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## **SUMMARY RECORD OF THE 4<sup>th</sup> MEETING OF THE EXPERT GROUP ON TAXATION OF SAVINGS**

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

Held in Brussels on 19 May 2008

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## 1. INTRODUCTION

The fourth meeting of the Commission Expert Working Group on Taxation of Savings (hereinafter the 'EUSD Expert Group', where 'EUSD' is the commonly used acronym for the "European Union Savings Directive") was attended by the appointed experts representing banking, accountants, asset management, insurance, investment funds and professional trustees. The meeting was chaired by Mrs Kerstin Malmer, Head of the Direct Tax Legislation Unit in Directorate General Taxation and Customs Union of the Commission. The Chair briefly introduced two background documents:

- "Questions arising from a first analysis of the comments received on the Working Document prepared by the Commission services on 14 March 2007 for the Expert Group on Taxation of Savings" ("Working Document" hereafter);
- "Refining the present coverage of Council Directive of 2003/48/EC on Taxation of Income from Savings ("Savings Taxation Directive")"<sup>1</sup>, prepared for the ECOFIN meeting of 14 May 2008 ("Commission staff document" hereafter).

The Chair outlined the time schedule for the follow-up work on the review of the Directive. She reminded the experts of the ECOFIN Conclusions of 14 May 2008 which called on the Commission to submit to the Council the report pursuant to Article 18 of the Directive by 30 September 2008 at the latest, to be followed by specific proposals based on the report. Under this time schedule, it is highly uncertain whether it would be possible to hold another EUSD meeting before submitting the report to the Council. The experts were also informed that the next Working Party IV meeting is scheduled for 29 May 2008.

The Chair informed the group that since the deadline to submit comments has passed, the Commission will publish the summary record of the 3<sup>rd</sup> Expert Group meeting of 13 September 2007 in its current form on its website. The Chair also requested those experts who have not already done so to give their authorisation to publish the document "Opinions expressed during 2007 in the Expert Group on Taxation of Savings" as soon as possible.

The Chair briefly outlined three main issues to be discussed: (i) the definition of beneficial owner; (ii) the definition of paying agent and its obligations; and (iii) the definition of income covered by the Directive.

## 2. DISCUSSION ON THE TWO DOCUMENTS

### **2.1. Definition of beneficial ownership**

The Commission services presented Section 2.1 of the Commission staff document dealing with the suggestion to apply a "look-through" approach to interest payments made to legal entities and arrangements established outside the EU whose beneficial owner, as identified for anti-money laundering purposes, is an individual resident in a Member States of the EU different from that of the paying agent. The Commission services noted that while some

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<sup>1</sup> SEC (2008) 559 of 29 April 2008.

Member States have called on an extension of the scope of the directive to **all** payments made to legal persons, many objections to the more targeted Commission's original suggestion to extend the scope only to those payments resulting from a “positive” at a “look-through” test have been received from the European Banking Federation (EBF) and other associations. In order to balance the call for an extension of the scope of the Directive with the need to limit any additional administrative burden on paying agents, the Commission services have suggested limiting further the extension of the scope of the Directive under a “look-through” approach only to payments made to certain legal entities and arrangements established outside the EU in selected 3<sup>rd</sup> countries.

One of the experts representing EBF reminded the group of his statement made at the 1<sup>st</sup> meeting of the Expert Group on the need to evaluate the effectiveness of the Directive before any decision on the revision of the Directive is made.

Another expert from EBF added that although the Commission's suggestion is superficially attractive, any amendments should be practicable and should respect the reporting systems in place. The present suggestion is incompatible with the way the reporting systems are currently structured. The expert concluded by briefly restating the main objections of EBF to the proposal:

- The beneficial owner for anti-money laundering (AML) purposes will often not be the beneficial owner for tax purposes and seeking to align the two would create problems for both paying agents and tax authorities;
- Not all paying agents are in possession of AML information since some of them have no contractual relationship with the beneficial owner;
- The proposal would require a radical restructuring of existing paying agents' systems to accommodate such a requirement. AML information is typically not held on paying agents' systems;
- The proposal would further erode the position of EU paying agents compared to paying agents in 3<sup>rd</sup> countries who are currently not required to apply Article 4(2). EBF objects to extending the scope of the Directive without genuine equivalent measures agreed with 3<sup>rd</sup> countries.

An expert talking on behalf of the Society of Trust and Estate Practitioners (STEP) expressed general support for EBF's comments. The expert observed that difficulties in determining the beneficial owner are the same in regard to payments made to discretionary trusts established within the EU and in 3<sup>rd</sup> countries. The expert expressed further concerns that under the present proposal, the beneficial owner identified would be a person who has not actually received a payment. Such an approach could violate the fundamental principle of being taxed proportionally on income received as provided by the European Convention of Human Rights. Furthermore, he claims that some definitions given in the proposal ("routing", "channelled interest", "a commercial payment" and "screen companies") are based on political and economic concepts which are too vague to be used as legal definitions.

The expert representing the European Forum of Securities Associations (EFSA) was concerned that, under the Commission's suggestion, paying agents may be required to make subjective judgments. Payments made by savings institutions are generally automated which

make it highly impractical to make any subjective judgments. In order to be workable, the proposal should allow selection on an automatic and systematic basis. The expert concluded by emphasising that the major worry of EFSA members concerns the deterioration of the competitive position of EU financial centres in comparison with financial centres not bound by the Directive and by genuine equivalent measures.

The Chair noted that the Commission services share the view that a workable solution is needed which would not be too burdensome and would not lead to deterioration in the competitive position of EU paying agents. However, the political will of the Member States must be taken into account.

The expert talking on behalf of STEP emphasised that although the industry is not against amendments as such, any amendments need to be practicable and workable. The main issue for him is not the exchange of information on interest payment but rather enabling the Member States to rapidly exchange information already in their possession. In that regard, the expert referred to chapter 4.3 of the working document, noting that a large volume of information has been recently reported in the UK on offshore accounts. The expert concluded by suggesting that the Commission concentrates on the review of the Mutual Assistance Directive rather than the Savings Directive.

The Chair responded that as the proposal to amend the Mutual Assistance Directive is due to be presented in October 2008, the review of the Savings Directive and the Mutual Assistance Directive shall be complementary. The review of the Mutual Assistance Directive could possibly focus on a broader application of exchange of information. Nevertheless, a number of Member States are willing to pursue targeted measures under the Savings Directive in parallel with more general measures under the Mutual Assistance Directive. The Savings Directive provides for common and clearly defined obligations of paying agents whereas, under the Mutual Assistance Directive, paying agents can be subject to 27 different set of obligations.

In reply to the previous comments made by the expert representing EBF, the Commission services clarified that the purpose of its suggestion is not to extend AML obligations to paying agents not already covered by the Third Anti-Money Laundering Directive (AMLD). The Commission services acknowledged the difficulty for paying agents of having to make judgements, but noted that any proposal should be workable both for exchange of information and withholding tax systems. The suggestion to extend the scope of the Directive to particular payments made to entities established in some 3<sup>rd</sup> countries could request some adaptations to the transitional system in the form of withholding tax, in order to ensure the compatibility of its application to the payments concerned with the free movement of capital as enshrined in the EC Treaty. The threat of an extension of the scope of the Directive to payments made to particular non-EU countries could encourage these countries to become more cooperative in order to avoid being affected by such an extension.

The Commission services acknowledged the difficulty of measuring the actual effectiveness of the operation of the Directive on the basis of quantitative analyses. The results of the quantitative questionnaire sent to the Trade Associations represented in the Expert group were not satisfactory; it is also unclear whether the information to be provided by the tax administrations of Member States would be fully satisfactory.

The expert representing the European Fund and Asset Management Association (EFAMA) noted that the proposal on the application of a "look-through" approach to certain legal entities and arrangements established in some 3<sup>rd</sup> countries could create less administrative burden than broader solutions, by affecting only a few artificial structures. The expert suggested drawing up a selective "positive" list of entities established in 3<sup>rd</sup> countries, e.g. Panamanian companies, without affecting other entities conducting genuine business activities.

In reply, the Commission services noted that although it strongly supports establishing "positive" lists of entities, such a solution is generally not favoured by the Member States. Instead, they favour "negative" lists, although these do not necessarily provide legal certainty. The Commission services suggest providing for lists in the annexes of the Directive, to be updated under a Comitology procedure, as the best possible solution. If the proposal on "positive" lists is accepted by the Member States insofar as the "look-through" approach is concerned, selectivity could be based both on geographical and technical criteria in order to target particular structures established in particular non-fully cooperative 3<sup>rd</sup> countries. If the suggestion for such a "positive" lists is accepted by Member States, it would make it easier to apply, when appropriate, the Directive to payments made to legal entities and arrangements established outside the EU.

The experts representing EBF expressed general support for establishing a "positive" list while noting their disagreement with a "look-through" approach. The experts underlined that any "positive" list should be simple to administer and very precise. If the Commission services could focus on particular entities, e.g. Panamanian companies, the industry could reluctantly proceed with such a proposal. Certain paying agents, e.g. transfer agents and registrars, have no contractual relations with the payee which makes it very difficult for them to distinguish one type of entity from another.

The expert talking on behalf of STEP underlined its view that such a "positive" list should cover only entities that are legally already acknowledged as entities rather than extending the scope of the Directive to arrangements.

An expert representing EBF noted that the system of automatic exchange of information has not yet proved to be efficient, and it would be easier to apply withholding tax to payments, particularly those made to entities established in 3<sup>rd</sup> countries since it is simple, practical and can be coupled with allowing an exemption when the payee can prove they that they are not liable to withholding tax. Furthermore, the expert expressed concerns about creating a bureaucratic system consisting of three different sets of obligations: (i) withholding tax at the national level; (ii) automatic exchange of information and transitional measures in the form of withholding tax within EU and (iii) exchange of information according to the Mutual Assistance Directive following the pattern of the OECD 2002 model on exchange of information on request.

With regard to this suggestion to always impose withholding taxes on payments made to selected entities established in selected 3<sup>rd</sup> countries, the Chair responded that the general imposition of a withholding tax could be inconsistent with the free movement of capital as enshrined in the EC Treaty. On the evaluation of the two systems provided by the Directive, the Commission services responded that it is more difficult to measure the efficiency of the Directive in the case of exchange of information since Member States tax systems vary considerably and that, because of this, the imposition of a withholding tax in three Member

States does not eliminate the obligation for the beneficial owner to file a tax declaration in his State of residence. The Chair added that Member States applying transitional provisions in the form of withholding tax can only provide figures on amounts withheld whereas other important information for the measuring of effectiveness, e.g. on the number of beneficial owners concerned, is unavailable from them.

The expert representing the European Central Securities Depositories Association (ECSDA) stated that, without the "look-through" approach, it would be impossible to identify the beneficial owner behind the entity established in the 3<sup>rd</sup> country. The Commission services agreed by noting that establishing a "positive" list would be effective only if coupled with a "look-through" approach, otherwise the information received would be of little use.

An expert representing EFAMA suggested applying the provisions on a "look-through" approach only for new customer relationships and from a certain date.

With regard to the availability of AML information, the expert representing EBF noted that the Commission services' suggestions require updating information on a regular basis, which is not currently a requirement of the AMLD.

## **2.2. Definition and obligations of the paying agent**

The Commission services briefly presented Section 2.2 of the Commission staff document. This Section examines proposals to make the "paying agent on receipt provisions" more operational by imposing reporting obligations on certain entities and arrangements at the moment of the first distribution of cash or other liquid assets from such entities and arrangements which follows a date at which an interest payment, as defined under Article 6 of the Directive, was made to the entity or arrangement. These entities and arrangement would be obliged to keep track of the interest payment for a given period of, let's say, five years after the date on which the interest payment has been made.

An expert representing EBF asked why a limitation period of 5 years would be appropriate.

The Commission services referred to statutory limitations in the Member States' domestic laws. It would be difficult for an administrator or a trustee to keep track of an interest payment for a period longer than 5 years.

The expert talking on behalf of STEP said he was perplexed about the Commission's proposal noting that the proposed solution could work only in certain areas and circumstances and will not solve the problems identified. The proposal for "deemed interest payments" could work only when the MS' domestic tax laws provide for equivalent "deeming" provisions. It is not unusual for a trust to keep a clear distinction between capital and other income, therefore the trustee knows when a payment relates to capital or income. For the purposes of the Directive, the first "deemed" payment could in fact be a distribution of capital whereas for the second out-payment which may actually relate to interest income no information would be reported. Secondly, trusts have a variety of assets which makes it important to precisely define what we mean with 'liquid payments' (e.g. what about shares in a private company?). Even in the case of cash, the Commission services' suggestion may not be a workable solution since cash can relate to both capital and income. Finally, the expert suggested solving the political problem by defining in the Directive the general objectives which Member States

are required to achieve. The advantage of such an approach would be to familiarise the drafters of the national implementing legislation with the different concepts existing in the various Member States.

A representative of EBF noted that while EBF welcomes shifting some administrative burden away from banks, the Commission's suggestion seems complicated and unworkable. He wanted to highlight two further points: (i) as trusts set up for charitable purposes are excluded from the Directive, he would not understand the logic of the suggestion if it results in including trusts set up for pension purposes within the scope of the Directive; (ii) he did not agree with the connection being made between discretionary trusts and investment funds: from the perspective of the UK, trusts are not considered as an alternative to investment funds.

The expert representing the Alternative Investment Management Association (AIMA) agreed that investors do not consider trusts comparable to investment funds.

In response, the Chair pointed out that at the moment of adoption of the Directive most Member States were not aware that a trust was an arrangement and as such is not covered by the Directive. In the light of recent events, a number of Member States are calling to extend the scope of the "paying agent on receipt" provisions to discretionary trusts and foundations. The situation of Liechtenstein foundations is similar to discretionary trusts since at the moment of the out-payment, the income has lost its character of interest income. The Chair asked whether it would be useful to apply a "deemed" interest provision in regard to trusts which keep a distinction between income and capital. The Commission services reminded the experts of the wording of point 8 of the ECOFIN conclusions of November 2000 stating that "similar income going through structures used as substitute for collective investment vehicles (trust, partnerships and so on) shall also be within the scope of the Directive". In practice, the ECOFIN conclusions have not been realised since many Member States were not aware that the "paying agent on receipt" provision does not cover trusts.

The expert talking on behalf of STEP said that point 8 of the ECOFIN conclusions of November 2000 did not state that discretionary trusts are substitutes to collective investment undertakings. Substitutes for collective investment undertakings are fixed interest trusts where the beneficiary is immediately entitled to the interest income. The expert was of the opinion that investors would, under no circumstances, risk gambling their money by using a discretionary trust as a substitute for a collective investment undertaking.

The expert talking on behalf of STEP had a further concern about the alternative suggestion to impose to the upstream economic operator a reporting obligation on the interest payment at the moment when the payment is made to a trust established in another Member State. He said that, as far as the UK is concerned, there are rules on the trustee's residence and that the problems associated with the establishment of residency of the trustee should be borne in mind. When a permanent establishment exists in the UK for a UK trust, then the beneficiary's income received both from onshore and offshore is taxable in the UK even if the trust is operated by a trustee established outside the UK.

With regard to concerns expressed by the Commission services on the inconsistency of treatment between direct payments and payments made through intermediate structures, the same expert pointed out that income received by a beneficiary is quite different from the income received by a trust. The beneficiary of a trust is not entitled to income until all the

expenses of the trust are covered. There is always the risk of reporting information on capital distributions rather than interest income and the fact that the nature and amount of income received by the beneficiary is always different from the income paid to the trust.

An expert representing EBF noted that Article 18 of the Directive requires not only an evaluation of the efficiency of the Directive but also to investigate any distortion of competition. The Commission's suggestion would require changing the definition of interest income. The reference in the Commission's staff document to distributions in kind is very broad and could cover dividend distributions and capital reductions which are not currently covered by the Directive.

The Commission services clarified that the suggestion based on applying the Directive at the distribution of liquid assets refers to those assets whose value can be assessed on an objective basis, e.g. listed securities with an official market value at the date of distribution. The proposal to extend the scope of the "paying agent on receipt" provisions targets possible distortions of competition between entities and arrangements. Even if a discretionary trust is not a substitute to a collective investment undertaking, it can be used by individuals to obtain interest income indirectly. A number of Member States have called on an extension of the "paying agent on receipt" provisions to such arrangements at the moment the interest payment is made by the upstream economic operator. Some of the Member States provide for provisions where the payment is considered as income at the moment of receipt of the payment by the entity or arrangement. Application of the Directive at the moment of distribution of the income could be an alternative to a less accurate application of the Directive at the moment the payment is made by the upstream economic operator. Any solution should be workable not only for market operators but also, if possible, for 3<sup>rd</sup> countries. Therefore, if the suggestion to apply the Directive at the moment of the out-payment to the beneficial owner is followed by Member States, it shall be coupled by a "positive" list of the entities and arrangements concerned.

The expert talking on behalf of STEP responded that, even if the suggestion is limited to assets having a published market value, Member States would still risk receiving information on capital rather than income.

The Commission services agreed with this remark and said that such suggestion would be workable only if Member States' domestic laws provided for similar "deeming" provisions.

### **2.3. Definition of income covered**

The Commission services briefly presented Section 2.3 of the Commission staff document on applying the principle of "substance over form" to structured financial products and certain life insurance products. The Commission services noted that reservations have been expressed by Member States on the proposal to supplement the Directive with a "positive" list of structured financial products, as it would be extremely difficult to cover possible financial instruments worldwide. The Commission services suggested rather defining more general criteria for deciding if a structured financial product should fall under the Directive.

The expert representing the International Swaps and Derivatives Association (ISDA) and the expert from EFSA underlined that structured financial instruments, due to their costs and their economic characteristics, are not comparable to debt instruments and as such cannot be

considered as a means to avoid the Directive. The expert representing ISDA agreed with the Commission services that creating a "positive" list would be an impossible task, while making a list of characteristics would also be problematic. Paying agents will have to rely on information provided by the issuer or the product developer who in turn will classify products according to the domestic laws of the Member States. Due to the variety of domestic laws, a different treatment for similar products is inevitable. The expert stressed that it is important to take into account the fact that capital protection is a different concept from the commitment to reimburse capital linked to debt claims. Both experts expressed concerns regarding the subjectivity of the application of the principle "substance over form" noting that any solution needs to be consistent, practical and workable. Both experts stressed the need for further consultations with appropriate bodies such as ISDA and EFSA.

The expert representing EBF underlined that irrespective of the decision taken, the solution needs to be practical. In particular, remote paying agents would not be able to make 'substance over form' judgements; they would be wholly reliant on information from the issuers of the financial products and appropriate communication channels would need to be established to route such information from the issuer to the paying agent. Similar considerations already apply to income from Collective Investment Undertakings as covered by the Directive.

In reply to a question on the possible scope of Comitology procedure, the Commission services responded that according to the opinion of our Legal Service a list of characteristics would be better placed in the text or annex of the Directive and that a Committee could only take care of the updating of any such list. The Commission services acknowledged that as there is inconsistency of treatment of structured financial products in the Member States, general criteria should be drafted in the Directive for possibly identifying structured financial products with underlying debt claims. Finally, with regard to consistent treatment of comparable financial products, the Commission services noted that, when capital protection is guaranteed, structured financial products without underlying debt claims could be even more appealing to investors as compared to a direct investment in debt claims.

The expert representing ISDA pointed out that a significant portion of underlying products of the main structured financial products are equities and indices of equities. When drafting a list of characteristics it is particularly important to understand the investor's motives for investing in capital protection products. Furthermore, the expert underlined the necessity for clear rules on what needs to be reported when the particular product is within the scope of the Directive, in particular, whether all payments or only a portion of savings income needs to be reported. It would be impossible to report only on the portion of savings income without the assistance of the product developer or the issuer. Moreover, if the portion of the savings income needs to be reported, such portion would probably differ for each issue of the financial instrument. The expert representing EFSA added that the difficulty of drawing a clear line between dividend and interest income derived from structured financial products has led to complex rules in the UK. Both experts concluded by stressing that it is important to avoid charging withholding tax wrongly as well to avoid over-reporting.

In response to a question by an expert representing EBF on the use of different terminology such as "fixed return" and "capital protection", the Commission services reiterated that a large Member State has been consistently calling for an extension of the scope of the Directive to products having a commitment to reimburse capital **or** to pay a return. The proposal on the income covered by the Directive could include either one or both of the aforementioned

criteria. The Commission services further elaborated on two alternative ways of defining income covered by the Directive, consisting of applying the principle "substance over form" or extending the scope of the Directive by looking at the motivation and risk undertaken by the investor.

With regard to the question of extending the scope of the Directive to financial products having no direct link with underlying debt claims, an expert representing EFAMA commented that there are certain structured financial products, insurance products and trusts that are comparable from the viewpoint of investors. The expert was of the opinion that non-UCITS should not be covered by the Directive as long as the aforementioned three categories of competing products are not covered by the Directive. In response to the question on criteria for detecting investment in competing products (e.g. composition or return), the expert responded that the structure of underlying assets is a criteria for comparing insurance products with investment funds. As regards structured financial products, capital protection and fixed return are criteria for making them comparable to direct investment in bonds and in investment funds.

The expert representing the Comité Européen des Assurances (CEA) and the expert representing the Association of Mutual Insurers and Insurance Cooperatives in Europe (AMICE) pointed out that it is important to distinguish between insurance "wrappings" and other life insurance products. Insurance products cannot be defined as interest by neglecting the risk insured. Although the investment element is present in life insurance products, it is impossible to assimilate life insurance products with investment in bonds or in investment funds. If the decision is made to extend the scope of the Directive to life insurance, the definition of income shall be extended to other kinds of investment income and not just interest income. The expert representing AMICE noted that Member States do not generally tax income from life insurance or tax it like employment income.

Regarding the point that it was impossible to determine the underlying assets of unit-linked insurance products with insurance risk, an expert representing EFAMA disagreed by noting that insurance companies already claim tax refunds on interest payments and are therefore aware of the underlying assets.

The Commission services wondered if the general inclusion of insurance products in the scope of the Savings Directive would be appropriate and suggested that the Mutual Assistance Directive could be a more appropriate instrument. Nevertheless, they considered it worth examining whether the scope of the Savings Directive should be extended to insurance products where longevity or mortality risk is merely ancillary and which are perceived as equivalent to debt-claims by the investors.

The expert representing CEA disagreed with the Commission services noting that the proposal to extend the scope of the Savings Directive only to contracts where the longevity or mortality risk is merely ancillary is unworkable. The criterion "merely ancillary" is an unclear concept, would lead to legal uncertainty and is far from reaching broad support in the ongoing discussions on VAT on financial services. CEA is in favour of treating **all** life insurance products under the Mutual Assistance Directive.

An expert representing EFAMA suggested unbundling insurance products by splitting them into insurance and savings products.

The experts representing CEA and AMICE were against this suggestion, noting that the proposal to unbundle insurance products disregards the unity of the insurance contract and the fact that insurance product is a protection product.

An expert representing EFAMA drew attention to the problem encountered by the Member States that impose withholding tax regarding the determination of the taxable basis of investment funds sold on the secondary market. The expert proposed to tax investment fund income on a lump sum basis (TIS), which would be simple to administer.

With regard to the Member States' proposal on "deeming" provisions, the Commission services referred to UK and German laws according to which payments made under some insurance contracts are deemed to be paid directly to the beneficial owners. The Commission services noted that in practice, it would mean treating an insurance company as "paying agent on receipt" under the Directive. The Commission services asked whether it would be sensible to provide for such "deeming" provisions at EU level.

An expert representing EBF drew a comparison with the ex post approach enshrined in CFC legislation noting that for a bank it is very difficult to detect abusive transactions in advance.

The expert representing AMICE noted that insurance income is taxed differently across the Member States and that changes in German domestic laws shall not necessarily lead to changes at EU level. The expert referred to various tax treatments across the Member States, e.g. in Sweden some insurance are non-deductible at the moment of investing and non-taxable at the moment of the out-payment.

The Commission services took note of the problems of requiring paying agents to make difficult judgments on the underlying structure of insurance product, and would therefore appreciate feedback from the experts.

#### **2.4. Definition of a Collective Investment Undertaking**

The Commission services briefly outlined the proposal on completing the Directive with a definition of collective investment undertakings, noting the difficulty of applying the same concept for undertakings inside the EU and in the territories to which the EC Treaty does not apply. The Commission services proposed to define collective investment undertakings established in the EU by making reference to the place of registration as proposed in the Commission staff document and to base the definition of collective investment undertakings established outside the territory to which the EC Treaty applies on the OECD 2002 Model. The Commission services further noted that complementing the Directive with such a definition of collective investment undertaking could help to clarify the general reference to undertakings for collective investment in the savings agreements with dependent and associated territories and Switzerland. At present, the reference to undertakings for collective investment has been interpreted by the aforementioned countries as covering only funds equivalent to UCITS. The Commission services invited experts to provide their comments on this.

The expert representing EFAMA expressed a preference for making reference to collective investment undertakings regulated at national level rather than the definition based on the 2002 OECD Model. With regard to collective investment undertakings established outside the EU, the reference in the Commission's White Paper to "diversified investment" would be a

legitimate way of defining collective investment funds. The expert concluded by suggesting that use is made of existing definitions rather than creating new ones.

The expert representing EFSA expressed surprise that only a casual reference has been made in the Commission staff document for negotiating equivalent measures to the Directive with 3<sup>rd</sup> countries and associated and dependent territories. The expert referred to recent discussions with the UK tax authorities suggesting that the UK should accept amendments only if equivalent measures to the Directive are negotiated with 3<sup>rd</sup> countries or associated and dependent territories. The Chair responded that the Member States need to agree on amendments to the Directive within EU before thinking about renegotiating the agreements with 3<sup>rd</sup> countries.

### **3. FINAL REMARKS**

The Chair reminded the Expert group of the time schedule which was outlined at the beginning of the meeting, and invited the experts to submit any written comments, especially on the proposal concerning insurance products and collective investment undertakings, as soon as possible. Finally, the Chair thanked all the experts and the associations that they represent for their work in the Expert group.