



EUROPEAN COMMISSION

DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION

Direct taxation, Tax Coordination, Economic Analysis and Evaluation

Brussels, 05/05/2011
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REPORT OF MEETING

- 1. Meeting** Council – High Level Working Party (HLWP)
- 2. Subject** (1) Savings Taxation (FISC 34); (2) CCCTB [REDACTED]
+ [REDACTED] (3) Financial Sector Taxation ([REDACTED] [REDACTED]) (4) Proposal for a revision of the Energy Taxation Directive (COM(2011)169/3)
- 3. Date and Place** 28 April 2011, Brussels
- 4. Participants** TAXUD/D: [REDACTED]
TAXUD/D1: [REDACTED]
TAXUD/D2: [REDACTED]
TAXUD/C: [REDACTED]
TAXUD/C: [REDACTED]

5. Results

(1) Savings

Agreement of 25 Member States on the enclosed draft conclusions to be possibly submitted to ECOFIN on 17 May 2011, with the only exception of Italy (premature to consider the amendments as agreed before results of due diligence) and Luxembourg (general political reservation on the approach and technical reservation because of the absence in the text of an option allowing individual MSs to exclude from the scope insurance contracts with >5% ratio of biometric risk).

Detailed discussion

The HU **Presidency** referred to the previous two meeting of the HLWP, as well as to the orientation debate at the February ECOFIN and the Council's request to continue discussions in the HLWP. The Presidency reminded that the way forward encompasses the following actions: (i) the top priority is to work towards agreement on the extension of the savings

taxation directive (ii) discussions on transitional period are separated, (iii) level playing field should be addressed by formal negotiations with the 5 third countries and (iv) the latest compromise text is to be fixed for these negotiations.

The HU Presidency also reminded that as concluded from discussions on 18 March, the freezing of the text would add value to the exercise since it creates a base for a political agreement at the later stage. The slight amendments proposed by IE and NL (and resumed in a room document distributed by the Presidency) are being examined by the Presidency, Commission and the Council. The Presidency received some questions and concerns of some delegations in this respect. Since these proposals for amendments are of highly technical nature, they need to be discussed by technical working group later on. They are however not essential for fixing the text for the negotiations, as they would not change the scope of the measures to be negotiated but rather have an influence on reporting obligations. Therefore the main issue here is to discuss a draft Council Conclusions.

The Commission expressed support of the Presidency to go forward and stressed that it is important to advance in the works. It indicated that all MS should be able to sign for the text as agreed under the SE Presidency as a useful basis for negotiations with third countries. Indeed the amendments proposed now are not essential for the text, since there is no issue of coverage but only the issue of timing or duplication of reporting in MS and interactions between savings directive and administrative cooperation directive. Therefore we can ask a go ahead from the ECOFIN.

Moreover, the Commission informed that we are currently busy with the replies to the due diligence questionnaire. Three replies (FR EE) are still lacking and the Com needs them quickly to come back with the report. The Com indicated that its first impression is that there are no substantial problems of incorrect application of the current directive, but there is rather a problem of lack of clarity and loopholes which cause lack of consistency in treatment by different MS. The amendments included in the compromise text deal with such issues.

The Presidency opened then discussion on the draft Council conclusions, but at the same time invited MS who propose technical amendments to explain their position and those having difficulties to explain what these difficulties are.

NL stressed that in its view it is important to avoid double reporting. In the light of a new standard, which NL intends to apply as from 2013, all life insurance products will be covered by the automatic exchange of information under the new administrative assistance directive. While if we followed the Presidency's approach, the same products will be covered under the amended savings taxation directive only as from 2017 or 2018, since it will form a part of Article 8 reporting obligations of paying agents. Therefore, the NL insisted that their proposal is included in the text already now and that the draft Council conclusions in second bullet point refer to the text of the amended directive as to FISC 19 rev 1.

IE clarified that from their perspective current wording of the amending proposal may lead to a possibility of non-reporting. It stated that partial repayment can cause liability in IE. However, it agreed with Presidency that this is a technical issue which not influence negotiations with third countries and therefore doesn't need to be addressed immediately by the HLWG, but by the technical group later on.



FR promised to send the response to the questionnaire next Monday. It opposed reopening of the debate on technical matters. Reflecting on NL intervention, FR stated that it also exchanges information automatically and that indeed some obligations may become redundant, nevertheless we should not open the discussions on technical issues now. FR also stressed that it is more optimistic than NL about the timeframe for adoption and implementation of the amending proposal on savings. On the draft Council conclusions, FR stressed its wish for even clearer conclusions which better reflect our discussions so far: we need the improvements that the new text brings in, but we don't need the external conditionality. Our discussions cannot depend on third countries. With the proposed text of draft conclusions we risk it. In FR view we need to encompass the following elements: (i) we should state that we have agreement on the text; (ii) the final adoption of the directive should take place quickly; maybe we could put a date (e.g. end of the year); (iii) we need to quickly agree on a mandate for negotiations (e.g. June); and (iv) the Commission should consult with this group in course of negotiations, but completing the discussions with third countries shouldn't be a precondition to adopt the directive.


PL liked the draft conclusions and did not oppose the FR additions if needed for agreement. It proposed that a technical working group would need to be consulted as well during negotiations with third countries and this should be reflected in the text of the conclusions.

DE stated that there are some technical points but in fact we have already agreed on the text. It may be of importance to make sure that information is not sent twice as proposed by NL, but even if it happens, there would be no harm. We need to get the text out ASAP. As to the conclusions, DE would prefer to precise the text on the absence external conditionality but could accept the Presidency draft.

AT insisted that in second bullet point we refer to the "extended scope" of the Directive, since as far as other issues are concerned (Article 10.2 still needs to be discussed) there is still work to be done for ensuring a level playing field.

ES recalled the issue of the anti fraud agreement and stressed that progress needs to be achieved on this file as well. On the draft Council

conclusions, ES could accept them. It also shared views expressed by FR and DE, especially on the need to reflect urgency (agreement e.g. by end of the year) and showing there is no link to other actions. Technical questions should not stay on the way to the agreement.



SE can accept the draft conclusions; stressed that this matter is urgent. SE shared FR and DE concerns that new technical points may imply a delay and there must be an end to the technical debate. We need to stop now and come back to the text already agreed in December 2009, this would allow the Commission to start the negotiations with third countries.

LU confirmed its political reservation. For LU external conditionality is a key to a level playing field and therefore LU has problems with FR proposal for the conclusions. LU also highlighted that there are big discrepancies between EN and FR version of the draft conclusions. EN version suggest that the text is agreed only "for the purpose of the negotiations" while FR version states that the text "is agreed and is the basis for negotiations. LU can agree for EN language version of the draft Council conclusions but not for FR, but all of that is without prejudice of its political reserve. On insurance products, LU stressed that it didn't agree to the SE compromise; because it does not include the LU proposal of having option for Member States to include in the scope only benefits from insurance contracts presenting a low "biometric risk". This proposal has been sent to the HU Presidency and is on the table still.

The Presidency clarified that the working language for the conclusions and for the HLWP is EN.

DK stressed that it fully shares FR and ES positions but is open to a compromise.

GR can agree, but it shared concerns of FR and ES, especially when it comes to the need of making a reference to an immediate adoption and to the absence of condition of success of the negotiations with third countries.

IT stressed that we are discussing a difficult matter; it is not clear that the work of the Presidency has been completed on this file. It would be strange to propose the text as agreed only for negotiations and if this Group is not able to finalize the technical details of the text, it is not worth to discuss the issue at ministerial level. IT shares FR views but adds that it is very important to know the findings of the due diligence report and that this is not made evident by the draft conclusions presented by the Presidency. Maybe the text of the amending directive will need to be further adapted. DE colleague needs to wait.

The Presidency summed up the discussion by stating that most MS support the current text and the need to go forward with the negotiations.

However some different views and standing points were expressed as well. The draft conclusions, need to be re-drafted in order to express urgency of the works and the independence between the negotiations and the adoption of the directive (no external conditionality). PL comment on extending the consultation to technical group will be taken into account. The political reserve of LU was recorded, on LU technical point, the Presidency thought that the proposal was withdrawn. On IT issue of due diligence report, the Presidency took note. NL technical amendment was accepted.

Council conclusions – revised draft distributed in the afternoon

DK was of the opinion that AT suggestion [inserting 'extended scope of'] was unclear.

FR had a question in the same line: what we actually mean by extended scope? Are we referring to all improvements or not? And if yes, why we are adding that? And if not, what we are trying to exclude? Moreover, FR questioned the expression 'as agreed [...] a basis for negotiations' in the fourth bullet point – what it actually means, is the text agreed or not? –, it is not probably the best way forward. The text is agreed and this should be stated clearly in the conclusions, otherwise third countries could have the impression that negotiations will have an influence on the text of the Directive.

The Presidency clarified that what they were intending to say was that the text can be used for negotiations by the Commission. We aren't saying anything about dependency of the two things. The Commission confirmed that it was also its understanding of the wording.

IT stressed that for them the text has not yet been agreed, we may still add something to reflect the Italian position better than it is done in the new second bullet point. It proposed adding to this second bullet point the following wording: "and agrees that the outcome of this report will be considered with a view to the adoption of the amendments to the savings directive". Regarding the fourth bullet point, IT shared the concerns of FR and proposed deleting the words 'compromise' and 'as agreed'.

NL expressed sympathy for FR position on fourth bullet point.

DK was ready to accept fourth bullet point on the basis of interpretation of the Commission, but did not like IT suggestion on the fourth bullet point.

The Commission stressed that IT proposal radically alters the meaning. The Commission's understanding is that what we have now in the proposal should be extended to the agreements, so the equivalence is maintained. We need a reasonably strong message to be successful with negotiations with CH. If there is a specific point which is troubling the IT delegation, now is the time to address it. By taking away all strong words from the conclusions we would be weakening our position.

DE stressed that it is not appropriate to leave 'as agreed' out. We are assuming that this will be the text which will be finally agreed upon. Word 'compromise' can be deleted.

SE shared the Commission view on what is necessary to be successful.

PL also made this point: stronger mandate make the works of the Commission easier.

LU maintained political and technical reservations. It doesn't consider that these conclusions might be interpreted as if its technical objection on insurances had been lifted.

IT stressed again that the text is not definitive: we need to wait for the result of the due diligence report and what further amendments it may bring.

RO shared the SE position

FI stressed that 'as agreed' should be kept in.

The Commission stipulated that there is a certain degree of confusion between the COM and IT – we need a text which is agreed by the MS to have all the essential elements for the negotiations with third countries, so that in the agreements we will have the equivalent coverage as in the directive per se. On due diligence report, the Commission signalled that it wonders what could require further amendments. Giving CH weak signals would undermine the whole exercise we are trying to accomplish.

IT confirmed that a [redacted] proposal to refer to the result of the due diligence as an element to be kept into account within negotiations may be a good way forward and stressed there is no hurry in our works.

NL proposed new wording suggestion for the beginning of bullet 4 ['agrees that (...) provides the basis for negotiations'] which gained support from DE and FR. COM proposed adding at the end of this bullet point words 'with third countries on equivalent measures'.

However, IT could not agree.

The Presidency summed up the debate stating that bullet points:1, 3, 5, 6, 7 could stay as they are while bullet point 2 requires modifications and bullet 4 will be amended in line with NL +Com proposal.

IT stressed that its position is not reconcilable with the Com's position. Stressed that CH knows exactly what we say here in the Council HLWG. The proposed wording weakens all 27 countries because negotiations will take place in CH and not within the EU.

The Commission reminded IT that what it wants to obtain is negotiating on a text which is stable and whose elements will not be called in question.

FR proposed and obtained from the Presidency a further amendment [second bullet 'as a part of this works'] in order to give a signal that the technical work on the Directive is not completely finished and that suggestions from the due diligence could be taken into account.

Presidency called for more flexibility and willingness for compromise from IT side. We need a strong mandate for the negotiations.

IT thanked FR for its effort but still could not accept the conclusions. IT highlighted again that there is no point to hide that we didn't have agreement on the directive. In IT view we cannot start negotiations without the result of due diligence report.

FR reminded that the Commission is working on the evaluation on the functioning of the current directive, but we already have a proposal to amend it. FR stressed that it doubts there is something which would need to be addressed following the due diligence report. But even if we discover something we can bring further amendments in.

The Presidency closed the discussions and stated that it will reflect on how to proceed further. In the Presidency view, there was no possibility to move forward within the HLWG.

(2) CCCTB

[Redacted content]

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[Redacted text block]

[Redacted text block]

[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]

(3) Financial Sector Taxation

[Redacted text block]

[Redacted text block]

[Redacted text block]

(4) Any other business

Presentation of Revision of the energy taxation directive (see separate report – ref: Ares(2011) 469279)

6. Follow-up Meeting of the Fiscal Questions Group on 5 May 2011 (for CCCTB)

Coreper on 11 May 2011 (for Savings and FST)

7. Report by [Redacted]

Circulation	[Redacted]
	[Redacted]
	Circ. Taxud D1, Taxud D2
	Cabinet [Redacted]

Annex: Draft Council conclusions on savings as accepted by 25 MS at the end of the meeting

DRAFT COUNCIL CONCLUSIONS
REGARDING THE PROPOSAL FOR A COUNCIL DIRECTIVE
AMENDING DIRECTIVE 2003/48/EC ON TAXATION OF SAVINGS INCOME
IN THE FORM OF INTEREST PAYMENTS

REV3

The Council:

- Welcomes the fact that the Presidency has taken up the work on the proposal to amend the Savings Tax Directive with the aim of its early adoption.

- Takes note that, **as a part of this work**, an ad hoc report on the correct and effective implementation is being prepared by the Commission for early examination by the relevant Council bodies.

- Also endorses the Presidency suggestion to start, in parallel, formal negotiations with the relevant third countries with a view to ensuring the continued equivalence of the measures applied by them with the text of the amended Savings Tax Directive.

- **Agrees that** the latest compromise text on the extended scope of the amended Savings Tax Directive (Annex I to doc. 6946/11 FISC 19) provides the basis for negotiations.

- In the light of the above, invites the Commission to submit in the coming weeks recommendations to the Council to adopt relevant decisions authorising the opening of such negotiations.

- Agrees that future negotiations should be conducted in consultation with the Council High Level Working Party (Taxation) and, as appropriate, other relevant Council bodies.

- **[Takes note of the intention of the future Presidency to address the issues mentioned above.]**