



Brussels, 27 May 2019  
(OR. en)

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FISC 274  
ECOFIN 515

## REPORT

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From: General Secretariat of the Council  
To: Permanent Representatives Committee/Council

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Subject: Code of Conduct Group (Business Taxation)  
– Report to the Council  
= Endorsement

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### France's old patent box regime (FR053)

The following rollback was agreed by the Code of Conduct Group on 30 January 2019:

#### Background

Article 37 of the French 2019 Finance Bill abolishes the old IP regime with effect of 31 December 2018 and introduces a new IP regime as of 1 January 2019 ([art 238 CGI](#)).

The nexus agreement<sup>1</sup> required Member States with a patent box regime to introduce:

1. A **cut-off date** at 30 June 2016 for new entrants in any existing IP regime not consistent with the nexus approach (cut-off).
2. An **abolition date** at 30 June 2021 for the entitlement of taxpayers benefiting from an existing IP regime (grandfathering rules).
3. **Enhanced transparency** rules on new entrants after 6 February 2015.
4. **Grandfathering for IP assets acquired** directly or indirectly from related parties after 1 January 2016, by forbidding such transfers of IP assets if the assets had not benefitted from a patent box before.

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<sup>1</sup> *Action 5 report: Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance.*

## Agreed description

| Country   |                                   | France   |
|---|-----------------------------------|--|
| 1. Did your jurisdiction begin the legislative process before 1 January 2016 to bring your IP regime into compliance with the nexus approach?   | Yes/No                            | No   |
| Additional information may be provided in the text box below.   |                                   |  |
| 2. If your jurisdiction has introduced legislation to implement a nexus-compliant IP regime, when will this regime take effect?   |                                   | The new regime will take effect in January 2019.   |
| 3. Do you have a system for excluding new taxpayers from your existing IP regime after 30 June 2016 (or the date when your nexus-compliant IP regime takes effect, if earlier)?                                   | Yes/No                            | Not between June 2016 and the end of 2018.   |
|   | If yes, please describe it below. |  |
| 4. Do you have a system for preventing existing taxpayers from bringing new IP assets into your existing IP regime after 30 June 2016 (or the date when your nexus-compliant IP regime takes effect, if earlier)? | Yes/No                            | Not between June 2016 and the end of 2018.   |
|   | If yes, please describe it below. |  |
| 5. Do you have a system for abolishing your existing regime by 30 June 2021 (or five years after the date when your nexus-compliant IP regime takes effect, if earlier)?  | Yes/No                            | Yes  |
|   | If yes, please describe it below. | The existing regime will be abolished at the end of 2018. There is no grandfathering clause. |
| 6. Are you permitting new entrants (including either new taxpayers or new IP assets of  | Yes/No                            | Yes as the existing regime will apply until the end of 2018.                                 |

| Country   |                                   | France                                |
|---|-----------------------------------|---------------------------------------|
| existing taxpayers) in the existing regime after 6 February 2015?   |                                   |                                       |
| If yes, please describe the procedures you have implemented to ensure spontaneous exchange of information on the identity of these new entrants, as required under paragraph 66 of the Action 5 Report.   |                                   | None.                                 |
| 7. Have you established a system to exclude from the existing regime (as of 1 January 2017) any IP assets that were acquired directly or indirectly from related parties after 1 January 2016, and that did not previously benefit from another "back-end" IP regime? | Yes/No                            | Not between 2016 and the end of 2018. |
|   | If yes, please describe it below. |                                       |

## Assessment of the rollback:

France's amendment to rollback does not introduce any of the following: cut-off date (point 1), enhanced transparency rules (point 3) or grandfathering for acquired IP assets from related parties (point 4).

However, the amendment to rollback abolishes the old IP regime and replaces it by a new IP regime as of 1 January 2019. Therefore, the effects of the old IP regime end at 31 December 2018, earlier than the grandfathering rules would require (point 2).

## Overall conclusion:

The French rollback currently under scrutiny is the last one among the old IP regimes assessed harmful by the CoC Group in 2014<sup>2</sup>, and for which the *Group agreed that the legislative process necessary to give effect to that change and the related monitoring by the Code of Conduct Group should commence in 2015*.

France's rollback of the old IP regime deviates from the modified nexus approach agreed by the CoC Group in 2014 because the benefits have been granted and new entrants allowed for longer periods than provided for under the agreement.

The Group has had the opportunity in the past to scrutinize other transitional rules that were not fully in line with the nexus agreement (IT, NL, ES).

The Commission services note that the time taken to comply with the rollback obligations was the longest and beyond the two years general benchmark set to roll back.

However, in light of the previous decisions adopted by the Group, we would suggest that the Group follows the same wording<sup>3</sup> and concludes that: *while the transitional rules are inconsistent with the nexus agreement for the three particular aspects mentioned above, the extensions granted were **limited in time** – only until 31 December 2018 when the old IP regime was entirely abolished – and **therefore not harmful**.*

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<sup>2</sup> <https://data.consilium.europa.eu/doc/document/ST-16553-2014-REV-1/en/pdf>

<sup>3</sup> <https://data.consilium.europa.eu/doc/document/ST-14364-2018-INIT/en/pdf>