

FISCO: 11th MEETING 3rd MAY 2007

OPERATIVE CONCLUSIONS

The main operative conclusions of the 11th FISCO Meeting are the following:

1. Introductory Address

The Chairman welcomed all Members to this 11th FISCO Meeting. The Chairman also thanked all experts for their efficiency and good contributions, in particular as regards the draft chapters of the Second FISCO Report on Solutions (SRS).

2. Plan of the 11th FISCO Meeting

The main objectives of the 11th FISCO Meeting were to:

- Discuss and examine the draft text of the FISCO Second Report on Solutions (SRS).
- Discuss the planning of the Joint Conference 23 October 2007 on the SRS by DG MARKT/DG TAXUD, OECD and C&S Industry.

3. Second FISCO Report on Solutions (SRS)

The following points were discussed:

3.1 Preface

The emphasis of the preface "delivering solutions" should be toned down. The Report's aims consists of highlighting the main problems, analyse the pros and cons of possible solution and whenever possible indicating solutions.

3.2 Introduction

- **Chapter 1** of the Draft SRS, "**Introduction**" was introduced by Tomas Thorsén. The chapter describes the way forward and the different types of measures that the FISCO SRS could propose.
- **Chapter 2** of the Draft SRS, "**Executive Summary of the FFS with some text describing the situation in Member States as regards fiscal procedures with**

relevance for Giovannini barriers 11 and 12" was presented by Tomas Thorsén and Kerstin Malmer.

Operative Conclusion:

- The view of the Group was that the two chapters should be merged and improved along the following lines:
 1. The chapter should begin with highlighting the link between the Giovannini Barriers and this report;
 2. Then, it should proceed by delivering the FFS executive summary structured in harmony with the structure of the SRS.
 3. Then, it should continue with the introduction to this report and explaining the content of the different chapters.
 4. Finally, the "grey box" at page 4 of the draft text should be rephrased in "Policy and market developments in the trading and post-trading field" and include recent industry developments, such as market consolidation.

- The next draft of this chapter will be prepared by the FISCO Secretariat in consultation with DG TAXUD and will be distributed to FISCO Members for further comments **by Wednesday 30 May 2007.**

3.3 Transaction tax procedures

- **Chapter 6, "Transaction Tax Procedures"** was introduced by Steven McGrady and Ella Grundell.

Operative Conclusion:

- The view of the Group was that the current text of these chapters should be kept, however be improved as follows:
 1. The text should clearly highlight the main problems, and clarify what is the barrier and its economic significance.
 2. The possible solutions should be clearly addressed without providing a ranking, but pointing out advantages and disadvantages of each solution.
 3. The section should not be too country-specific; Sweden should be exploited as a very useful example, however reference in the text should be limited.
 4. In view of the delicate issue, language which allows unfair interpretations should be avoided.

- Philip Kerfs will provide an updated draft of this chapter asap. This chapter will then be further updated by Ella Grundell, Steven McGrady, Charles Hellier and Philip Kerfs and be provided to the FISCO Secretariat **by the latest Wednesday, 30 May 2007.**

3.4 Shifting responsibilities to foreign intermediaries, simplification, harmonisation and remaining issues.

- **Chapter 3, "Increased efficiency by allowing all intermediaries to assume withholding responsibilities"** was introduced by Klaus Zinkeisen. This Chapter was updated by Klaus Zinkeisen in cooperation with Francis Barrier, Gabriele Escalar and Philip Kerfs in line by the Operative Conclusions of the FISCO February meeting.
- **Chapter 4, "Simplification and Harmonisation"** was introduced by Anne Rutberg. This Chapter was updated by Anne Rutberg and Erkki Kontkanen in line with the discussions at the latest FISCO Meeting. It proposes an EU Tax Relief Procedure is proposed in order to facilitate the clearing and settlement of securities within the Member States.
- **Chapter 5, "Remaining issues related to withholding tax procedures"** that cannot be resolved by solely shifting responsibilities to foreign intermediaries was introduced by Philip Kerfs.

Operative Conclusions: Structure

- The view of the Group was that most of the material in the current chapters already is in place and consequently most of the text of these chapters should be kept. These chapters should however be merged and restructured following the proposal of Phillip Kerfs as attached:
- The new **section 3.1.** should begin with a new introduction, explaining why relief at source is the preferred method and refund the backup method. It should then contain the graph placed at chapter 4 (pages 36/37) of the draft text, clarifying its relevance. And it should also comprise a "grey box" describing the four foreign systems (US(QI),Irish(QI) Japanese (QFI),US(DTC).
- The new **section 3.2.** corresponds to chapter 3 of the draft text, without the section about documentation, currently in the draft text under the title 3.3.3, 3.3.4 and 3.3.5. Also section 3.3.2 should be splitted in two parts with the first part staying in the new section 3.2. and the second part going to the new section 3.3.
- The new **section 3.3.** should deal with simplification and standardization corresponds to chapter 4 of the draft text, plus 3.3.3, 3.3.4 and 3.3.5, and the second part of 3.3.2 and without the graph placed at page 36/37.
- The new **section 3.4.** is the last section of the new chapter. This section should contain an updated version of the current chapter 5 of the draft text "Remaining Issues".

- The introductory **section 3.1.** will be prepared by Philip Kerfs asap. The chapter will then be updated by Klaus Zinkeisen, **section 3.2.** and by Anne Rutberg, **section 3.3.** and by Philip Kerfs, Joseph de Wolf and Gabriele Escalar, **section 3.4.** and delivered to the FISCO Secretariat **by the latest Wednesday, 30 May 2007.** Assistance from Tomas Thorsén and Doris Kolassa is available in order to finalise sections 3.2., 3.3 and 3.4.

Operative Conclusions: Substance

- At (2), page 12 to insert the notion "to allow" (and to delete "the granting of") for withholding tax relief.
- At second paragraph, page 19 to insert "primary" withholding responsibility.
- The graph on page 21 should be turned upside down.
- At (2), page 24, to delete investors country and replace with "relevant intermediary".
- At page 25, first bullet, explain link between tax authorities and external auditors.
- At page 26, rephrase the second bullet point along the suggestion for a more general approach by Koen Marsoul. That means referring to the need for authorities to have appropriate tax audit instruments without overburdening firms and taking into account of the European economic and political integration. Also the bullet point should refer to the EBF opinion on "reconciliation".
- At page 27, make sure that intermediaries are not seen as only banks.
- At page 27, insert a long term solution. The need for Member States to work towards relying on each other tax audits along the scheme home/host already used in other areas (supervision, etc).

3.5 Chapter 7 "Conclusions"

- The FISCO Secretariat will make a revision of the chapter on Conclusions and will provide a proposal with limiting the conclusions from at present 25 to approximately 10 conclusions in the updated SRS.

3.6 Annex I

- **The Annex I** contains reference to the European Court of Justice cases and was introduced by Daniel Deak.

Operative conclusion:

- The Group agreed on the following improvements:
 1. Cases should be explained more extensively.
 2. The logic underlying the three heading should be made clear at the beginning of the section.

3. Reference to the opinion of the Advocate General Poiares Maduro should be eliminated.

- The Annex I will be updated by Daniel Deak and delivered to the FISCO Secretariat **by the latest Wednesday, 30 May 2007.**

3.7 Links between the FISCO SRS work with the Ad Hoc Group on Barrier 3

- Salvatore Lo Giudice reported on the outcome of the second informal meeting on corporate actions, held on 9th March 2007 among the Commission, the Legal Certainty Group, the FISCO Group, ECSAs and ECSDA.
- The aim of this meeting of experts was to exchange views in order to establish a common understanding of the legal and fiscal compliance issues which impact or may impact on the full dismantling of Giovannini barrier 3 (Differences in national rules relating to corporate actions, beneficial ownership and custody). The final objective should be to achieve clarity and ideally agreement on the interdependences among barrier 3 and legal and fiscal compliance issues.
- Three important comments to the SRS were made at the informal meeting:
 1. As regards the issue of shifting withholding responsibilities to foreign intermediaries participants expressed a strong preference for the US taxation system, as compared in particular with the Japanese system.
 2. The report should clearly give the option between at source relief procedure and quick or even standard refund procedures, as the latter might be preferable for small intermediaries. Moreover, the need for a sharper distinction between "pooled accounts" and "omnibus accounts" was expressed.
 3. Participants found the report ambiguous when it refers to the "nominee" or to "intermediaries"; in particular, the report should clarify that CSDs are, either included in the definition of intermediaries or in any case in the scope of the report.

4. FISCO Conference 2007

- The Group discussed the plans for a FISCO Joint Conference DG MARKT/DG TAXUD, OECD together with Industry 23rd October 2007 –the day after the CESAME Meeting- when the SRS is planned to be finalized.
- The Group was in favour of structuring the conference into four different panels, indicatively with the following length:
 - A introductory panel with high-level names (1h)

- A Panel on Withholding Tax Procedures, 4-5 panel members (1h 30'), Of which 2-3 panel members from FISCO.
- A Panel on Transaction Tax Procedures, 4-5 panel members (1h 30'), Of which 2-3 panel members from FISCO.
- Conclusion (30')

Operative Conclusion

- The Chairman confirmed for the conference participation Mr. Wright, Mr. Holmquist and Mr. Owens.
- Kerstin Malmer is looking for equivalents in DG TAXUD.
- The Chairman asked for two contributions **by 30 May 2007** from the FISCO Members:
 1. Technical names as counterpart of the FISCO Members in the technical panels.
 2. High-level speakers from the private sector for the introductory panel and the conclusive session.

5. Next Steps

- The updated contributions from the FISCO Members as regards the draft SRS should be provided to the FISCO Secretariat **by the latest Wednesday 30 May 2007**.
- The FISCO Secretariat will then work further on the draft and distribute the updated SRS to the FISCO Members for further comments.

6. Planned FISCO Meetings

- The ambition is that the SRS should be finalised without the need of another FISCO meeting. In this spirit we call for wide dissemination of e-mails and text among the FISCO Group Members. In case of necessity, a further meeting will then be scheduled for Thursday 28th June 2007.