
Policy Forum: UK and EU Approaches to Treaty Shopping

Jonathan Schwarz*

KEYWORDS: TAX TREATIES ■ ANTI-ABUSE ■ TREATY SHOPPING ■ TAX AVOIDANCE ■ UNITED KINGDOM ■ EUROPEAN UNION

CONTENTS

Introduction	729
UK Judicial Approaches	730
General Anti-Abuse Rules in Recent UK Treaties	733
The UK Legislative Approach: GAAR and Tax Treaties	735
EU Judicial Approaches	737
EU Tax Legislation	738
Conclusion	739

INTRODUCTION

In this article, I first provide a UK perspective on treaty shopping and treaty abuse. I consider judicial approaches to treaty shopping, examine anti-abuse measures in UK tax treaties, and look at the new domestic-law general anti-avoidance rule (GAAR) as it relates to treaties. Judicial reluctance to allow treaty shopping or other treaty abuse suggests that existing measures in treaties are sufficient and that a case has not been made for the introduction of general anti-abuse rules in this area. Broad domestic treaty overrides jeopardize the international legal order and rule of law. Second, I examine EU law by reference to the approach taken by the Court of Justice of the European Union in relation to treaty shopping. The cases are essentially constitutional in nature because they test the validity of tax treaty provisions against the fundamental freedoms in the treaties constituting the European Union as taxpayers challenge the jurisdiction of member states to conclude treaties containing limitation-on-benefits (LOB) provisions. I then look at what might be termed “directive shopping” in relation to the EU direct tax legislative measures.

* Of Temple Tax Chambers, London (e-mail: jonathan.schwarz@taxbarristers.com).

UK JUDICIAL APPROACHES

Her Majesty's Revenue and Customs (HMRC) describes treaty shopping as “the improper use of a DTA [double taxation agreement], whereby a person acts through an entity created in another state with the main or sole purpose of obtaining treaty benefits which would not be available directly to such a person.”¹ The courts have adopted this characterization. In *Indofood International*, Evans-Lombe J said,

It is clear that the original loan by the noteholders through the issuer to the parent guarantor amounted to treaty shopping in the sense that there was no other reason why they should have done so through a Mauritian company save for the purpose of taking advantage of the double taxation treaty between Indonesia and Mauritius.²

The UK discourse, however, seldom distinguishes between treaty shopping in the sense described above and abuse in the sense of using treaty provisions for unintended purposes.³ This is reflected in a wide variety of measures that have appeared in UK treaties,⁴ most of which are aimed not at treaty shopping but at preventing abuse. For example, a specific anti-abuse provision was included in the 1980 UK-Netherlands treaty⁵ aimed at limiting access to tax credits in respect of dividends paid by UK-resident companies to Netherlands-resident companies under articles 10(3)(b) and (c). Under those articles, a Netherlands-resident corporate shareholder was entitled to payment of a partial tax credit upon receiving dividends from a UK-resident company⁶ if that shareholder, either alone or together with one

1 United Kingdom, HM Revenue & Customs, *International Manual* (hmrc.gov.uk/MANUALS/intmanual/index.htm), at INTM504010, “Double Taxation Treaties: Beneficial Ownership: Treaty Shopping.”

2 *Indofood International Finance Ltd. v. JP Morgan Chase Bank NA*, [2005] EWHC 2103, at paragraph 42 (Ch.).

3 Somewhat confusingly, HMRC's *International Manual* says that “broadly, treaty shopping can be regarded as an arrangement put in place to take advantage of a provision in a double taxation agreement (DTA) for tax purposes.” Supra note 1, at INTM511050, “Thin Capitalisation: Practical Guidance: Introduction: Referrals to Business International.”

4 Jonathan S. Schwarz, *Schwarz on Tax Treaties*, 3d ed. (Surrey, UK: CCH, 2013), chapter 17.

5 Convention Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, signed at The Hague on November 7, 1980 (SI 1980/1961), as amended by protocols signed on July 12, 1983 (SI 1983/1902) and August 24, 1989 (SI 1990/2152).

6 The Netherlands was only the second country, after the United States, to conclude a treaty with the United Kingdom that conferred such tax credit payments on non-UK-resident shareholders. A number of subsequent UK treaties extended tax credit payments to residents of some contracting states, but the practice was far from universal. Interestingly, other treaties that permitted tax credit payments did not contain the same limitation on this benefit as the UK-Netherlands treaty. The Netherlands, however, had an established reputation as a holding company location by reason of its domestic exemption for dividends received on substantial participations and a treaty network that eliminated or reduced Netherlands withholding tax on dividends.

or more associated companies, controlled directly or indirectly 10 percent or more of the voting power in the UK company. Article 10 provided in part as follows:

Notwithstanding the provisions of sub-paragraphs (b) and (c) of this paragraph, no tax credit shall be payable . . . unless the company shows that it is not controlled by a person or two or more associated or connected persons together, who or any of whom would not have been entitled to a tax credit if he had been the beneficial owner of the dividends.⁷

The availability of tax credits under article 10 of the UK-Netherlands treaty was at issue in *EVC International*.⁸ The case involved a joint venture in which the joint venture vehicle was a Dutch company owned by several participants. An Italian company held small minority participation. At the time, the UK-Italy treaty did not grant repayment of tax credits to Italian residents. The Court of Appeal upheld the application of the limitation where the Netherlands-resident company was controlled by non-qualifying persons or by persons “associated or connected with” such persons. The court agreed that the provision was an anti-avoidance measure to prevent the artificial creation of entitlement to tax credits and accepted that the joint venture structure was not a scheme designed for the purpose of creating an entitlement to a tax credit where none would otherwise exist. However, it rejected the argument that the absence of such a purpose would render the anti-avoidance provision inapplicable, with the result that the joint venture vehicle was ineligible for the tax credit. The case illustrates the inflexibility of such provisions and the necessity to consider carefully the class or classes of persons that ought to be entitled to, or that ought to be excluded from, treaty benefits.

Indofood suggests a proper course of action for states that believe that a particular treaty confers benefits in circumstances that they consider inappropriate—namely, termination of a tax treaty where the treaty is regarded as no longer acceptable and the relevant states cannot agree on new terms.⁹ The Indonesian government adopted such a course of action because it believed that domestic-law changes in Mauritius allowed non-resident parties in Mauritius to engage in treaty shopping and tax abuse. The ensuing commercial dispute over the expression “beneficial ownership” in the Indonesia-Mauritius treaty came before the English court because the unavailability of treaty benefits permitted the Indonesian borrower to repay loans to bondholders. The English court was required to decide how an Indonesian court would have interpreted the expression “beneficial ownership” in the Indonesia-Mauritius treaty. The Court of Appeal noted that

there is no free-standing principle of Indonesian law which requires an advantage apparently obtained under a tax avoidance scheme to be denied to a participant in that

7 *Supra* note 5, at article 10(3)(d)(i).

8 *Steele (HMIT) v. EVC International NV*, [1996] BTC 425 (CA).

9 *Indofood*, *supra* note 2, at paragraph 25.

scheme, though the existence of a tax avoidance scheme may be relevant to questions of legislative interpretation.¹⁰

This statement is an early suggestion that the principles of interpretation themselves may operate to defeat treaty shopping. In fact, HMRC has tried to develop that line of reasoning in arguing such cases. For example, in *HMRC v. Smallwood*, which concerned a trust that migrated to Mauritius in order to benefit from the capital gains provisions of the UK-Mauritius treaty, HMRC contended in the Court of Appeal that

the purpose of the DTA was to grant relief against double taxation. It was specifically not its purpose to facilitate the avoidance of tax in both jurisdictions. . . . It therefore requires to be construed purposively with that primary object in mind.¹¹

Much the same argument was accepted in *Bayfine UK*, where the Court of Appeal said that

the primary purposes of the Treaty are, on the one hand, to eliminate double taxation and, on the other hand, to prevent the avoidance of taxation. In seeking a purposive interpretation, both these principles have to be borne in mind. Moreover, the latter principle, in my judgment, means that the Treaty should be interpreted to avoid the grant of double relief as well as to confer relief against double taxation.¹²

Bayfine was not a treaty-shopping case; it concerned tax avoidance by means of complex arrangements involving two offsetting forward contracts with a US bank concluded by two UK subsidiaries of US corporations that had a common US parent, and mismatching entity characterizations between the two states, with the object of claiming a foreign tax credit in both the United Kingdom and the United States. Although the court's reasoning was based on an erroneous assumption that the expression "fiscal evasion" in the title of the treaty is properly equated to tax avoidance, credit for foreign tax under the UK-US treaty was justifiably denied on the basis that article 23 (elimination of double taxation) ought to be read so as to confer relief from double taxation and not to grant credit in the United Kingdom for tax that was not payable in the United States because, under the treaty, the United States would also be giving credit for UK tax. Such a conclusion may be reached on the basis of the purpose of the treaty and the article to relieve double taxation, but without relying on extending the reasoning by reference to an alleged anti-avoidance purpose.

10 Ibid.

11 *HM Revenue and Customs v. Smallwood & Anor.*, [2010] EWCA Civ. 778, at paragraph 23.

12 *Bayfine UK v. HM Revenue and Customs*, [2011] EWCA Civ. 304, at paragraph 17.

GENERAL ANTI-ABUSE RULES IN RECENT UK TREATIES

Since the first tax treaties were concluded, traditional UK treaty policy has been to include specific anti-avoidance or LOB provisions in particular treaty articles. A number of the approaches adopted by the United Kingdom in its treaties have found their way into the OECD commentary.¹³ Only the UK-US treaty of 2001¹⁴ contained a general LOB article patterned on the article in the US model treaty.

This situation changed in 2010, when general anti-abuse provisions started to appear in some but not all UK treaties. A new UK-Germany treaty concluded on March 30, 2010 was accompanied by a joint declaration addressing the improper use of the convention. The declaration prescribed an approach to interpretation of the treaty by reference to paragraphs 9.4, 9.5, 22, and 22.1 of the OECD commentary on article 1 of the OECD model convention. The joint declaration states, in part, that

this Convention shall not be interpreted to mean that a Contracting State is prevented from applying its domestic legal provisions on the prevention of tax evasion or tax avoidance where those provisions are used to challenge arrangements which constitute an abuse of the Convention.¹⁵

The reason for this statement is unclear, but it appears to reflect the parties' lack of confidence that the ordinary principles of treaty interpretation would operate in the manner suggested by the commentary.

The joint declaration also states that

an abuse of the Convention takes place where

1. a main purpose for entering into certain transactions or arrangements is to secure a more favourable tax position and
2. obtaining that more favourable treatment in these circumstances would be contrary to the object and purpose of the relevant provisions of the Convention.¹⁶

13 Commentary accompanying Organisation for Economic Co-operation and Development, *Model Tax Convention on Income and on Capital: Condensed Version* (Paris: OECD, July 2010) (herein referred to as "the OECD model convention" and the "OECD commentary").

14 Convention Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains, signed at London on July 24, 2001 (SI 2002/2848), as amended by SI 2002/2848, at article 23.

15 Convention Between the United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital with Protocol, signed at London on March 3, 2010 (SI 2010/2975).

16 Ibid.

The UK-Germany treaty was followed by a revised UK-China treaty concluded on June 27, 2011 that provides as follows:

Miscellaneous Rule

Nothing in this Agreement shall prejudice the right of each Contracting State to apply its domestic laws and measures concerning the prevention of tax evasion and avoidance, whether or not described as such, insofar as they do not give rise to taxation contrary to this Agreement.¹⁷

A more measured but apparently all-embracing anti-abuse article in the revised UK-Spain treaty of 2013 reads as follows:

No relief shall be available under this Convention if the main purpose or one of the main purposes of any person concerned with the creation, assignment or alienation of any shares, debt-claims, assets or other rights in respect of which income or gains arise was to take advantage of this Convention by means of that creation, assignment or alienation.¹⁸

Similar language had previously been used in many UK treaties, but it was limited specifically to dividend, interest, and royalty articles.

The UK-India treaty of October 30, 2012 extends the anti-abuse rule specifically to the establishment or maintenance of residence in a contracting state:

Benefits of this Convention shall not be available to a resident of a Contracting State, or with respect to any transaction undertaken by such a resident, if the main purpose or one of the main purposes of the creation or existence of such a resident or of the transaction undertaken by him, was to obtain benefits under this Convention.¹⁹

Other treaties concluded during the same period, including those with Albania, Barbados, Belgium, Hungary, Liechtenstein, the Netherlands, Norway, and Zambia, do not contain a general anti-abuse rule.

17 Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China for the Reciprocal Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains, June 27, 2011 (SI 2011/2724), as amended by the protocol signed on February 27, 2013 (SI 2013/3142), at article 23.

18 Convention Between the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital of March 14, 2013 (SI 2013/3152), at article 23(2).

19 Protocol to the Double Taxation Agreement Between the United Kingdom and the Republic of India, signed at London on October 30, 2012 (SI 2013/3147), at article 28C(1).

THE UK LEGISLATIVE APPROACH: GAAR AND TAX TREATIES

The March 2011 budget proposed legislation in Finance Bill 2012 to counter avoidance schemes that exploit treaties. In August 2011, a draft treaty GAAR to override all UK tax treaties was published; however, it was dropped in September pending the publication of a report on the possible introduction of a GAAR in the United Kingdom.²⁰ In November 2011, the Aaronson report recommended a GAAR, including an override of all UK tax treaties. The UK GAAR, which was enacted in 2013 and has effect from July 17, 2014, applies to “tax arrangements”:

Arrangements are “tax arrangements” if, having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a tax advantage was the main purpose, or one of the main purposes, of the arrangements.²¹

Tax arrangements fall foul of the UK GAAR if they are “abusive”:

Tax arrangements are “abusive” if they are arrangements the entering into or carrying out of which cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions, having regard to all the circumstances including—

- (a) whether the substantive results of the arrangements are consistent with any principles on which those provisions are based (whether express or implied) and the policy objectives of those provisions,
- (b) whether the means of achieving those results involves one or more contrived or abnormal steps, and
- (c) whether the arrangements are intended to exploit any shortcomings in those provisions.²²

HMRC provides an example of the kind of treaty case that will be regarded as abusive under the UK GAAR. In the example, UK-resident individuals, who separately carried on trades as information technology consultants in the United Kingdom, individually entered into contracts to provide their services to a Manx partnership consisting of five Manx companies. The partnership then contracted out the services of each individual to end users. Each Manx company was a trustee of a Manx trust, of which one of the UK-resident individuals was the settlor and life tenant. The scheme relied on the UK-Isle of Man treaty, which, it was claimed, exempted from UK tax the share of the partnership profits received in the United Kingdom by each individual in his or her capacity as a beneficiary under the trusts. No tax was

20 Graham Aaronson, *GAAR Study: A Study To Consider Whether a General Anti-Avoidance Rule Should Be Introduced into the UK Tax System* (London: HM Treasury, November 11, 2011).

21 Finance Act 2013, c. 29, section 207(1).

22 *Ibid.*, section 207(2).

paid in the Isle of Man, and tax was paid in the United Kingdom at an effective rate of about 3.5 percent. HMRC views the overseas partnership and trust as contrived and abnormal in the context of UK individuals carrying on a trade in the United Kingdom and results in income for UK tax purposes that is significantly less than income for economic purposes.²³

The example is based on the facts in *Huitson v. HMRC*.²⁴ To counteract this dubious arrangement, retrospective legislation overriding the treaty was introduced. This legislation effectively closed off appeals by some 300 individuals who had participated in the scheme. This approach to treaty abuse has little to recommend it as a matter of principle. The treaty with the Isle of Man has been in place since 1955, so there has been more than adequate opportunity to amend or terminate it if it was thought to operate inappropriately or to grant benefits in undesirable circumstances.

The extension of the UK GAAR to override treaty obligations is difficult to understand in light of the intolerance shown by the courts to treaty shopping (*Smallwood*) and treaty abuse (*Bayfine*). HMRC has sought to justify the UK GAAR treaty override on three grounds. First, it contends that the UK GAAR is targeted at abusive schemes, and therefore it accords with international law.²⁵ That contention makes little sense in light of article 26 of the Vienna Convention on the Law of Treaties.²⁶ Second, it says that other jurisdictions with GAARs (such as Australia, Canada, and South Africa) take the view that their GAARs override DTAs. Third, HMRC relies on paragraphs 9.4, 9.5, 22, and 22.1 of the OECD commentary on article 1 of the model. The OECD commentary has been held to be a supplementary means of interpretation²⁷ and thus within and subject to the constraints of article 32 of the Vienna Convention on the Law of Treaties. The OECD commentary in this respect is largely assertion, and it conflates jurisprudential principles (which include treaty interpretation) with legislative measures. To that extent, it contradicts the OECD recommendation concerning treaty override.²⁸

23 United Kingdom, HM Revenue & Customs, *HMRC's GAAR Guidance* (London: HMRC, April 2013).

24 *Huitson, R (on the Application of) v. HM Revenue and Customs*, [2011] EWCA Civ. 893.

25 United Kingdom, HM Revenue & Customs, *A General Anti-Abuse Rule: Consultation Document* (London: HMRC, June 2012).

26 Vienna Convention on the Law of Treaties, signed at Vienna on May 23, 1969, UN doc. A/Conf. 39/27, fourth annex, UNTS 1155/331.

27 *IRC v. Commerzbank*, [1990] STC 285, at 298 (Ch. D.).

28 Organisation for Economic Co-operation and Development, *Recommendation Concerning Tax Treaty Override* (Paris: OECD, October 2, 1989).

In 2008, Lord Bingham said that

[t]he rule of law in the international legal order is damaged in those situations where there is a “willingness of some states in some circumstances to rewrite the rules to meet the perceived exigencies of the political situation.”²⁹

The proper place for any limitations on treaty benefits and measures to protect against the abuse of treaties is thus in the treaties themselves.

EU JUDICIAL APPROACHES

The compatibility of treaty LOB provisions with EU law was considered by the Court of Justice in *ACT Group*.³⁰ The case concerned the repayment of imputation tax credits on dividends paid by UK-resident companies to Dutch-resident shareholders pursuant to articles 10(3)(b) and (c) of the UK-Netherlands treaty. One issue was the LOB provision in article 10(3)(d), which denied entitlement to a tax credit (that would otherwise exist) if the Netherlands-resident shareholder were controlled by a person not entitled to the tax credit. This category included residents of states that did not have a treaty with the United Kingdom conferring a tax credit on UK-source dividends.

The court ruled that the LOB provision did not infringe the right of establishment or the free movement of capital. In reaching this conclusion, the court held that the tax credit available under a treaty is not a benefit separable from the remainder of the treaty but is an integral part of the treaty and contributes to its overall balance, and that this overall balance includes the LOB provision. Advocate General Geelhoed also observed that a consequence of the coexistence of national tax systems is that disparities will exist between them which do not amount to restrictions on fundamental freedoms and that, under EU law, the power to choose the criteria of, and to allocate, tax jurisdiction in tax treaties lies purely with member states. These conclusions give broad authority to member states to limit treaty benefits under the terms of the treaty in question. However, the decision examines the question only in the context of the source state's entitlement to restrict treaty benefits; the court has yet to consider whether a restriction on the fundamental freedoms arises in the residence state by reason of LOB articles in double tax treaties. A challenge may well be made on the basis that it is an infringement, for example, on the right of establishment to conclude a treaty that permits only certain residents to claim treaty benefits and excludes others by reason of ownership or investment emanating from another member state.

29 Tom Bingham, “The Rule of Law in the International Legal Order,” in Robert McCorqudale, ed., *The Rule of Law in International and Comparative Context* (London: British Institute of International and Comparative Law, 2010), 1-19, at 18.

30 *Test Claimants in Class IV of the ACT Group Litigation v. Commissioners of Inland Revenue*, case C-374/04; [2006] ECR I-11673.

In the Canadian context, the decision will have an impact on the extent to which EU member states may be willing to agree to LOB articles in tax treaties with Canada. The risk of infringement will rest with the EU member states.

EU TAX LEGISLATION

Two pieces of EU legislation sit directly with the provisions of tax treaties. The parent-subsidiary directive³¹ prohibits withholding taxes on dividends paid by subsidiaries in one member state to a parent company in another member state and requires the member state of the parent company to grant credit or exempt such dividends from corporate income or profits tax. Similarly, the interest and royalties directive³² prohibits withholding taxes on certain intragroup interest and royalty payments. The directives deal with limitations on benefits and abuse in different ways.³³

The November 25, 2013 proposal to amend the parent-subsidiary directive is indicative of current thinking. The longstanding provision in article 1(2) permitting member states to apply domestic or treaty-based anti-abuse rules to the directive would be replaced by a common mandatory anti-abuse rule:

Member States shall withdraw the benefit of this directive in the case of an artificial arrangement or an artificial series of arrangements which has been put into place for the essential purpose of obtaining an improper tax advantage under this directive and which defeats the object, spirit and purpose of the tax provisions invoked.³⁴

An arrangement is “artificial” if “it does not reflect economic reality.” Indicia of artificiality include

- (a) the legal characterisation of the individual steps which an arrangement consists of is inconsistent with the legal substance of the arrangement as a whole;
- (b) the arrangement is carried out in a manner which would not ordinarily be used in a reasonable business conduct;
- (c) the arrangement includes elements which have the effect of offsetting or cancelling each other;

31 European Council Directive 2011/96/EU, November 30, 2011, on the Common System of Taxation Applicable in the Case of Parent Companies and Subsidiaries of Different Member States (replacing 2003/123/ED, formerly 90/435/EEC).

32 European Council Directive 2003/49/EU, on a Common System of Taxation Applicable to Interest and Royalty Payments Made Between Associated Companies of Different Member States, subject to proposed amendments issued November 11, 2011.

33 Schwarz, *supra* note 4, at chapter 14.

34 European Council, “Proposal for a Council Directive Amending Directive 2011/96/EU on the Common System of Taxation Applicable in the Case of Parent Companies and Subsidiaries of Different Member States,” COM (2013) 814 final, at new article 1a(1).

- (d) the transactions concluded are circular in nature;
- (e) the arrangement results in a significant tax benefit which is not reflected in the business risks undertaken by the taxpayer or its cash flows.³⁵

The “essential” purpose may be equated with the “main” purpose of an arrangement, and an “improper” tax advantage may perhaps be equated with an “abusive” tax advantage.

A single common anti-abuse rule, rather than individual rules of member states, would thus apply throughout the European Union, and, as an EU rule, would be subject to interpretation by the Court of Justice. The use of the directive by residents of states outside the European Union may be curtailed in some cases. A stated purpose of the amendment is “an equal application of the EU directive without possibilities for ‘directive-shopping’ (i.e. to avoid that companies invest through intermediaries in Member States where the anti-abuse provision is less stringent or where there is no rule).”³⁶

The prospects for the proposal’s adoption are uncertain. The unanimous approval of member states is required to enact tax law in the European Union. The proposal was not presented for adoption by the EU Ecofin Council (the relevant EU legislative institution) at its May 6, 2014 meeting in order to assist the passage of the less controversial amendment of the parent-subsidiary directive (which itself was not adopted);³⁷ in the tax treaty context, this serves as a useful reminder of the consensual nature of international instruments.

CONCLUSION

I have described aspects of the UK and EU approaches to treaty shopping and treaty abuse. In my view, the discussion of this issue is not assisted by the conflation of “treaty shopping” and “abuse.” If access to treaty benefits by residents of third states is regarded as unacceptable in some or all circumstances, then a US-style LOB article setting out either the permitted or the excluded category of such persons is an appropriate and effective response: it complies with the principles of legality and is consistent with international law. Purpose-based provisions are inherently uncertain and still raise the question whether treaty shopping is an abuse or an intended use of treaties applicable to persons that are residents of a contracting state under the domestic law of the contracting state, where no other qualification is expressed.

35 Ibid., at new article 1a(2).

36 Ibid., “Explanatory Memorandum,” at paragraph 2.

37 Speaking points by Commissioner Šemeta at the Ecofin press conference, European Commission, Speech/14/360, Brussels, May 6, 2014.

