



EUROPEAN COMMISSION
 DIRECTORATE-GENERAL
 TAXATION AND CUSTOMS UNION

Brussels, 4 February 2014
 Taxud.d2(2014) 3784720

REPORT OF MEETING

- 1. Meeting:** Council – High Level Working Party on Tax Questions
- 2. Subject:** **3. FATCA – Information Point; 4. Savings Directive – The Way Forward.**
- 3. Date and Place:** 4th February 2014, Brussels
- 4. Participants:** [REDACTED]
 [REDACTED] (TAXUD.D2).

5. Detailed report:

Agenda item n. 3 - FATCA

Pres explained that the item was aimed at allowing Member States to share information on how FATCA negotiations with the US are progressing. Pres has circulated, in advance of the meeting, a table to be completed by each Member State which indicates the type of Model agreement chosen, the date of signature/ratification/entry into force of the agreement and possible remarks. Contributions provided by Member States have been put together by Pres in Room Document #6, a revised version of which (REV1 – in Annex) was circulated yesterday. [REDACTED]

[REDACTED]. Pres invited Member States to share their experience with each other.

[REDACTED].

PL noted that most Member States have already signed or are negotiating a FATCA Model 1 agreement. PL initialled a FATCA Model 1 agreement with the US last September but is still waiting to sign it due to the long time that the US State Department is taking to check the Polish translation of the agreement. PL complained about the US's behavior and wanted to know from other Member States whether they experienced the same problems with having the translations of the agreements checked by the US.

ES informed the other Member States that the US/ES FATCA agreement has recently entered into force and will be published soon.

DE said that the US/DE FATCA agreement is already in force and that domestic implementing rules as well as a regulation for financial institutions will be put into place soon. In response to the question raised by PL, DE said that also the US/DE FATCA agreement took some time to be checked by the US State Department.

[REDACTED]

[REDACTED]

COM thanked Pres for having put FATCA on the meeting agenda and also thanked Member States for having provided an update on how they are progressing with FATCA agreements. COM found it very helpful for Member States to continue to share information on this topic. COM noted that while several Member States have already signed an agreement with the US or are close to doing so, for some Member States negotiations with the US are at a less advanced stage. In this respect, COM recalled that the US, in Notice 2013-43, clarified that in order for a jurisdiction to be treated as having a FATCA agreement in effect, it is sufficient that the jurisdiction signs a FATCA agreement before 1 July 2014. COM restated that it would be very happy to assist Member States with any issue they may have during the negotiations.

[REDACTED]

[REDACTED], COM recalled to Member States that the US legal and infrastructure framework should not only ensure the confidentiality of the data exchange but also comply with EU rules on data protection.

COM welcomed the clarity on the timetable provided by the [REDACTED] and restated that the best means of implementing the global standard within the EU is through an EU instrument, notably the COM proposal to revise the Directive on Administrative Cooperation. COM said that it was happy with the progress made in the Council's discussions on this proposal and that these discussions should continue in parallel with discussions at OECD level.

IT pointed out that the timeline for implementing the global standard should remain ambitious and explained that the G5 proposal to push it a little forward was aimed at having a critical mass of countries on board. IT said that it is very important that this critical mass of countries includes all EU MS.

Agenda item n. 4 - Savings Directive

Pres opened the item by presenting the contents of Room Doc #5 (in Annex) to the meeting and inviting views from the floor.

DE noted that as the file had been on-going for years, the time was ripe for adoption. The EU needed to send a signal to the rest of the world that it meant business.

[REDACTED]

IT agreed with the need for the EU to send a clear message. This was also an issue of EU credibility as well as being an important issue of resources for Member States. Action was required by ECOFIN. Alignment with the DAC was obviously necessary, but this should follow adoption, after February ECOFIN.

ES agreed with IT and also highlighted the importance of making rapid progress in the negotiations with the third countries.

FR supported all speakers and said that adoption by the end of March was vital for the credibility of the European Council.

PL supported all speakers and went a step further saying that if there was no adoption by the end of March, the EU would be blamed for its lack of action.

LU congratulated the [REDACTED] on the points it had made, notably the need for one coherent global standard, the importance of international developments at the OECD and elsewhere, the need to avoid duplication to achieve efficiencies and the need to achieve a level playing field (a particular concern of LU in recent months). [REDACTED]. [REDACTED]. The call of the December European Council was for the Commission to present a progress report to its March meeting. In those circumstances, it would be wrong for ECOFIN to take any decision before that EC meeting which might prejudice the view that the EC might wish to take on the COM's progress report. Specifically, in the case of LU, the new Prime Minister had subscribed to the December EC conclusions and it would be wrong for the new Finance Minister to prejudice the PM by adopting revised Savings at ECOFIN, before the PM had considered the COM progress report in a EC context, particularly as LU has a coalition government. Member States may put what they wish on the ECOFIN agenda's for February or March, but LU will not adopt the revised Directive at either meeting.

COM thanked the Pres for its hard work on the file and said it would respond to MSs who had emphasised the need to know the status of the negotiations with the five. It gave a chronological rundown of events, from the granting of the EU mandate, to the visits to the five made by the Commissioner, to the holding of preliminary technical meetings and the consideration thereof and in writing of technical detail, notably relating to beneficial ownership. Following receipt by the five of formal mandates, first round discussions have been held and second (& in the case of CH, third) round discussions have been organised. Automatic exchange has been the COM requirement throughout and it is clear, even from international developments, that all 5 are moving in this direction. Regarding CH, it is clear that its Rubik-style agreements are outdated and no longer relevant. CH has made it known that it sees the outcome as being time dependant, with the quick-fix option comprising of an agreement based on the Savings amending proposal, but without automatic exchange, whereas the longer term option could be based on automatic exchange and a wider scope. The COM sees automatic exchange as the goal and is pursuing continued equivalence, in accordance with our mandate, having regard to the emerging global standard. The outlook is very positive. COM will report to the March EC, but hopes to be able to inform the earlier March ECOFIN of the substance of its progress.

COM referred to the calls of MSs to adopt the revised Directive and endorsed those calls, adding a substantial point. In view of the agreement that alignment was required between EU measures and the global standard, for clarity and the avoidance of doubt, COM recommended putting a second matter, in parallel, on the ECOFIN agenda – ie to ask the ECOFIN Ministers to announce their agreement to adopting the global standard emerging at OECD level by incorporating it into EU legislation, paying particular attention to achieving consistency between its provisions and those of the Directive on the Taxation of Savings and the Directive on Administrative Cooperation, including their amending proposals. This would give clarity to operators within the EU and would strengthen the negotiating position of COM, as well as confirming its negotiating objectives. Accordingly COM called for two outcomes from ECOFIN; adoption and orientation.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. In closing, LU recalled that when its delegation met last week with Commissioner Semeta, it announced that it would welcome the Commissioner giving an “information” presentation to March ECOFIN on progress in the negotiations, which would be helpful to pave the way towards a favourable outcome at the March European Council and that Commissioner Semeta seemed satisfied to take this approach. In that event, the LU Finance Minister would welcome being able to report to his PM that negotiations were progressing satisfactorily, but it should be noted that adoption at February or March ECOFIN is out of the question.

Pres said it would carefully consider the positions with a view to coming back to the topic at tomorrow’s Coreper.

Report by [REDACTED] (TAXUD.D2).

Circulation	Cabinet of Mr. Šemeta: Mr Moutarlier Mr. Zourek, [REDACTED] Mr Kermode [REDACTED] TAXUD.D2 list
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ANNEX

Presidency Note to HLWP of 4 February 2014

1. Momentum to move forward

The European Council in its conclusions of 19/20 December 2013 called for the adoption of the revised Directive on the taxation of savings income by March 2014.

The Presidency's view is that in the current international economic climate it is important to arrive at a satisfactory solution for all 28 Member States, enabling them to safeguard their tax revenues in respect of undeclared savings hidden abroad. Moreover, as the perils of offshore tax evasion have received increased public scrutiny, it is imperative that the EU retains its leading role in the combat of tax fraud and evasion, by adopting a comprehensive legal framework for the effective taxation of savings within the EU.

The momentum within the EU corresponds to other important developments, which are confirming the global trend towards automatic exchange of information, such as:

- The call for more transparency in tax matters, as highlighted in a Joint Statement made by a large number of jurisdictions. It aims at an early adoption of the global standard of automatic exchange, to be developed and endorsed in the OECD context.
- The Global Forum on Transparency and Exchange of Information for Tax Purposes, continues to play an important role in relation to efforts mentioned in the above Joint Statement.

–The US Foreign Account Tax Compliance Act (FATCA) promoting automatic exchange of information on financial accounts has had concrete consequences for financial and banking sectors in many countries. As far as the EU is concerned, negotiations of all 28 Member States with the US administration are ongoing in relation to FATCA. The starting date for the application of FATCA provisions is approaching. The first report of information is due in 2015, for information about accounts maintained during 2014.

2. **Submission to Council (ECOFIN)**

Against this background, the Presidency intends to submit the revised Savings Directive to the Council (ECOFIN) in line with the request by the European Council of December 2013 to adopt it by March 2014.

3. **Preparation by the HLWP**

In preparation of the submission of the file to ECOFIN, Member States are invited to express their views on the way forward at the HLWP on 4 February 2014.