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From: General Secretariat of the Council

To: Delegations

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 184/2005 on Community statistics concerning balance of payments, international trade in services and foreign direct investment as regards conferring of delegated and implementing powers upon the Commission for the adoption of certain measures

- result of the Presidency hearing on the proposed amendments of the Committee on Economic and Monetary Affairs and guidance for further work

Delegations will find attached a note drawn up by the Presidency intended to serve as a basis for the elaboration of a mandate for negotiation with the European Parliament.

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 184/2005 on Community statistics concerning balance of payments, international trade in services and foreign direct investment as regards conferring of delegated and implementing powers upon the Commission for the adoption of certain measures

Comments of Member States on European Parliament amendments

The discussion of the BoP file in the Council Working Party on Statistics (CWPS) led to a « general approach » endorsed by COREPER on 27 May 2015 under the Latvian Presidency (document 6638/15). The Committee on Economic and Monetary Affairs of the European Parliament (EP) voted amendments to the proposal for a Regulation on 25 June 2015. The Luxembourg Presidency launched a hearing on the EP amendments on 6 July 2015, to which 25 Member States (MS) provided their comments. In view of future trilogue negotiations, the Presidency intends to get a clear mandate from the CWPS on the following issues.

1. Extension of data requests – Amendments to Article 5 and Annex I

The EP asked to replace the current article 5 of Regulation 184/2005 and to extend data requests to:

1. FDI outflows based on the country of incorporation of the ultimate beneficial owner (UBO) of the economic unit controlling the outflow;
2. FDI inflows distinguishing greenfield investments from takeovers.

The legal framework of those new data requests should be provided by delegated acts (cf. point 2 below).

New data requests are introduced in Annex I for the reference year 2013:

3. The EP proposes enriching FDI statistics by compiling the main headings "Direct investment abroad" and "Direct investment in the reporting economy" following "ultimate host country (UHC)" and "ultimate investing country (UIC)";
4. The EP proposes more granularity in tables 4.1, 4.2 and 5.1 of Annex I (moving from Geo 5 to Geo 6).

Whereas MS generally welcomed the enrichment of FDI statistics in the future, the Presidency received basically 2 opinions, both in disagreement with the EP.

- Some MS want to keep the text of the « general approach » and the initial scope of the Commission's proposal, which is to align Regulation 184/2005 to the Lisbon treaty with implementing acts and delegated acts.
- A large majority of MS consider that the compilation of direct investment abroad and direct investment in the reporting country according to UHC and UIC as requested in table 4.1, 4.2 and 5.1 in Annex I, is impossible at this stage. Statistics based on this distinction, as well as FDI statistics based on the UBO concept and on the distinction of greenfield FDI from takeovers, could be envisaged in the future under certain conditions.

In this field, MS consider that there are many methodological aspects to be considered and to be solved in order to establish comparable statistics of good quality. Therefore, these MS propose a stepwise approach:

- development of appropriate methodology for all new FDI statistics together with all relevant stakeholders;
- 2 years after the entry into force of the Regulation, voluntary pilot studies to assess the feasibility of these new data collections, their cost, quality and cross-country comparability;
- 4 years after the entry into force of the Regulation, the Commission shall prepare a report on the findings of the pilot studies to be forwarded to the EP and the Council. The report might suggest amendments to that Regulation in order to introduce through the ordinary legislative procedure new data collections on FDI.

A majority of MS did not have a clear position on the greater geographical granularity in Annex I (Geo 6 instead of Geo 5). The Presidency would like to have a clearer position from MS on this issue as well as on the specification of the reference year for these statistics.

2. Delegated acts

Delegated acts for content of quality reports - Amendment to Article 2(3) related to Recital 6

The EP suggests specifying the content of the quality reports on BoP by delegated acts. An overwhelming majority of MS do not agree with the EP proposal. The content of a quality report should be defined by an implementing act, establishing uniform conditions for the application of quality criteria. This amendment is related to the amendment of article 4 paragraph 3 where MS would like to revert to the COM proposal.

Delegated acts for new data requests - Amendment to Article 2(3) related to Recital 6

The EP suggests specifying the requirements for producing outflow FDI according to UBO (Ultimate Beneficial Owner) and distinguishing greenfield investments from mergers and acquisitions by delegated acts. MS consider that such new requirements should be regarded as belonging to the scope of the Regulation and hence be regulated by ordinary legislative procedure.

Exercise of delegated powers - Amendment to Article 10 (2)

As for Article 10.2 and following their position on Article 2 (3), almost all MS oppose the EP proposal and are in favour of the LV Presidency proposal (6638/15).

3. Data sources for new statistics - Amendments to Article 3 (1a)

The EP proposes an extension of examples of data sources related to UBO like the registers referred to in the Anti-Money Laundering Directive, the EGR (European Group Registry) or the GLEI (Global Legal Entity Identifier). Many MS do not agree with this proposal, although some MS were more positive. Several MS have not provided a clear position. The data sources referred to by the EP have not yet proven their usability, but might be mentioned in the recitals. If this is acceptable, the reference to EGR should be correctly spelled out as the “EuroGroups Register”. Moreover, the CDIS (Coordinated Direct Investment Survey) as a source is inappropriate as CDIS is produced on the basis of the information provided by national authorities in charge of FDI statistics and depicts only the immediate counterpart.

4. Report on implementation - Amendments to Article 12

The amendment to article 12 is closely related to Article 5. Whereas some MS are against the EP amendment, a majority of MS could partially accept the EP proposal, except for paragraph (ba). Moreover, depending on the future wording of Article 5, the reference to 5.2 and 5.3 is to be questioned, and could be replaced by reference to 5.1.

5. Public reporting - New Article 12b

A specific provision (Article 12b) on the “dissemination of FDI data” is considered superfluous by some MS. If such a provision were, however, deemed to be necessary, these MS consider an amendment of Article 9 “Dissemination” of the current Regulation 184/2005 more appropriate. Some MS could accept the provision and whereas others would like to hear the Commission’s view on this amendment.
