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## Company Taxation in an Enlarged Union - *Challenges and Options* - Rome 6 December 2003

Ladies and Gentlemen,

I am delighted to have been given the opportunity to give the concluding remarks to this important conference. In doing so, I will focus mainly on the challenges facing us in the months and years to come, and the options we have for addressing them.

During the last two days, this conference has addressed the many concrete problems facing European companies doing business in the European Union.

What is perhaps most striking to note is that the vast majority of these issues are not new - they have been identified in a succession of reports spanning over more than four decades.

The Neumark, Tempel and Ruding reports identify barriers to cross border activities, and they all proposed ambitious plans for company taxation. Despite the consistent support of the European Parliament, as we know, little became of them.

In 2001, too, the Commission adopted an extremely valuable and comprehensive study on company taxation which once again identified the many hindrances and barriers still in existence.

As a result of that last study, the Commission has proposed a few new legislative proposals in the area of company taxation. It is encouraging to note that there has in fact been some progress in Council on at least one of them. At the same time, it is disheartening that the Council reached its political agreement without awaiting the outcome of the deliberations in the European Parliament.

Welcome as these small steps are, it is in my view necessary to take a global view on this subject rather than trying to fix it here and there. A coherent

approach is not only necessary for companies, but even more so for national tax administrations as they will otherwise see their room for manoeuvre continuously narrowed by the non-discrimination case law of the European Court of Justice. I will return to that latter point in a moment.

A final, but noteworthy development, in the last few years has been the increased focus on combating harmful tax competition. This was launched of the sop called Monti package back in 1997, and the result has been quite impressive. The Primarolo Group identified a long list of tax measures that simply had no place in the European Union as their main aim was to lure companies to move to another country as a result of an unduly favourable tax treatment.

Although it is widely recognised that a degree of tax competition will always remain, there is a point where tax competition becomes predatory, and where a Member State simply becomes a bad neighbour. Just as you and I do not want to live in the sane street as somebody who steals your newspaper every morning rather than taking out his own subscription, we do not want to live in a Union where a Member State by underbidding its poaches companies.

I therefore very much urge both the Commission and the Member States to continue and keep up this exercise, and in particular do a similar inventory of potentially harmful measures in the accession countries.

### ***The Challenges***

More than ever, making progress in the area of company taxation is vitally important, but at the same, progress may prove to be more elusive than ever. Next year, the European Union will face an institutional challenge of an unprecedented scale, whilst company tax reform is an important aspect in order to ensure a return to growth and employment, and to the eventual attainment of the Lisbon objective of making the Union the most dynamic and

knowledge based economy in the world. A single Market and a Single currency are orphans in a Union where not even tax co-ordination in the field of company taxation seems to be allowed.

### **Institutional Challenges**

It may seem redundant, but it is worth pointing out that the European Union will undergo its most dramatic change on 1 May next year when ten nations will join the European Union. This is an historic event which will contribute to long term peace and prosperity on the European continent, and beyond.

At the same time, enlargement will also mean many challenges, both for the new Member States, and for the existing ones. Nowhere will this be more evident than in those areas where common policies still must be decided by unanimous agreement between Member States.

One such area is of course taxation where unanimity has ruled since 1957, and where the draft constitutional treaty proposes no change.

One must thus ask oneself what progress can realistically be made in the area of taxation in tomorrow's European Union. We know that progress has been limited in a Europe of 15 - what will it then be like in a Europe of 25?

We saw earlier this year how one single country managed to block the adoption of the savings tax directive over a completely unrelated issue. That does not bode well for the future. But looking at the conclusions from the last Ecofin council as regards reduced rates of VAT, it seems as if this coupling of issues is becoming more blatant, and indeed more common.

Although such deals may be a way for Member States to break a deadlock on a particular issue, I would like to stress that the Council is taking a major risk in doing so. By cutting opaque, back room deals on unrelated issues, the risk

further undermining public understanding of and support for European integration.

### ***Economic Challenges***

We have set ourselves an ambitious objective in terms of becoming the most competitive region in the world. One element of achieving that objective is to ensure that companies and individuals are not unduly hampered by artificial barriers to their cross border activities as a result of asymmetries between national tax rules.

As I indicated before, compared to most other areas of the Single Market, little progress has been made in the field of taxation. Time and time again, the European Commission, with the strong support of the European Parliament, has taken initiatives to improve the tax treatment of companies and individuals only to see the majority of those issues blocked by the Council of Ministers.

Yet European Companies and individuals exercising their right of free movement see things differently. They want a simplified VAT system, they want at least a co-ordination of corporate tax systems, and they want a fair treatment of the pension entitlements they have earned in different Member States.

After all, the logic of the Single Market, in my view, presupposes that cross border activities of companies are treated in a way that is neutral from a tax point of view. It is simply not acceptable that more than a decade after the official launch of the Single Market, there is such a large number of obstacles remaining. We - or rather the Member States - can no longer pretend that the problem does not exist - we must face up to these problems and tackle them head on. The question is how, then, this could and should be done.

### ***The Options***

It has been said that one should never tell people how to do things, but that one should tell them what to do and they will surprise you with their ingenuity.

I am afraid, however, that we are past that point and we therefore need to give the Council a strong impetus to act, and to make concrete proposals.

I do not think that I am giving away any secrets by stating that my preference, and that of the European Parliament, is for that reason that the European Parliament has called for a move to qualified majority voting, coupled with a greater influence for Parliament, in tax matters so as to ensure that the Single Market can function properly.

In several resolutions on the Treaty of Nice, the European Parliament called for the Co-decision procedure coupled with qualified Majority Voting in Council to be applied to all areas of legislation up to and including tax legislation. We believe that that is the only way to finally achieve real progress in this area.

Looking back at the work of the Convention on the future of Europe, and taking into account the discussions within the IGC, that will clearly not happen in the short term. This is regrettable, but I remain optimistic, and I think that European nations one day will realise that there is a real practical need to move away from unanimity. I just hope that they realise it before it is too late.

In the absence of any movement on this aspect, one must then consider what can be done under the present treaty, and the future constitution, whatever shape it may take.

***Doing nothing is not an option***

There is in my view a misconception in some corners of Europe that greater tax harmonisation will erode fiscal revenue, and will reduce the national leeway in deciding on the financing of the national budget.

On the contrary, I would say that the opposite is true - in the absence of any specific EU rules on the tax treatment of different types of income, the Courts, and ultimately the European Court of Justice, are bound to apply the general principles of EU law - non-discrimination and proportionality.

Although it is to be welcomed that the Commission has decided to take a tougher stance against Member States where tax rules are believed to breach fundamental Treaty rights, that is in our view not enough. We need to equip ourselves with the proper mechanisms to also take positive measures, and not only rely on bringing Court cases against individual states.

In addition, there are cases where there might be a legitimate interest for member states to tax foreign companies differently for anti avoidance reasons, but again, in the absence of a *lex specialis*, the Courts have no choice but to apply the *lex generalis* - even where this may seem like non discrimination in absurdum.

I was pleased to note that this point seems to have been understood at least by the business community with the FT last month in its lead editorial setting out the case against the "Intolerable consequences of courts setting Europe's taxes".

I wholeheartedly agree, although I do not necessarily want to go as far as the FT and declare that it is "Time to stop the EU's taxing judges". The Court will always have an important role in interpreting the law. The paradoxical situation we have today is that there is really not very much law there for them to interpret. Therefore, they are obliged to substitute the lawmaker who is absent.

### ***Exploring the legislative toolbox***

I think that the key message is that we as lawmakers must not give up in the face of the difficulties facing us. If we do, we will be looking towards and uncertain future where minute details of national tax legislation are being scrutinised against very broad principles such as non-discrimination.

We must thus keep on pushing the legislative agenda, and we must use whatever options we have to the fullest. The core will always have to be legislative measures, in particular as regards setting clear definitions of key core pieces of tax legislation like tax base, profit etc.

For the rest, and in order to further, we must also explore other options, such as co-operation between smaller groups of countries, and through the conclusion of multi-lateral tax treaties. By the way, it is nothing short of a scandal that the bilateral tax agreements of EU Member States with the US in many cases are more favourable than those with other EU countries.

This action, whatever legal form it may take, must focus on the elimination of the tax obstacles - double taxation on cross-border transaction or higher or less tax within a country than a domestic company would have to pay - is indispensable for the proper functioning of the internal market.

This will not be easy, but Member States must show a greater flexibility and a greater willingness to act so as to avoid a total stalemate. They must simply realise that they will loose control over revenues, and their companies will be less competitive if they do not. This is no longer a question of national sovereignty because in a globalised world companies operate activity on a transnational level which thus influence competition between the member states in a harmful competition approach which is not compatible with the Community Treaty and the principles of non-discrimination.

It is also true that other policies could - and should - be used to support the (lack of) progress in the area of tax competition. Here, state aid policy is



playing an increasingly important role because indirect subsidies work in form of tax subsidies even work in an efficient way.

It is encouraging to see that the Commission now seems less hesitant in resorting to competition law measures in the field of tax competition. Tax benefits may be indirect subsidies and may prove to be tantamount to state aid, and there is no reason they should not be treated as such.

Finally, I would urge the Commission and the Member States to continue and expand the fruitful work that has been undertaken within the framework of the code of conduct of business taxation.

This measure - although legally non-binding - has proven instrumental in rooting out measures that have little other purpose than luring companies from one Member State to another. Such policies have no place in a Union like ours - although there will always be competition between Member States, it is unreasonable that this takes the shape of Member States underbidding each other when it comes to corporate taxation.

### ***Conclusion***

It is deeply regrettable that the Convention on the future of Europe, and the ongoing Intergovernmental Conference represents a lost opportunity when it comes to address the European Union's shortcomings in creating an Internal Market without tax barriers.

Instead of a move towards qualified majority voting, we are witnessing the maintaining of the status quo which risks turning into inertia next year when there will be 25 finance ministers around the table who must agree on every word, and this without the full involvement of the directly elected European Parliament.

I can only plead that the IGC - which is on its finishing stretch by now and - revisits the voting rules for tax matters in order to facilitate limited progress in this area, and I would like to call on the business community to bring this point home to their governments - that they need a more uniform treatment of their European activities.

I am, however, a realist, and recognise that this is unlikely to happen, this time around, but I can only hope that the situation will be different next time it is time to review the treaties.

As we are meeting here in Rome, I would like to leave you with some words of wisdom from Plato:

*Never discourage anyone...who continually makes progress, no matter how slow.*

I am saying this because we *are* making progress, albeit slowly, and it is up to us all - the Parliament, the Commission, the Member States and the Industry but also research, academics and professionals- to keep up the momentum and ensure that we continue to make progress. We must jointly try to explore various pistes for progress, and I think that conferences such as this one, are extremely important and useful in that respect.