

Code of Conduct Group meeting – 28 March 2006

Minutes of the meeting

1. Appointment of the Vice Chair

Austria () and Finland () were welcomed.

2. Work Programme for the AT Presidency

NL requested when the Code report presented to the December 2005 Ecofin will be discussed again since it was not approved, more specifically the case of HU interest. The Chair stated that this shall be dealt with under the future of the Code (under procedures) before the end of the AT presidency.

3. Rollback and Standstill: Notifications of Member States:

MS were also invited to report in writing in case there was nothing to report.

4. Implementation of rollback

Malta ML 4 and ML 5

MT presented their case. COM focussed on the two points of dispute: Amount of the refund and clarification of the anti-abuse measures. MT did not say anything on the State aid developments. The Chair and DE supported the COM view that more information was needed. PT also supported the COM view and mentioned the difference between resident and non-resident shareholding situations. Furthermore PT protested against the allowance of new entrants under ML4 and ML5 until the end of 2007. BE supported the COM but mentioned that there will always be a different outcome for resident and non-resident shareholders. The Chair concluded that MT should provide information as requested by COM and asked the COM to provide a note (apart from the description) stating why ML4 and ML5 were considered harmful, compare it to the new measure + table and provide for a paragraph what more is needed (from the COM position). COM and MT and Chair should achieve agreement on the clarifications and the treatment of shareholders.

5. Future of the Code of Conduct: discussion

Summary of the MS contributions (+ statements from the Code meetings of 23 November 2005 and 28 March 2006): *additions from the last meeting in italics:*

- **The Chair:** Their paper is more or less procedural and aims at identifying areas for further consideration under the Austrian Presidency. From an informal meeting with the Chair we know that they do not seem to see a very ambitious Code before them. Just maintaining the present work and downgrading the standstill work to subgroups of the Code before presenting it to the main Group.

- **AT** proposes to discuss the procedural rules in case there is a split decision in the Group on a specific regime. A minority should not be able to impede the assessment of a regime (it is clear that the HU-interest regime is meant). Furthermore, AT proposes to draft guidelines for regimes for passive income. *AT would not favour a legal instrument since 1 MS could block everything by which the effectiveness of the Code is undermined. AT is in favour of including new elements to the work of the Code Group.*
- **BE** questions some of the results and the extension of criteria 1b and 2b. Furthermore, sees no real chance for a further mandate for the Group and would like to see that fiscal State aid rules would be applied to combat harmful tax competition.
- **DE** proposes to include other forms of (business taxation) as well, including expat taxation and shareholder taxation. Furthermore, on procedure, DE would like to see the majority view of the MS in the reports to Ecofin and the divergent opinions in footnotes. DE suggests that COM prepares a draft for a new council conclusion (mandate) in which all new work will be dealt with. *DE would be in favour of drafting a legal proposal for the Code of Conduct and supports more in general everything the COM has proposed in their contribution.*
- **EE** is positive on the Code results and proposes to continue.
- **ES:** On procedure: ES wants clarification on how to handle minority views in conclusions of the Group and proposes to keep minutes of the meeting. On attendance: ES proposes high-level when we discuss a report to Ecofin and lower level on technical meetings. Furthermore, amending of the organisation (Chair, secretariat) to operate more efficiently. On content: ES wishes to pick up: review of the exchange of information on APA's, transfer pricing as a separate subject, relation between State aid and Code of Conduct, the value of precedents and equal treatment of MS, revision of the Code criteria and geographical extension of the Code. *Code process should continue. A legal instrument would be welcomed, however this might jeopardize the whole process with no future for the Code at all.*
- **SK** is positive on the Code results and proposes to continue if sufficient work is on the table.
- **NL** sees no future (in time or scope) for extension of the mandate for the Code Group. Remaining work should be done in a technical Commission group. Fiscal State aid should take a leading role in combating harmful tax competition. EU should focus on developing EU minimum standards (harmonization). *NL points to the shortcomings of the Code process (as mentioned in the COM document) and does not support the political tool that we have used so far. The NL would like to openly discuss a strategy which should be more comprehensive including cross-border loss relief, R&D incentives, exit taxation and minimum standards (rates) for mobile capital in the EU. NL sees no room for broadening the scope of the Code since there is no level playing field, either within EU or, more importantly, outside EU.*
- **CY** supports the Code work and also for the future and stresses the need for the 'highest technocratic level' regarding attendance.
- **PT** wants to continue with monitoring of standstill and rollback. Furthermore, suggests to clarify the decision process of the Group (unanimity, majority) and the use of precedent decisions. On the content: investigation of expatregimes, geographical extension of the Code, relation with State aid and measures that lead to double non-taxation (hybrids?).

- **LT** suggests to use criterion 1 and 2 only in respect of the 'de jure' approach and not use de 'de facto' approach anymore.
- **CZ** suggests to clarify the Group decision procedure (fix quorum) and to clarify the use of precedents (former decisions against future decisions).
- **IT** is not satisfied with the rollback achieved and diverging deadlines. Zero rates should have been discussed. A high level group is no longer required (only in case of general issues). IT support DE on the expats.
- **EL** supports the work and wants to continue. Equal treatment should be respected.
- **SE, FR and DK** strongly support the COM document.
- *FR would like to focus on new elements like exit taxation, promotion of the Code to targeted third countries and rules of procedure. FR would not see any role for the Code group to discuss transfer pricing issues. FR is however open to discuss anti-abuse measures and ECJ.*
- **FI** want the present work to continue on a technical level but when new elements will be discussed a high level should be present. They don't feel the need to change the criteria. *Code is fine and if an extension would be too difficult to agree it would not be a problem for FI.*
- **SI** supports looking for new types of tax schemes and proposes to also support the Lisbon strategy (R&D?). Rules and procedures should be reviewed
- **IE** does not want to change the remit, *no personal taxation and no transfer pricing issues.*
- **HU** wants to discuss 'de facto', equal treatment and vast majority.
- Chair concluded that they would provide a new working document with some options for the future (either under the current remit or a new and improved remit).
- *PL supports the work done so far and supports the NL idea of having minimum standards.*
- *LU, LT and LV do not see any extension for the remit.*

For the next meeting on 27 April 2006

- The procedures of the Code Group.
- The future pattern of work of the Group.