Meeting Report Code of Conduct Group  
19 October 2016

I. EXECUTIVE SUMMARY

- 1. Links to third countries: Liechtenstein: It was agreed that Member States would provide the COM with information on discrimination before the end of October, and that the Chair would write to Liechtenstein to inform them about the latest events and reiterate the need to have agreed descriptions for work to progress.

- 2. Standstill and Rollback: Patent Box (a) France: After some redrafting, the group's report to Ecofin on this issue was agreed, and will be submitted to the November Ecofin.

- (b) General Update on Rollback of Patent Boxes: All MS have now updated the Group, orally or in writing. COM then updated the Group on its plans for this process going forward.

- 3. External Strategy of the EU – Subgroup on third countries: The subgroup report to Ecofin was agreed, and work will continue under the SK Presidency. The file now goes to the HLWP for further discussion on the substantive issues.

- 4. Clarification of the 3rd and 4th criteria: report from the subgroup: It was agreed to include the report on the work of the subgroup as an annex to the Code of Conduct Group report to ECOFIN in December.

- 5. Outbound payments: No agreement was reached on any further action.

- 6. Interpretation of the gateway criterion: It was agreed that guidelines on the interpretation of the gateway criterion are not needed. However, the Code of Conduct Group could consider discussing a possible revision to the gateway, and provide the HLWP with a basis for its discussions on the issue.

- 7. AOB: None
II. REPORT

1. Links to third countries: Liechtenstein:

- The Chair informed the group that he had invited Liechtenstein to the meeting but that they had declined.

- The Commission services informed the Group about the recent contacts with Liechtenstein.

- The Commission services would need input from Member States (MS) concerned on the alleged discrimination issues in order to discuss this further with Liechtenstein.

- It was agreed that Member States would provide the Commission services with information before the end of October and that the Chair would write to Liechtenstein to inform them about the latest events and reiterate the need to have agreed descriptions for work to progress.

2. Standstill and Rollback: Patent Boxes – (a) France

- Chair invited France to comment on his report to Ecofin. France stated that it maintained its position as set out in previous meetings.

- IE, DE, and AT intervened to support the Chairs paper, intervened both to oppose the FR position on the procedural aspect, but they also noted that FR had some valid points on broader issues. The item was postponed until after lunch for some redrafting, and for the addition of some explanation of FR position.

- The revised Group report was accepted with one or two more changes. All MS were then satisfied by the text of the report, and it will now be submitted to the November Ecofin.

(b) General Update on Rollback of Patent Boxes:

- COM asked ES, as the only country not to reply to the request for information, for an oral update.

- ES informed the Group that they had already amended their national patent box as of 2015 and they were continuing to work on changes to the regional regimes.
• Then COM updated the Group on its plans for this process. The intention is to have an analysis of the closure of existing boxes by end 2016, and to assess the new modified nexus compliant patent boxes in 2017.

3. External Strategy of the EU

• The Slovak Presidency of the CoC Subgroup gave the CoC an update on the progress made in the Subgroup.

• The Subgroup has worked on both the determination of the jurisdictions prioritised for screening and the criteria that should be used for screening. Next to that, the Subgroup worked on the draft council conclusions and the guidelines for the screening process. Three subgroup meetings later, there are still two questions unanswered.

• However, the MS stuck to their positions as mentioned in the Subgroup. DK made a new proposal to exclude criterion 2.2 as mentioned under fair taxation only if the CoC agrees on the ‘3 out of 3’ approach. Unfortunately, no agreement was reached on the DK proposal or the Belgian proposal already being made in the Subgroup.

• The subgroup report to Ecofin was agreed, and work will continue under the SK Presidency. The file now goes to the HLWP for further discussion on the substantive issues.

4. Clarification of the 3rd and 4th criteria: report from the subgroup:

• It was agreed to include the report on the work of the subgroup as an annex to the Code of Conduct Group report to the ECOFIN in December.

5. Outbound payments:

• The Commission services presented the room document in which a number of recently adopted measures were discussed as potentially useful solutions to the outbound payments issue. Furthermore the document contained an outline of possible alternative solutions to be discussed further in case the existing measures were to be deemed insufficient.

• Most of the Member States who expressed themselves (11) were of the opinion that it was premature to discuss further measures as the effects of the recently adopted measures should be evaluated first. Further existing measures were mentioned such as Transfer Pricing guidelines. A few Member States (5) indicated that they were of the opinion that the issues of the taxation of outbound payments is important and that it is necessary to keep discussing possible measures. The idea of a toolbox with different alternative measures for Member States to apply was seen by those 5 delegations as a possible way forward.
• It was decided that it should be reported to the ECOFIN that the issue had been discussed, and that it had been agreed that while the issue of outbound payments was worth discussing, no agreement had been found on any further action.

• Chair stated that this item would be on the agenda again, in January 2017 and progress would be made.

6. Interpretation of the gateway criterion
• The Commission services presented the room document in which the conclusion was that there was no need for interpretation but that a revision of the gateway criterion would be the right approach to achieve a change to the scope of the Code.

• Some Member States expressed disappointment at the lack of proposals for guidelines on the interpretation in the Commission services’ document. These MS could not accept the conclusions in the room document. Whereas a majority of those delegations who expressed an opinion agreed that any changes to the gateway criterion had to take the form of a revision of the criterion and that it would have to be decided in another forum such as the HLWP.

• COM reminded MS that as long as the Group hasn’t changed the rules then they have to use the ones they have, and that it is not possible to change the Group's mandate by interpretation.

• It was suggested that the Code of Conduct Group could consider discussing a possible revision, and then provide the HLWP with a basis for its discussions on the issue.

7. Any other Business
None

ENDS.