Code of Conduct for business taxation

Vinod Kalloe
Unit E1 - Analysis and co-ordination of tax policies
Directorate for Analyses and tax policies
Directorate General for Taxation and Customs Union
Political commitment (Council resolution of Dec. 1997), not creating new Community competencies (no harmonisation)
Concerns tax measures which affect, or may affect, the location of business activity
Includes laws, regulations and administrative practices
Measures are potentially harmful if they provide for a significantly lower level of taxation than the general level in the MS concerned
Both standstill and rollback provisions
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European Commission - DG Taxation and Customs Union

Assessment of harmfulness should, inter alia, take into account:

1. Whether advantages are accorded only to non-residents or in respect of transactions with non-residents

2. Whether advantages are ring-fenced from the domestic market (does not affect national tax base)

3. Whether advantages are granted even without real economic activity and substantial economic presence

4. Whether the rules on profit determination deviate from internationally accepted principles (notably OECD)

5. Whether the tax advantages lack transparency
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- **Code Group report of Nov. 1999:** 66 harmful tax measures (40 in the old 15 MS, 3 in Gibraltar, 23 in dependent or associated territories)
- Report includes footnotes with MS reservations
- Nov. 2000 ECOFIN Council agreement of timetable for rollback (abolish measures by end 2002; no benefits beyond end 2005)
- Group fulfilled work on rollback proposals, standstill and transparency/exchange of information in the area of transfer pricing
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- June 2003 ECOFIN Council agreement on the tax package:
  - Adequacy of rollback proposals
  - Extension of benefits for some existing beneficiaries
- In 2003, 30 harmful measures in the 10 new MS were identified and rollback was agreed
- Now monitoring of standstill and rollback
- Future of the Code of Conduct?
Based on the State aid provisions of the EC Treaty: any aid which distorts or threatens to distort competition shall, in so far as it affects trade between MS, be incompatible with the common market.

Code of Conduct notes Commission’s intention to apply rules strictly and to examine or re-examine existing tax arrangements and proposed new legislation, taking into account the insights from the application of the Code.