effect from 1 January 2007;
- Malta's measure on Dividends from (other) Maltese companies with Foreign Income (ML5) had been rolled back with effect from 1 January 2007 through the introduction of appropriate anti-abuse measures;
- Slovenia's Foreign Income measure and the respective anti-abuse provisions were introduced in 2004 to implement rollback of SL2 (Foreign Income). The Foreign Income measure and the respective anti-abuse provisions are now prescribed by Article 24 of Slovenia's new Corporate Income Tax Act, which entered into force on 1 January 2007;
- As set out in the Code Group report dated 26 November 2002 (14812/02), measures F061 (UK: Isle of Man - International Business Companies), F062 (UK: Isle of Man - Exemption for Non Resident Companies), F063 (UK: Isle of Man - Exempt Insurance Companies), F065 (UK: Isle of Man - Fund Management), F066 (UK: Isle of Man - Offshore Banking Business), F067 (UK: Isle of Man - International Loan Business) had all been repealed.

13. **Extension of benefits:** The Group noted a report concerning an outstanding request for an extension of benefits until 31 December 2007 in respect of BG5 (Bulgaria's Foreign Investment Act) for those beneficiaries existing on 31 December 2006, which had availed themselves of the scheme in 1998, the year before it was closed, and agreed that this matter should be referred to the Council.

Standstill

14. Member States are committed not to introduce new tax measures which are 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 practice – to assist the Group in its work by notifying to the Commission services 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 2007.

15. The following new measures were notified to the Group:
 - *Bulgaria - Amendment to BG 4 Investment Tax Credit;*
 - *Netherlands - Interest Box;*
 - *Netherlands - Patent Box;*
 - *Slovenia - Exemption of Dividends and Capital Gains;*
 - *Slovenia - Venture Capital Scheme;*
 - *Slovenia - Amending the Economic Zones Act;*
 - *UK: Isle of Man - The Distributable Profits Charge (DPC).*

16. The Group agreed that there was no need to proceed with the assessment of the measures notified by Bulgaria and Slovenia.

17. As far as the other above-mentioned measures were concerned, the Group requested the Commission Services to prepare descriptions of these in consultation with the Member States concerned, in time for the next meeting of the Code Group.³

³ The Netherlands notes that it is established practice not to notify all changes to a tax system, but only potentially harmful measures. The Group has repeatedly, recently and unanimously considered and approved general regimes with a reduced tax rate for R&D income as not harmful. In comparison to those approved regimes, the Patent Box is not limited to groups, is not limited to non-residents or transactions with non-residents, is not ring-fenced in the sense that the domestic taxbase is protected and requires genuine R&D-activity, thus substance. In this context it is for The Netherlands without any doubt that the Patent Box is not potentially harmful. Therefore The Netherlands have not notified the Patent Box under the standstill procedure. Consequently it does not see the need for a description of this measure.

18. The Group agreed that the draft description of the Netherlands' Interest Box measure would simply be noted and that work on the assessment of that measure would not be finalised whilst the Commission's work on State Aids was still outstanding.⁴

Future of the Code

19. The Group had further discussions on the future of the Code of Conduct, focusing on an extended programme of work for the Code of Conduct Group within the existing mandate of the Code.
20. The Group agreed that any such work would be in addition to its ongoing work on monitoring standstill and the implementation of rollback. The Group also acknowledged that it would need to continue to report back on its work to the Council at the end of each Presidency.
21. The following areas of work were suggested within the existing mandate of the Code (see Annex 1):
- (1) procedure and the role of precedence and comparability
 - (2) how the Group copes with the situation where measures are affected by State aid proceedings
 - (3) anti-abuse
 - (4) transparency and exchange of information in the area of transfer pricing
 - (5) administrative practices
 - (6) links to third countries.
22. Accordingly, the Group discussed and established a package of work within the existing mandate of the Code of Conduct, which could be approved by the Ecofin Council. The Group considered that it should be able to complete the work package over the next eighteen months under the Portuguese, Slovenian and French Presidencies.

⁴ The Netherlands informed the Group that the Interest Box is currently being investigated by the Commission under state aid rules. The Netherlands considers the Group's dealing with this measure both premature and inefficient, as long as that procedure has not been finalised. In the light of the above, The Netherlands does not see the need for preparing a description at this stage.

FUTURE WORK PACKAGE

WITHIN THE EXISTING MANDATE OF THE CODE

In addition to the ongoing work on monitoring standstill and the implementation of rollback, the Code of Conduct Group proposes to take forward the programme of work within the existing mandate as set out at (1) to (6) below. The Group considers that it should be able to complete this programme of work over the next eighteen months under the Portuguese, Slovenian and French Presidencies.

(1) Procedure and the role of precedence and comparability

In accordance with the conclusions of the Council of December 1997 considering as potentially harmful a tax measure which provides for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question and while not reopening assessment of measures that have been finalised, the Group would reflect on the pros and cons of relying purely on precedence, or of considering each measure in isolation, or alternatively somewhere in between.

The Group would also explore how it might be possible to improve the way it works within the context of the Council Conclusions of 9 March 1998, including the way conclusions are reached.

(2) How the Group copes with the situation where measures are affected by State aid proceedings

The Group would discuss the interaction of State aid proceedings and evaluation under the Code to see whether there is any scope for better managing the interaction.

(3) **Anti-abuse**

While noting the Commission's work on coordination in this area, the Group would discuss what potential there is for a common political understanding of the latest position in European law and in particular what 'genuine economic activity' means within the context of anti-abuse rules in the EU.

(4) **Transparency and exchange of information in the area of transfer pricing**

The Group would follow up on the Group's work in 2002 on transparency and exchange of information in the area of transfer pricing, and discuss the extent to which the agreed proposals set out in Annex 2 of the report to the ECOFIN Council of 26 November 2002 (14812/02) have been reflected in Member States' practices.

(5) **Administrative practices**

The Group would revisit the work done in 1999 when Member States provided comments on a comparative study across Member States of administrative practices in taxation, and discuss the extent to which Member States' administrative practices relax measures to the point that they may be considered harmful.

(6) **Links to third countries**

With regard to the first paragraph of Paragraph M of the Code on the promotion of the adoption of the principles of the Code of Conduct in third countries, the Group would explore the potential ways to help Member States to increase their influence in this respect.
