



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Direct taxation, Tax Coordination, Economic Analysis and Evaluation
The Director

Brussels,
Taxud-D2 – ■

000701\minutes\meeting

SUMMARY RECORD OF THE 9th MEETING OF THE EXPERT GROUP ON TAXATION OF SAVINGS

*Second Review of the operation of the Council Directive 2003/48/EC on
taxation of income from savings*

Held in Brussels on 28 October 2011

1. Introduction

█ (COM) from the Commission welcomed to the Group for the first time █ (nominated by EFAMA to replace █ (nominated by EFRP to replace █ (nominated by ISDA) and █ (CEA observer).

COM presented the agenda for the meeting:

- Status update of the Amending Proposal (the 'Proposal');
- The UK-CH and DE-CH agreements;
- FATCA;
- Preliminary results from the second review of the Directive;
- A.O.B.

2. Amending Proposal

COM: Most if not all technical aspects of the Proposal have been agreed upon by the Member States. The latest compromise text¹ is considered by the Commission to have received sufficient consensus from Member States, as far as its extended scope is concerned, to enable the commencement of negotiations with the 5 third European countries with the view of updating the EU Savings Agreements to obtain equivalent improvements.

On 17 June 2011 the Commission adopted a recommendation to start negotiations with these third countries to bring the EU Savings Agreements in line with the amendments to the Directive. The recommendation was presented at the ECOFIN Council on 12 July 2011.

█ (COM) confirmed that, both following comments from the insurance industry and as a consequence of the adoption of the new Council Directive² on administrative cooperation in the field of (direct) taxation, the compromise text of the Proposal was amended by the Council to indicate that insurance payments do not need to be reported under the Directive, not only if they are already reported by the paying agents but also if the

¹

http://register.consilium.europa.eu/servlet/driver?page=Result&lang=EN&typ=Advanced&cmsid=639&ff_COTE_DOCUMENT=6946%2F11&ff_COTE_DOSSIER_INST=&ff_TITRE=&ff_FT_TEXT=&ff_SOUS_COTE_MATIERE=&dd_DATE_DOCUMENT=&dd_DATE_REUNION=&fc=REGAIS EN&srm=25&md=100&ssf=DATE_DOCUMENT+DESC

² Council Directive 2011/15/EU of 15/02/2011

information is already reported by the tax authorities under any other legislation.

3. UK-CH and DE-CH agreements

COM: in front of the ECON committee of Parliament, the Commissioner has raised the Commission's concerns over the agreements. Regarding the DE agreement, the Commissioner's primary concerns are over the following provisions:

(i) Tax rate under the Directive at 35% is higher than the tax rate under the CH-DE agreement (being 26.75%);

(ii) Under the DE-CH agreement, the difference is to be refunded directly by a CH paying agent to the beneficial owner and not by the DE tax authorities as is currently the case under the EU-CH agreement where the tax levied only represents an advance of the tax to be ultimately paid by the beneficial owner in DE.

The Commissioner has also concerns about the UK-CH agreement although the objections are not as strong as with the DE-CH agreement due to the fact that the tax rates to be applied in the UK-CH agreement are higher than the DE-CH agreement, and that there is no refund of withholding tax by the CH paying agent to the beneficial owner in the UK.

The Commissioner has made clear that bilateral agreements should not impede the rights of the Commission where it has exclusive competence, and that the Commission will not hesitate to undertake the necessary steps to ensure this.

The UK and DE have stressed that their agreements are complementary to the Proposal and will not compromise its provisions. The Commission is currently assessing the agreements to ensure that Member States are adhering to their obligations under the treaty, therefore at this stage the Commission cannot give any more details on how it would like to proceed.

■ wanted to know whether insurance benefits would be within the scope of the agreements.

COM: believed that they were included in the agreements although their coverage may be different than that contained in the Proposal. At this stage, the Commissioner has decided to address the main issues, as previously outlined, with the UK and DE.

■ asked if the DE-CH agreement achieved a level playing field both in the scope of the products to be included in the Proposal and the equal treatment between domestic and cross-border investments?

COM: it is difficult to compare the Directive and the DE-CH agreement. The bilateral agreement has different mechanisms to the Directive and taxpayers do not have to declare their income to the DE authorities. Furthermore, the rate under the EUSD at 35% is higher than the rate envisaged under the DE-CH agreement. In addition, domestic and cross-border investments are not directly comparable.

■ contended that the automatic exchange of information led to a lower amount of tax actually paid and that bilateral agreements, i.e. as the DE-CH agreement, could lead to more effective taxation as the agreements can be more specific and address the provisions of DE law more accurately. For example, the agreement uses the DE definition which attributes income differently from the definition of beneficial owner as used in the Directive. This also applies to the definition of interest income. If bilateral agreements can achieve this more precisely than the Directive then this should be pursued in the Directive, and the related EU agreements should only ensure a minimum level of harmonisation. In DE, it was reported that automatic exchange of information had led to a direct increase of only 0,009% in the relevant tax revenue.

COM: the Commission is not contesting the right of Member States to enter into bilateral agreements. Rather any agreement should not conflict or undermine the provisions of EU legislation on taxation matters that have already been agreed upon. The Directive does not harmonise the taxation of savings income but rather provides a common framework for the exchange of information.

■ (COM): considered that the updated paying agent upon receipt provisions of the Proposal for intermediary entities are crucial for preventing beneficial owners from circumventing the Directive. The current DE-CH agreement does not contain these provisions.

■ why not merge the positive aspects of the Proposal (the updated paying agent upon receipt approach for beneficial owners) with the positive aspects of the agreement (the equal treatment of domestic and cross-border investments).

COM: emphasised that bilateral agreements are not excluded, but that they should not contravene existing EU legislation and agreements in the applicable domains.

■ understood that the scope of insurance products within the Amending Proposal is larger than that under the DE-CH agreement therefore fears the latter has not in fact achieved a level playing field between comparable products. The DE-CH agreement also means that the authorities will find it more difficult to levy other taxes like inheritance tax.

4. FATCA

COM: ■

■ the Commission has had technical meetings with their US counterparts to improve the understanding of each other's position. The Commissioner will visit the US at the end of November in order to discuss the way forward including meeting the concerns of the Commission and market operators.

While the Commission welcomes the principal aim of FATCA to fight cross-border tax evasion, there are a number of concerns in particular the administrative burden put on market operators and that FATCA may violate data processing legislation in the EU and in the domestic legislations of Member States. The Commission is currently assessing the FATCA proposal for these aspects to ensure they are compliant with EU legislation.

Regarding the use of information for tax purposes, only tax authorities in Member States can pass on this information to other tax administrations and not directly by financial institutions as proposed under FATCA. Therefore there may be a way forward by the use of current EU legislation in the field of direct taxation, for example the Savings Directive, to see whether this mechanism can be used instead of imposing FATCA on EU market operators. FATCA and the Directive have different scopes therefore naturally the Commission realises that this may be an obstacle to progress. The Commission expects a reasonably clear indication from the US authorities by the end of 2011 about the way forward. The US authorities have indicated that they have the remit to adopt a flexible approach to the implementation of FATCA.

The Commission welcomes contributions from market operators in the EU on the FATCA issue. FATCA will be applicable as from 1/01/2013, therefore a speedy solution needs to be found. The EU will also cooperate with third countries which have raised objections to FATCA.

■ raised a concern that the market has the perception that the Commission is abandoning the banks. Even Members of the US Senate and third countries have publically raised their objections whilst the Commission has not publically communicated its stance.

COM: stressed that the Commission has been very active in discussions with the US authorities and EU market operators on this subject. The Commission seeks a workable solution with the US but would be prepared to take a more public stance if agreement cannot be reached.

■ supported the comments of ■ (EBF) and would like more information from the Commission including an exchange of e-mails with the Group's experts in order to update them, and therefore the respective Trade associations, about the Commission's contacts with the US authorities on FATCA.

COM: accepted the suggestion of ■

■ the Commission could ask members of the Group for their contributions to subjects that are of relevance to the Group in relation to FATCA. He suggests that the Commission coordinate these views with other experts in the Group.

COM: asked the experts whether they wished to expand on their contributions submitted this year for the second review of the Directive.

■ wishes to expand on the letter³ that was sent to the Commission for the second review of the Directive.

COM: confirmed that ongoing project work will not stop with the second review of the Directive. We will also ask in a follow-up e-mail for the experts in the Group to give their approval for publication of their letters/contributions on the website.

■ wanted to know when the second review will be completed, and if there would be a fixed date by which the Proposal should be adopted

COM: the second review will be completed by the end of the year. The adoption of the Proposal, based on the first review, depends on the Council. The second review does not foresee other amendments to the Directive, rather market developments reinforce the need for the amendments contained in the Proposal.

■ wanted to know whether the Council had changed the grandfathering date from 01/07/2010 for the new products to be included in the Directive (insurance). EFAMA is concerned that a level playing field should be maintained.

³ Dated 21/10/2011 by EuroInvestors

COM: grandfathering date depends on the decision of Council.

■ (COM): the adoption of the Proposal is the principal way of ensuring that a savings income is effectively taxed and that a level playing field is maintained between products that produce income similar to the debt claim products contained in the existing Directive.

■ will assess if this is achieved by the latest version of the Proposal. Difficult to assess this as the Proposal is not yet in force.

5. Second review of the Directive – preliminary results

Economic effects:

■ (COM) gave a presentation on the data sources used in the second review and the main findings:

BIS Data: data confirmed the importance of off-shore jurisdictions for non-bank deposits, which supports the inclusion of the intermediary structures contained in Annex I and II of the Proposal. The data shows high inter-connectivity between EU Member States and other agreement countries, highlighting the importance of triangular situations and the need for the look through and updated paying agent upon receipt provisions of the Proposal.

For the **ECB data**, the methodology of the simulation exercise was explained which compared interest payments reported under the Directive to the notional interest payments based on the cross-border deposits of households in the euro-area with EU paying agents. 7 Member States fell under the 70% benchmark with 3 of them falling significantly and consistently under this benchmark.

For the **SNB data**, the importance of fiduciary deposits for Swiss banks was shown which supports the inclusion of the provisions of the Proposal in the Savings agreements with third countries.

The **IMF data** demonstrated that the introduction of the Directive did not drive individual investors away from investing in securities issued in Member States and particularly those exchanging information; the Luxemburg fund industry has experienced a significant increase in its share of total equity (IMF definition) investments of households in the EU.

The **structured product** Avery database has shown a significant increase in the volume of sales of structured products during the period under review,

which supports the inclusion of these products in the wider scope of the Proposal.

The importance of **life insurance products** with an investment element (PRIPS report) and **derivative products** for households (EUROSTAT) demonstrates the need for an extension of the product scope of the Directive.

■ regarding the methodology used for the simulation exercise with the ECB data, why did the review consider that there was a bias in the results for withholding tax countries?

■ (COM): replied that in the case of Member States that levy and pay the withholding tax, it was not possible to separate out the elements that could be attributed to interest income and to sales proceeds as was done in the case of Member States who exchange information under the Directive.

■ regarding the Proposal, the EBF would like to reiterate its concerns expressed in its letter⁴, including the practical application of the Proposal.

■ stressed the need for a level playing field between investment funds and insurance wrappers. It is also important that the Commission issues guidelines with the Proposal detailing how the asset tests should be applied in order to determine whether the benefits of structured insurance products should be reported by paying agents.

■ consider that it is premature to include the reporting of insurance income under the Directive and the Commission should wait until the new Directive on administrative cooperation has been implemented in order to avoid the duplication of reporting requirements.

■ (COM): according to the data provided by CEA, one Member State said it did not intend to exchange information on insurance payments under the Directive on Administrative Cooperation.

■ EFSA agreed with the comments of EBF, in particular that paying agents should be given adequate time to adapt their systems to the new provisions of the Proposal.

■ regarding withholding tax, the provisions for reclaiming tax are often difficult for investors and double taxation is an impediment for cross-border investment in the single market.

⁴ EBF letter of 29/04/2011

COM: investors can make benefit of the reduced withholding tax rates that are contained in the double taxation conventions of Member States. In addition, the FISCO project of the Commission has as an objective facilitating the relief at source/refund procedures of the cross-border payment of dividends. A similar project called TRACE is being pursued at OECD level. The Commission will shortly be producing a Communication on the avoidance of double taxation, including an improved scope for arbitration. If Euroinvestors has evidence of double taxation problems for investors then it should supply this information to the Commission.

█ would be interested to hear about these initiatives. Euroinvestors understands that the double taxation issue does not exactly fit in with the scope of the Proposal. However, these issues are connected and Member States should be aware of this.

█ there is an obligation of the Directive to refund excessive savings tax levied under the Directive.

█ supported the concerns of Euroinvestor in that some Member States require a certificate from the national bank, and not from the local paying agent, to confirm that withholding tax has been levied.

Functioning of the Directive:

█ (COM) summed up the contributions from the experts in the EUSD group:

- Comments of EBF related to the Proposal of 25/11/2009 concerning: paying agent considerations/look-through provisions/date of implementation of the proposal/residual entities and place of effective management/establishment.
- CEA comments: risk of duplication of requirements with the new Directive on administrative cooperation in direct taxation; and the new reporting requirements of the Proposal should be included in the administrative burden study.
- EFAMA: comments of July 2009 remain valid; lack of a level playing field with investment funds due to the grandfathering of insurance products; generally applicable guidelines should be provided for insurance products when the Proposal is implemented.

- EFSA: seeks clarity and practicality in the Directive; concerned about a level playing field with non-EU jurisdictions; Savings tax agreements should contain equivalent provisions to the Proposal. Paying agents should be given adequate time to implement changes to their systems in advance of the implementation of the Proposal.
- FECIF: avoiding disproportionate admin burden for market operators – 20% of its members costs are made up of legal, compliance and regulatory obligations.
- Euroinvestors: Proposal should contain provisions to avoid double taxation for beneficial owners; paying agents should disclose to their customers detailing for each 'saving income' the withholding tax pursuant to the Directive.
-

The questionnaire for the implementation of the Directive revealed that there are a number of interpretational issues for Member States but that these will be addressed by the Proposal.

The results from the questionnaire on the use of data by Member States: most MS note a clear increase of compliance levels and use the data for tax audits. However, many MS reported that the quality of the data they receive from other Member States varies widely.

For the statistics provided by Member States under the Directive, there is a wide variation of interest income/sales proceeds reported by Member States. Analysing only the interest income reported, there is still a large variation which cannot be explained by other factors i.e. falling interest rates/maturities. Given other evidence (i.e. the ECB data), Member States should enhance their controls on the data received from paying agents to ensure that it is both correct and complete.

■ wanted to know if Member States had quantified the use of data by stating how much undeclared tax income they had recovered through the use of the data. In Germany, the Court of Auditors had issued a report in which they reported that the DE tax authorities had made little use of the data.

■ (COM): it is not only a question of how much extra tax that the authorities had directly collected from residents through the use of the Directive but rather that the incentive to compliance, i.e. encouraging taxpayers to declare their foreign income, was the principal aim of the Directive which by its very nature is difficult to assess.

■ suggested that we should nuance the text in the slide presentation regarding whether the interpretational issues would be solved by the Proposal by stating: 'the Amending Proposal seeks to address these interpretational issues and provide clarity'.

6. A.O.B.

■ requested that an updated list of the members of the EUSD group is sent to the experts. He would like to know when the next meeting of the Group is planned and would like to receive the presentations given this afternoon.

Conclusion

COM: indicated that a follow-up mail will be sent out asking the experts for permission to publish their contributions in the website, and for using their contributions for the second review of the Directive. In addition, the provisional date of the next meeting of the Group will be included in the e-mail. The Commission will send the presentations of the meeting to the members of the group. The Commission will also provide information on the results of the FATCA discussions.

The Commission will be continuing with its efforts in Council for an agreement on the mandate for savings with third countries.

Experts who attended the meeting:

Name of the expert (s) and the stakeholder they represent	Initials (comments)
<p>■■■■■</p> <p>Alternative Investment Management Association</p>	
<p>■■■■■</p> <p>Association of Financial Markets in Europe</p>	■
<p>■■■■■</p> <p>Association of Mutual Insurers and Insurance Cooperatives</p>	
<p>■■■■■</p> <p>Association of Life Offices</p>	
<p>■■■■■</p> <p>European Federation of Financial Services Users</p>	■
<p>■■■■■</p> <p>European Association of Co-operative Banks</p>	
<p>■■■■■</p> <p>European Banking Federation</p>	■
<p>■■■■■</p> <p>European Association of Public Banks</p>	
<p>■■■■■</p> <p>European Fund and Asset Management Association Ltd.</p>	■
<p>■■■■■</p> <p>European Federation for Retirement Provision</p>	
<p>■■■■■</p> <p>European Savings Bank Group</p>	
<p>■■■■■</p> <p>European Structured Investment Products Association</p>	■
<p>■■■■■</p> <p>Fédération des Experts Comptables Européens</p>	
<p>■■■■■</p> <p>Fédération Européenne des Conseils et Intermédiaires Financiers</p>	
<p>■■■■■</p> <p>Insurance Europe</p>	
<p>■■■■■</p> <p>International Swaps and Derivatives Association</p>	