

## I

*(Information)*

## COUNCIL

## CONCLUSIONS OF THE ECOFIN COUNCIL MEETING

on 1 December 1997

concerning taxation policy

(98/C 2/01)

The Council held a wide-ranging debate in the light of the Commission communication entitled 'A package to tackle harmful tax competition in the European Union', which takes stock of a discussion initiated by the Commission at the informal meeting of Ministers for Economic Affairs and Finance in Verona in April 1996 and given more substantial shape at the informal meeting in Mondorf-les-Bains in September 1997.

That discussion concerned the need for coordinated action at European level to tackle harmful tax competition in order to help achieve certain objectives such as reducing the continuing distortions in the single market, preventing excessive losses of tax revenue or getting tax structures to develop in a more employment-friendly way.

In the light of that debate and in a spirit of comprehensiveness of approach, three areas were particularly highlighted: business taxation, taxation of savings income and the issue of withholding taxes on cross-border interest and royalty payments between companies.

Following that debate, the Council and the Representatives of the Governments of the Member States, meeting within the Council, agreed to the Resolution on a code of conduct for business taxation set out in Annex 1;

The Council also:

- approved the text on taxation of savings set out in Annex 2,
- considered that the Commission should submit a proposal for a Directive on interest and royalty payments between companies,

- took note of the Commission's intention to submit rapidly two proposals for Directives on the subjects referred to in the first and second indents above,

- called on the Commission to submit to it each year, together with the report provided for in paragraph N of the code of conduct for business taxation, a progress report on work concerning taxation of savings and interest and royalty payments between companies,

- took note of the Commission's undertaking on fiscal State aid,

- called on the Commission to take forward its work on taxation, continuing to draw on the assistance of the Taxation Policy Group,

- took note of the following statements for the Council minutes:

## 1. re Annex 1 (code of conduct)

Certain Member States and the Commission consider that special tax arrangements for employees could come within the range of problems covered by the code. They accordingly consider that this question needs to be discussed within the Taxation Policy Group with a view to a possible extension of the code under the review procedure laid down in paragraph N.

The Council and the Representatives of the Governments of the Member States, meeting within the Council, as well as the Commission note that standstill and rollback are closely inter-related and stress the need for a balanced application to comparable situations, without this delaying the implementation of standstill and rollback. They also consider that a period of two

years, as a general rule, should be sufficient for rollback. As from 1 January 1998 the actual rollback will have to take place within five years although a longer period may be justified in particular circumstances following an assessment by the Council.

The German delegation, like other delegations, understands point B (3) as including, *inter alia*, the targeted granting of advantages for international mobile activities, where they are not granted for non-mobile activities.

The Commission points out that the authorization granted in 1987 and extended most recently in 1994 for the arrangements for international financial services centres in Dublin expires in 2005 and that, under that authorization, no new institutions may benefit from those arrangements after 2000.

## 2. re Annex 2 (taxation of savings)

The Member States state that, if they were to change their legislation, they should be guided by the points set out in Annex 2 to these conclusions.

The United Kingdom delegation considers that such a Directive should not apply to Eurobonds and similar instruments.

The French delegation considers that the Directive on the taxation of savings should not lay down a rate of withholding tax of less than 25 %.

The Netherlands delegation notes that it will assess the proposals in the light of the principle of taxation of savings in the country of residence.

The Luxembourg delegation considers that a Directive on taxation of savings should be accompanied by a Directive on business taxation covering general arrangements for business taxation in the Member States.

The Belgian, Italian and Portuguese delegations state that they will not agree to the Directive on interest and royalty payments between companies before the Directive on the taxation of savings is adopted.

3. The Commission notes the Netherlands delegation's request concerning problems relating in particular to taxation of pensions and insurance benefits; it undertakes to consider the matter with the assistance of the Taxation Policy Group with a view to possibly drawing up a proposal for a Directive.
4. The Commission notes the Belgian delegation's request concerning VAT treatment of cross-border motor vehicle leasing and undertakes to look into it with an open mind. It will in particular consider to what extent the proposals already planned to modernize and streamline the present VAT arrangements can provide a suitable solution.

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### ANNEX 1

#### RESOLUTION OF THE COUNCIL AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL

of 1 December 1997

on a code of conduct for business taxation

THE COUNCIL OF THE EUROPEAN UNION AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL,

RECALLING that a comprehensive approach to taxation policy was launched, at the Commission's instigation, at the informal meeting of the Ministers for Economic Affairs and Finance held in Verona in April 1996 and confirmed at the meeting in Mondorf-les-Bains in September 1997 in the light of the consideration that coordinated action at European level is needed in order to reduce continuing distortions

in the single market, prevent significant losses of tax revenue and help tax structures develop in a more employment-friendly way,

ACKNOWLEDGING the major contribution made by the Taxation Policy Group to the preparation of this Resolution,

NOTING the Commission communication to the Council and the European Parliament of 5 November 1997,

ACKNOWLEDGING the positive effects of fair competition and the need to consolidate the competitiveness of the European Union and the Member States at international level, whilst noting that tax competition may also lead to tax measures with harmful effects,

ACKNOWLEDGING, therefore, the need for a code of conduct for business taxation designed to curb harmful tax measures,

EMPHASIZING that the code of conduct is a political commitment and does not affect the Member States' rights and obligations or the respective spheres of competence of the Member States and the Community resulting from the Treaty,

HEREBY ADOPT THE FOLLOWING CODE OF CONDUCT:

**Code of conduct for business taxation  
tax measures covered**

- A. Without prejudice to the respective spheres of competence of the Member States and the Community, this code of conduct, which covers business taxation, concerns those measures which affect, or may affect, in a significant way the location of business activity in the Community.

Business activity in this respect also includes all activities carried out within a group of companies.

The tax measures covered by the code include both laws or regulations and administrative practices.

- B. Within the scope specified in paragraph A, tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question are to be regarded as potentially harmful and therefore covered by this code.

Such a level of taxation may operate by virtue of the nominal tax rate, the tax base or any other relevant factor.

When assessing whether such measures are harmful, account should be taken of, *inter alia*:

1. whether advantages are accorded only to non-residents or in respect of transactions carried out with non-residents, or
2. whether advantages are ring-fenced from the domestic market, so they do not affect the national tax base, or
3. whether advantages are granted even without any real economic activity and substantial economic presence within the Member State offering such tax advantages, or
4. whether the rules for profit determination in respect of activities within a multinational group of companies departs from internationally accepted principles, notably the rules agreed upon within the OECD, or
5. whether the tax measures lack transparency, including where legal provisions are relaxed at administrative level in a non-transparent way.

### Standstill and Rollback

#### *Standstill*

- C. Member States commit themselves not to introduce new tax measures which are harmful within the meaning of this code. Member States will therefore respect the principles underlying the code when determining future policy and will have due regard for the review process referred to in paragraphs E to I in assessing whether any new tax measure is harmful.

#### *Rollback*

- D. Member States commit themselves to re-examining their existing laws and established practices, having regard to the principles underlying the code and to the review process outlined in paragraphs E to I. Member States will amend such laws and practices as necessary with a view to eliminating any harmful measures as soon as possible taking into account the Council's discussions following the review process.

### Review process

#### *Provision of relevant information*

- E. In accordance with the principles of transparency and openness Member States will inform each other of existing and proposed tax measures which may fall within the scope of the code. In particular, Member States are called upon to provide at the request of another Member State information on any tax measure which appears to fall within the scope of the code. Where envisaged tax measures need parliamentary approval, such information need not be given until after their announcement to Parliament.

#### *Assessment of harmful measures*

- F. Any Member State may request the opportunity to discuss and comment on a tax measure of another Member State that may fall within the scope of the code. This will permit an assessment to be made of whether the tax measures in question are harmful, in the light of the effects that they may have within the Community. That assessment will take into account all the factors identified in paragraph B.
- G. The Council also emphasizes the need to evaluate carefully in that assessment the effects that the tax measures have on other Member States, *inter alia* in the light of how the activities concerned are effectively taxed throughout the Community.

Insofar as the tax measures are used to support the economic development of particular regions, an assessment will be made of whether the measures are in proportion to, and targeted at, the aims sought. In assessing this, particular attention will be paid to special features and constraints in the case of the outermost regions and small islands, without undermining the integrity and coherence of the Community legal order, including the internal market and common policies.

#### *Procedure*

- H. A group will be set up by the Council to assess the tax measures that may fall within the scope of this code and to oversee the provision of information on those measures. The Council invites each Member State and the Commission to appoint a high-level representative and a deputy to this group, which will be chaired by a representative of a Member State. The group, which will meet regularly, will select and review the tax measures for assessment in accordance with the provisions laid down in paragraphs E to G. The group will report regularly on the measures assessed. These reports will be forwarded to the Council for deliberation and, if the Council so decides, published.

- I. The Council invites the Commission to assist the group in carrying out the necessary preparatory work for its meetings and to facilitate the provision of information and the review process. To this end, the Council requests Member States to provide the Commission with the information referred to in paragraph E so that the Commission may coordinate the exchange of such information between the Member States.

#### **State aid**

- J. The Council notes that some of the tax measures covered by this code may fall within the scope of the provisions on State aid in Articles 92 to 94 of the Treaty. Without prejudice to Community law and the objectives of the Treaty, the Council notes that the Commission undertakes to publish guidelines on the application of the State aid rules to measures relating to direct business taxation by mid- 1998, after submitting the draft guidelines to experts from the Member States at a multilateral meeting, and commits itself to the strict application of the aid rules concerned, taking into account, inter alia, the negative effects of aid that are brought to light in the application of this code. The Council also notes that the Commission intends to examine or re-examine existing tax arrangements and proposed new legislation by Member States case by case, thus ensuring that the rules and objectives of the Treaty are applied consistently and equally to all.

#### **Action to combat tax avoidance and evasion**

- K. The Council calls on the Member States to cooperate fully in the fight against tax avoidance and evasion, notably in the exchange of information between Member States, in accordance with their respective national laws.
- L. The Council notes that anti-abuse provisions or countermeasures contained in tax laws and in double taxation conventions play a fundamental role in counteracting tax avoidance and evasion.

#### **Geographical extension**

- M. The Council considers it advisable that principles aimed at abolishing harmful tax measures should be adopted on as broad a geographical basis as possible. To this end, Member States commit themselves to promoting their adoption in third countries; they also commit themselves to promoting their adoption in territories to which the Treaty does not apply.

In particular, Member States with dependent or associated territories or which have special responsibilities or taxation prerogatives in respect of other territories commit themselves, within the framework of their constitutional arrangements, to ensuring that these principles are applied in those territories. In this connection, those Member States will take stock of the situation in the form of reports to the group referred to in paragraph H, which will assess them under the review procedure described above.

#### **Monitoring and revision**

- N. In order to ensure the even and effective implementation of the code, the Council invites the Commission to report to it annually on the implementation thereof and on the application of fiscal State aid. The Council and the Member States will review the provisions of the code two years after its adoption.
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## ANNEX 2

## TAXATION OF SAVINGS

To ensure a minimum of effective taxation of savings income within the Community and to prevent undesirable distortion of competition, the Council calls upon the Commission to present a proposal for a Directive on the taxation of savings. The Council considers that the following points might form a basis for that proposal:

- I. The scope of such a Directive could be limited to interest paid in one Member State to individuals who are resident in another Member State.
- II. As a first step towards effective taxation of savings income throughout the Community, such a Directive could be based on the 'coexistence model', under which each Member State would either operate a withholding tax or provide information on savings income to other Member States. A Member State might combine the two. The Directive could contain a review clause, for the purpose of determining to what extent further progress would be conceivable with a view to better effective taxation of savings income.
- III. Any withholding tax on interest payments made to residents of other Member States could, in principle, be levied by the paying agent. Refinement of this method might be needed in order to counter tax avoidance and evasion more effectively and to avoid double taxation. The arrangements for checking the residence for tax purposes of beneficiaries should not be too cumbersome.
- IV. The provisions of such a Directive should take into account the need to preserve the competitiveness of European financial markets on a global scale.

Furthermore, it would be advisable for the points set out above to be adopted as widely as possible. To this end, Member States should undertake to promote the establishment of equivalent measures in third countries, at the same time as discussions on the Directive are taking place; they should also commit themselves to promoting their adoption in territories to which the Treaty does not apply. In particular, Member States with dependent or associated territories or which have special responsibilities or taxation prerogatives in respect of other territories should commit themselves, within the framework of their constitutional arrangements, to ensuring that equivalent measures are applied in those territories.

The Council should review the issue before adopting such a Directive.

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