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NOTE

From: General Secretariat of the Council
To: Delegations
Subject: ECOFIN Report to the European Council on Tax issues

1. The Council (ECOFIN) was invited to report back to the European Council on various tax issues mentioned, in particular in its conclusions of March and June 2012 and of 22 May 2013.
2. A draft ECOFIN Report to the European Council on Tax issues was prepared in the Council High Level Working Party on Tax issues (HLWP) on 19 November, for submission to the Council via Coreper.
3. ECOFIN on 8 December 2015 endorsed the report as set out in the Annex, and agreed to forward it to the European Council on 17/18 December 2015.

ECOFIN REPORT TO THE EUROPEAN COUNCIL ON TAX ISSUES

1. This report covers various issues mentioned in the European Council Conclusions of 1/2 March 2012¹ devoted to growth, as well as in the European Council Conclusions of 28/29 June 2012² and the relevant Council Conclusions on the future of VAT and on the fight against tax fraud and tax evasion³. It gives an overview on the state of play of Council work regarding some key legislative proposals, which were specifically mentioned in the aforementioned conclusions, such as the Common Consolidated Corporate Tax Base, the Financial Transaction Tax and the negotiations for Savings agreements with third countries.
2. More recently, the European Council on 22 May 2013⁴, 24/25 October 2013⁵, 19/20 December 2013⁶ and 20/21 March 2014⁷ identified tax dossiers where quick progress needed to be made. These dossiers, which respond to the increasing need to ensure the fairness and effectiveness of tax systems, are covered by the current report.
3. One of the priorities that the June 2014 European Council set for the Union for the next five years is to "guarantee fairness: by combatting tax evasion and tax fraud so that all contribute their fair share."⁸ Moreover, the December 2014 European Council concluded that "there is an urgent need to advance efforts in the fight against tax avoidance and aggressive tax planning, both at the global and EU levels."⁹

¹ EUCO 4/3/12 REV 3 (items 9 and 21).

² EUCO 76/12, 28/29 June 2012

³ Docs 9586/12 FISC 63 OC 213 and 14877/12 ECOFIN 864 FISC 136 OC 579.

⁴ EUCO 75/1/13 REV 1, 22 May 2013.

⁵ EUCO 169/13, 24/25 October 2013.

⁶ EUCO 217/13, 19/20 December 2013.

⁷ EUCO 7/1/14 REV 1, 20/21 March 2014.

⁸ Doc. EUCO 79/14 CO EUR 4 CONCL 2, point 2.

⁹ Doc. EUCO 237/14 CO EUR 16 CONCL 6, point 3.

4. In line with the more recent request from the European Council on 18 December 2014¹⁰, during the Luxembourg Presidency the Council has continued to focus its work on the fight against tax avoidance and aggressive tax planning, both at the global and EU levels. This has been done, in particular, on the basis of a Presidency roadmap on further work related to unfair tax competition, base erosion and profit shifting in the EU context (hereinafter - EU-BEPS), updated on 8 July 2015¹¹. In carrying out this work, the Presidency has paid particular attention to consistency between EU work and OECD actions in the area of BEPS.
5. More specifically in the area of direct taxation, the Council has swiftly reached a political agreement on the Commission's proposal on the automatic exchange of information on tax rulings in the EU, which was put forward to the Council in March 2015. Discussions on a Minimum effective taxation took place in various working parties (notably IRD), in the Council High Level Working Party on Tax issues (HLWP) and at the informal ECOFIN meeting on 11-12 September 2015. Council conclusions on BEPS issues and on the future of the Code of Conduct (business taxation) were adopted by ECOFIN on 8 December 2015.
6. In the field of indirect taxation, the Luxembourg Presidency aimed:
 - a) in the VAT area at reaching an agreement on the legislative proposal on vouchers.
 - b) at facilitating negotiations in a transparent way on the Financial Transaction Tax (FTT) in the framework of enhanced cooperation.
7. This report provides an overview of the progress achieved at the Council during the term of the Luxembourg Presidency.

¹⁰ EUCO 237/14, 18 December 2014.

¹¹ See Annex to the ANNEX.

A. Legislative dossiers

Increasing Tax Transparency

a) *Cross-border tax rulings*

8. The Commission proposal for a Council Directive amending Directive 2011/16/EU (DAC) as regards mandatory automatic exchange of information in the field of taxation was presented to the Council on 18 March of 2015. It has been submitted together with a proposal to repeal the Savings Directive, as well as a Commission communication outlining a number of other initiatives to advance tax transparency.
9. The DAC, as currently in force, provides for spontaneous exchange of information on tax rulings, but only in certain circumstances. The purpose of the new legislation in this field is to build into the existing DAC new rules on mandatory automatic exchange between tax administrations of all EU Member States of information regarding advance cross-border tax rulings and advance pricing arrangements (a particular type of advance tax ruling used in the area of transfer pricing). It also foresees creating a secure central directory at the Commission concerning information communicated in the framework of this proposal.
10. The Luxembourg Presidency built on the work done during the Latvian Presidency, and held four meetings of the Working Party on Tax Questions (WPTQ), where it presented possible solutions to the open issues, also with the view of taking into account the work done by the OECD in this area.

11. On 6 October 2015 the ECOFIN Council has reached a political agreement on this legislative file. The text of the political agreement foresees that the scope of information on advance cross-border tax rulings and advance pricing arrangements to be exchanged in a mandatory and automatic manner will be wider than that recommended by the OECD. The ECOFIN Council of 8 December has formally adopted the Directive.¹² The new Directive will have to be transposed into national law by the end of 2016. In the meantime, Member States will continue to exchange information under the rules of the existing DAC and the Code of Conduct Group's report endorsed in June 2014 ECOFIN Council. The report notes that the Group has agreed on a model instruction for the spontaneous exchange of information on advance interpretations of legal provisions in cross border situations ('rulings') and in the area of transfer pricing.¹³

b) Repeal of the Savings Taxation Directive

12. On 18 March 2015 the Commission also tabled a proposal for a Council Directive that is aimed at repealing the Savings Taxation Directive (Council Directive 2003/48/EC). The Savings Taxation Directive now overlaps with the provisions of the Directive on Administrative Cooperation in the field of taxation (DAC2 – Council Directive 2014/107/UE), which was amended in December 2014 and will be applied from 1 January 2016. The proposal also provides a number of transitional measures, notably with regard to the derogation granted to Austria.

13. At the WPTQ meeting of 31 March 2015, Member States agreed to the draft Council Directive without any changes. The European Parliament having adopted its opinion on the repeal at the plenary session of 26-29 October 2015, the ECOFIN Council adopted the Directive repealing the Savings Taxation Directive at its meeting on 10 November 2015.

¹² Doc. 12802/15 FISC 124 ECOFIN 755 and doc. 14207/15 FISC 152 ECOFIN 858.

¹³ Doc. 10609/14 FISC 96 ECOFIN 587 and doc. 10608/14 FISC 95 ECOFIN 586, point 23.

Interest and Royalties Directive

14. In November 2011, the Commission tabled a proposal to recast Council Directive 2003/49/EC on the common system of taxation applicable to interest and royalty payments made between associated companies of different Member States ("Interest and Royalties Directive" – IRD). Since the Interest and Royalties Directive has been amended several times, this proposal aims in the first place at recasting it for the sake of clarity. Moreover, the proposal would introduce some substantial changes to the existing Directive, notably: extending the list of companies to which the Directive applies; reducing (from 25% to 10%) the shareholding thresholds to be met for companies to qualify as associated; adding a "subject to tax" requirement for the tax exemption.
15. Following the adoption of the amendment to the Parent Subsidiary Directive (PSD), a broad majority of Member States underlined the need to make rapid progress by splitting the proposal on the IRD and concentrating work first on the insertion of a general anti-abuse provision similar to the one in the PSD and then to discuss later the remaining provisions. Some Member States were however of the opinion that the discussion should be held on the proposal as a whole.
16. This file was presented by the Latvian Presidency at the ECOFIN Council on 19 June 2015 for political agreement. However, such agreement could not be reached as some Member States insisted on the inclusion of a provision setting up a minimum effective level of taxation, which would require substantial technical work.
17. Following the June ECOFIN debate, the Luxembourg Presidency held a first discussion at the HLWP meeting of 2 September 2015 and at the informal ECOFIN meeting on 11-12 September 2015. In the light of this debate, the Luxembourg Presidency devoted two meetings of the Working Party on Tax Questions (WPTQ) on 30 September and 29 October 2015 to discuss the IRD proposal. Both meetings focussed on the possible inclusion of a minimum effective taxation (MET) clause.

18. At the WPTQ on 30 September 2015, some Member States expressed the wish to explore a MET clause as a possible way forward while, on the other hand, others were not in favour of a MET criterion, sole or combined as a condition for granting the benefits of the Directive.
19. At this meeting the Presidency has also asked the Legal Service to elaborate a written legal opinion concerning the question of the compatibility of a MET clause with EU law.
20. At the Working Party on 29 October 2015, the Presidency advanced technical work on three main areas:
 - the major elements of a MET clause (calculation on an “all income” basis or on an “isolated income” basis; the determination of the effective tax charge under the isolated income approach) and procedural aspects (i.e. the potential need for changes to procedural provisions in the Directive);
 - the determination of a level of tax to be considered as low taxation in order to set a benchmark on that basis (in relative or absolute terms); and
 - the drafting of a potential MET clause (with MET as sole criterion or in combination with an additional test on economic substance).
21. The Presidency noted that, leaving aside the political question on the appropriateness of inserting a MET clause in the IRD directive, the majority of Member States would favour an isolated income as a basis for a MET provision.
22. The Presidency was also able to advance technical work on the issue of the determination of the components necessary to calculate the effective tax charge under the isolated income approach.

23. Concerning the drafting of a potential MET clause, many Member States wish to continue to work on a clause with MET as sole criterion. On the other hand, some Member States would like to explore further the combination of the MET rule with a substantive test. Many other Member States are opposed to the principle as such of a MET clause.
24. In the light of the foregoing, further work, both at technical and political level, will be required in this dossier.

Common Consolidated Corporate Tax Base

25. The Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) was tabled by the European Commission on 16 March 2011, as a contribution to more growth-friendly taxation advocated by the Europe 2020 strategy. Since then, intensive technical discussions on the proposal have been taking place in the Council preparatory bodies.
26. In previous discussions, many Member States had underlined the need to focus discussions on the international anti-BEPS aspects of the CCCTB proposal. Further technical progress on most of them (artificial avoidance of permanent establishment status, CFC rules, switch-over clause, and interest limitation) was pending on the availability of the final OECD reports on these issues, but Member States agreed that discussion at expert level could be pursued on other international anti-BEPS aspects (exit taxation, the general anti-abuse rule and hybrid mismatches). As a first step, the Luxembourg Presidency therefore continued the technical examination of the latter. As a second step, in the wake of the publication of the OECD BEPS Action Plan conclusions in October 2015, the Luxembourg Presidency resumed the in-depth technical examination of the remaining items, with the aim to facilitate a coordinated implementation of the OECD recommendations in the EU context.

27. The June 2015 Commission's Action Plan on Corporate Taxation announced a relaunch of the CCCTB proposal in 2016. In this context and in line with its EU BEPS roadmap, the Presidency therefore launched a discussion on the opportunity of a split of the CCCTB proposal allowing to focus on these aspects. At the WPTQ meetings of 9 July 2015, most delegations supported such a split and suggested that the "anti-BEPS directive" that would result from this examination should address both third countries and intra-EU situations. At the following WPTQ meetings, the Presidency brought further clarifications as to how such EU legislation could materialise more concretely.
28. At the WPTQ meeting of 20 November 2015, the Presidency reflected BEPS related issues which have been subject to technical examination so far, into a consolidated text of the prospective "anti-BEPS" directive. Against this background the state of play of the CCCTB dossier was discussed at the ECOFIN Council meeting of 8 December 2015.

Savings Negotiations with European third countries, the UK's Crown dependencies and overseas territories and the non European Countries within the Kingdom of the Netherlands

29. On 17 June 2011, the Commission adopted a recommendation for a mandate to initiate negotiations with Switzerland, Liechtenstein, Andorra, Monaco and San Marino, in order to upgrade the EU's Savings Taxation agreements with those third countries and to ensure that they continue to apply measures equivalent to those in the EU.
30. At the Council on 14 May 2013 agreement was reached on the Negotiating Mandate, in line with the recent developments at global level, where it was agreed to promote automatic exchange of information as an international standard.
31. The European Council of 19/20 December 2013 called for speeding up the negotiations with the European third countries.

32. Following the adoption of the Decision on the signing of the agreement with Switzerland and the signing of the agreement on behalf of the European Union on 27 May 2015, the decision on the conclusion of the agreement was adopted on 8 December 2015.

33. Negotiations aiming at revising the existing EU savings agreements with the four remaining European third countries (Andorra, Liechtenstein, Monaco and San Marino) to bring them into line with the global standard went on under the Luxembourg presidency. The decision on the signing of the agreement with Liechtenstein was adopted on 26 October 2015 and the signing ceremony took place on 28 October 2015. The decision on the conclusion of the agreement was adopted on 8 December 2015. The decision on the signing of the agreement with San Marino was adopted on 8 December 2015 and the signing ceremony took place on that day.

34. Following the repeal of the EU Savings directive, work is under way with a view to the suspension of the bilateral exchange agreements with the United Kingdom's Crown dependencies and overseas territories and the non European Countries within the Kingdom of the Netherlands, in line with the commitments already made by these territories and countries. This issue was discussed at the Working Party on Tax Questions on 31 March 2015 and at the HLWP meeting on 16 April 2015.

The common system of Financial Transaction Tax

35. The proposal for a Directive on a common system of financial transaction tax (FTT) was submitted by the Commission to the Council on 28 September 2011. The proposal had as objectives a fair contribution of the financial sector to the costs of the crisis, avoiding fragmentation of the single market, and creating appropriate disincentives for transactions that do not enhance the efficiency of financial markets.

36. Unanimous agreement by all Member States could not be attained within a reasonable period. A number of Member States supported the examination of the FTT in the framework of enhanced cooperation. Adoption of a decision formally authorising enhanced cooperation among eleven Member States took place at the ECOFIN meeting on 22 January 2013. A formal Commission proposal for a Directive implementing enhanced cooperation in the area of financial transaction tax was put forward to the Council on 14 February 2013.
37. Building on the work done by previous Presidencies, the Luxembourg Presidency has enabled the continuation of deliberations among all Member States, taking specific account of the fact that during the term of Latvian Presidency, at WPTQ level, discussions were held on constitutive parts of the FTT design (the "building blocks" of the FTT) and on the assembly of those "building blocks" into possible FTT models.
38. During the term of Luxembourg Presidency two WPTQ meetings on FTT took place, where a number of issues were discussed, and in particular:
- a) some of the building blocks of this file, namely:
 - application of "issuance" and "residence" principles and the scope for the FTT;
 - taxable event for securities: "gross" or "net" transactions (Article 2(2) of the Commission proposal);
 - the treatment of the transaction chain (Article 10(1) and 10(2) of the Commission proposal);
 - possible exemption from FTT of market making activities;
 - transactions in derivatives contracts to be subject to the FTT;
 - the methods for calculating the taxable amount for derivatives contracts (Article 7 of the Commission proposal).
 - b) different options on how to avoid potential negative impacts of a FTT on:
 - retirement schemes (pension plans, funds, and other products serving similar objective), and

- the part of the economy that is concerned with producing, distributing and consuming goods and non-financial services (i.e. “real economy”);

39. The ECOFIN Council (8 December 2015) held an exchange of views on the state of play on this file.
40. In the light of the foregoing, further work at the Council and its preparatory bodies, both at technical and political level with all Member States will be required, before a final agreement on this dossier can be reached.

VAT: Treatment of Vouchers

41. The Commission put forward a proposal in May 2012 to provide for common EU rules for the VAT treatment of vouchers. These changes were considered necessary to support businesses operating cross-border and to ensure that instances of double taxation or non-taxation do not occur.
42. This file has undergone extensive technical examination of its various aspects by the Council preparatory bodies during more than three years. Member States could converge on the view that specific rules applying to the VAT treatment of vouchers are needed, in order to ensure certain and uniform treatment thereof and to avoid inconsistencies, distortion of competition, double or non-taxation and to reduce the risk of tax avoidance. With a view to reaching a required unanimous agreement on this dossier, a large variety of possible technical solutions have been examined in the course of these negotiations.
43. At the end of the Latvian Presidency there still was no unanimous understanding with regard to the scope of the definitions of Single-Purpose Vouchers (SPV) and Multi-Purpose Vouchers (MPV) and divergences remained on how the transactions in the distribution chain of MPVs should be treated including the issue of deduction of input VAT in these situations.

44. During Luxembourg's Presidency, one working party meeting took place, in order to verify whether positions of delegations on this dossier could evolve towards reaching an unanimous agreement. However, the meeting showed that divergent views of delegations on this dossier remain unchanged at this stage.

VAT: Standard VAT Return

45. The President of the Commission, Mr Juncker, announced on 9 September 2015 that the Commission will propose to withdraw the legislative proposal for a standard VAT return, which was later confirmed in the Commission's Work Programme for 2016.

VAT fraud and use of reverse charge mechanism

46. At the HLWP of 19 November 2015, Member States have held an exchange of views on a possible wider use of the reverse charge mechanism in the EU as a potential measure against VAT carousel fraud. In the light of the discussion, which covered the questions of general application of the reverse charge mechanism, delegations took note of the European Commission's intention to examine this issue early next year within the "Future of VAT" Group, in the context of the Action Plan on the Definitive VAT Regime. . Orientation from the Ministers of Finance on how to reduce VAT fraud might be useful.

B. Tax Policy Coordination

47. Important work in the area of Tax Policy coordination (outside of EU tax legislation) has been taken forward during the Luxembourg Presidency, as set out below.

a) Code of Conduct Group (Business taxation)

48. On the basis of the Work Programme approved in 2011, the Code of Conduct Group met four times under the Luxembourg Presidency, on 23 July, 17 September, 21 October and 18 November 2015.

49. The Code of Conduct Group¹⁴ continued work on standstill and rollback of harmful tax regimes. Work on rollback focussed on the treatment of Gibraltar's asset holding shell companies.
50. At that meeting of the High Level Working Party on 2 September 2015, Member States decided that the Group should develop and agree a new work programme before the end of the Luxembourg Presidency. The Code of Conduct Group agreed a new work program at its meeting on 18 November 2015. It confirms that work should focus in particular on the monitoring of standstill and the implementation of rollback, administrative practices, links with third countries, the monitoring of agreed guidance and procedural issues.
51. The HLWP also discussed the future of the Code of Conduct on 2 September and 19 November 2015. It prepared conclusions on this issue, which were adopted by the Council on 8 December 2015¹⁵.
52. The Code of Conduct Group continued its efforts to promote the principles and criteria of the Code of Conduct towards third countries, concentrating at this stage on a dialogue with Liechtenstein. The Commission informed the Group on the state of play of the dialogue with Liechtenstein and representatives from Liechtenstein were invited to expose their views at the meeting on 21 October 2015.
53. In June 2014, the Code of Conduct Group agreed on a "Model Instruction" on spontaneous exchange of information in relation to specific cross border rulings and exchanges in the area of transfer pricing that could be used as a reference by Member States. During the Luxembourg Presidency, the Code of Conduct Group discussed the progress made in the implementation of the model instruction in the Member States and the way to improve effective exchange of information.

¹⁴ Report to ECOFIN on 8 December 2015, doc. 14302/15 FISC 159 ECOFIN 883.

¹⁵ Doc. 15148/15 FISC 184 ECOFIN 964

54. The Code of conduct group discussed the issue of requests concerning access to documents of the Code of Conduct Group. While acknowledging that the outcome of the work of the Code of Conduct Group should be given more visibility, notably through its six months report, Member States stressed the need to protect the confidentiality of the discussions, and recalled that it is a key element for the good functioning of the Group.

b) Code of Conduct Group – anti-abuse: Subgroup on hybrid mismatches

55. The Code of Conduct Subgroup on anti-abuse launched its work on hybrid mismatches during the Irish Presidency. The Code of Conduct Group agreed in November 2012 to have detailed technical discussions in the Subgroup on anti-abuse issues related to inbound and outbound profit transfers and mismatches between tax systems, specifically on hybrid entities and hybrid permanent establishments. The guidance and explanatory notes on hybrid entity mismatches between Member States were finalised under the Italian Presidency, whilst the guidance and explanatory notes on hybrid permanent establishment mismatches between Member States was finalised under the Latvian Presidency.

56. Under the Luxembourg Presidency, the Subgroup met once on 14 October 2015 and discussed a guidance and explanatory notes on hybrid entity mismatches involving third countries. The latter was approved by the Code of Conduct Group at its meeting of 18 November 2015.

57. The Subgroup is expected to continue working during upcoming Presidencies on remaining cases of hybrid mismatches (hybrid permanent establishments in situations involving third countries, hybrid financial instruments other than dividends/interest; hybrid transfers; dual resident companies and imported mismatches).

c) Other tax coordination issues

58. The Luxembourg Presidency has continued work on new areas already identified by previous Presidencies for possible tax policy coordination in the HLWP.

i) EU/OECD: Base Erosion and Profit Shifting (BEPS)

59. Paragraph 6 of the Council conclusions of 14 May 2013 relates to coordination and cooperation with the OECD and G20 on BEPS:

"6. SUPPORTS further efforts at OECD level on Base Erosion and Profit Shifting (BEPS) and RECALLS the European Council Conclusions of 13 and 14 March 2013 on the need for close cooperation with the OECD and the G20 to develop internationally agreed standards for the prevention of base erosion and profit shifting and in particular NOTES the European Council call for the European Union to coordinate its positions. NOTES that this coordination will take place through the appropriate Council bodies including the High Level Working Party and WELCOMES that progress at international level in this area is being monitored. To this end, the EU should closely monitor its legal framework and identify where common solutions would best ensure effectiveness and efficiency."

60. In Paragraph 27 of its conclusions of 19/20 December 2013, the European Council states the following:

"27. Recalling its conclusions of May 2013, the European Council calls for further progress at the global and EU levels in the fight against tax fraud and evasion, aggressive tax planning, base erosion and profit shifting (BEPS) and money laundering. The European Council welcomes work undertaken in the OECD and other international fora to respond to the challenge of taxation and ensure fairness and effectiveness of tax systems, in particular the development of a global standard for automatic exchange of information, so as to ensure a level playing-field."

61. In Paragraph 3 of its conclusions of 18 December 2014, the European Council states the following:

"3. There is an urgent need to advance efforts in the fight against tax avoidance and aggressive tax planning, both at the global and EU levels. Stressing the importance of transparency, the European Council looks forward to the Commission's proposal on the automatic exchange of information on tax rulings in the EU. The Council will discuss how to make progress on all these issues and report back to the June 2015 European Council."

62. Following discussions on this issue held during previous Presidencies, the Latvian Presidency promoted and carried forward a concrete EU-BEPS Roadmap setting out a number of priorities for its term and highlighting other issues on which work could be foreseen in the middle or longer term (i.e. beyond June 2015). This Roadmap was updated on 8 July 2015 (doc. 10649/15 FISC 93) by the Luxembourg Presidency.

63. The Luxembourg Presidency subsequently brought forward, respectively concluded, the work on all related files as set out above, notably:

- a) the Tax Rulings Transparency proposal (DAC3);
- b) the Interest and Royalties Directive recast;
- c) the CCCTB proposal;
- d) the Code of Conduct Group and Subgroup;

The HLWP was regularly updated on progress made.

64. An exchange of views on the state of play of ongoing work in relation to BEPS was held at the HLWP meetings of 2 September and 20 October 2015. On this basis, and taking into account the G20 Summit in Antalya which highlighted the importance of BEPS, the Presidency submitted at the subsequent HLWP meeting a proposal for Council Conclusions on 'Base Erosion and Profit Shifting in the EU context'. These Council Conclusions were subsequently submitted for adoption at the ECOFIN Council of 8 December 2015¹⁶.

¹⁶ Doc. 15150/15 FISC 185 ECOFIN 965.

ii) Tax in non-tax dossiers

65. On 19 November 2013, the HLWP agreed that tax provisions in non-tax dossiers leading to any changes in Member States' tax laws or administrative practices or having other consequences on taxation should fall under an 'informal alert mechanism'. The systematic approach of bringing these cases to the attention of tax experts, with the support of the General Secretariat, will continue to ensure that Member States are alerted in a timely manner.
66. The most recent alerts covered in particular the following issues:
- First reading trilogue negotiations on the Proposal for a Directive on the fight against fraud to the Union's financial interests by means of criminal law;
 - First reading trilogue negotiations on the Proposal for a Regulation of the European Parliament and of the Council on indices used as benchmarks in financial instruments and financial contracts;
 - Proposal for a Directive of the EP and Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement;
 - Commission's Action Plan on Building a Capital Markets Union.

iii) Tax provisions in Agreements between the EU and third countries

67. The HLWP discussed at its meeting on 20 October 2015 the state of play concerning tax provisions in EU free trade agreements and in other agreements between the EU and third countries.
68. An overview was given on the tax provisions in various existing agreements. Delegations were informed about ongoing negotiations with China, Ecuador, Japan, Malaysia, Vietnam, Jordan, Morocco, Tunisia, Mercosur, Myanmar, Thailand, TTIP/USA and TISA with WTO members.

69. The Presidency noted the importance of monitoring further developments in the HLWP and to discuss a coordinated tax clause to be inserted in future agreements, as soon as possible.

iv) Third-country non-cooperative tax jurisdictions

70. The HLWP discussed the Commission list of third-country non-cooperative tax jurisdictions, published on 17 June 2015. Member States pointed out factual mistakes and noted that no decision on an EU list of non cooperative tax jurisdictions had been taken by the Council.

EU-BEPS PRESIDENCY ROADMAP

(Council doc. 10649/15 FISC 93)

1. On 25 November 2014, at the High Level Working Party on Taxation (HLWP), a discussion was held on further work related to unfair tax competition, base erosion and profit shifting in the EU context (hereinafter – EU BEPS). It was noted that this work should be brought forward on the basis of a concrete roadmap, which would include actions and clear timelines, taking account of the OECD work in this area.
2. The Italian Presidency presented a draft roadmap to the Working Party on Tax Questions (WPTQ) on 5 December 2014 setting out a number of priorities for actions in the short, mid and long term. The Latvian Presidency undertook to continue work on the basis of this draft roadmap, and circulated a final version of its Presidency roadmap (doc. 5968/15 FISC 15) following WPTQ technical examination on 21 January 2015 and discussion at the HLWP meeting of 5 February 2015.
3. On 18 March 2015, the Commission proposed a package of measures to create more transparency in corporate taxation in the EU, in particular a legislative proposal providing for compulsory exchange of information between tax authorities in respect of cross-border tax rulings. On 17 June 2015, the Commission also adopted a Communication on a Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action. It was put forward to the Council and presented to ECOFIN Ministers on 19 June 2015.
4. The Luxembourg Presidency intends to build on the work undertaken by the Italian and the Latvian Presidencies to ensure transparency of tax practices and respond to the challenges posed by BEPS within the EU, and to make substantial progress on the current legislative files, while taking into account new developments. The Luxembourg Presidency will facilitate discussions in Council in order to find solutions consistent with the results of the OECD work on BEPS, paying specific attention to the respect of the acquis of the Single Market and of the Treaty freedoms. The HLWP should play a central role in overseeing work in this field.

5. This paper intends to set out how the Luxembourg Presidency will conduct further work in the Council, taking into account views expressed by Member States and against the background of recent Commission initiatives in the field of corporate taxation and automatic exchange of information on tax rulings, as well as the results of the OECD work on BEPS.

I. Short-term work

6. The Presidency will strive to reach progress during the next months on the following EU-BEPS work items:

A. Transparency of tax rulings

7. On 18 March 2015 the European Commission presented to the Council the proposal on the automatic exchange of information on tax rulings. The Latvian Presidency held four meetings of the Working Party on Tax Questions during which the proposal has been examined and compromise solutions were tabled. ECOFIN Ministers held an exchange of views on the main issues identified by the Latvian Presidency in June.
8. The Luxembourg Presidency will give high priority to this file and continue discussions on the proposal in the WPTQ with a view to reaching a political agreement and adoption before the end of 2015. The Presidency will pay particular attention to the outcome of the OECD work in this field in order to ensure consistency. It will take into account views expressed by ECOFIN on some key elements of the proposal such as the scope for exchange of information, timing issues (including retroactivity) and the possible role the Commission could play.

B. Interest and Royalties Directive (IRD)

9. Following the opinion of the majority of the Member States, the Latvian Presidency decided to concentrate its work first on a *de minimis* anti-abuse clause, similar to the one recently adopted for the Parent-Subsidiary Directive, with the aim to reach an agreement of the Council on this part of the Directive, leaving the remaining provisions for later discussions. A number of Member States were however not in the position, at this stage, to agree to that approach and were of the opinion that the discussion should be held on the proposal as a whole, notably on the 'subject to tax' criterion contained in the 2011 recast proposal.
10. The Luxembourg Presidency intends to hold a discussion on this proposal and, in particular, the issue of minimum effective taxation, which was not foreseen by the original Commission proposal and which should be discussed on a more comprehensive basis.
11. In this context it will be important to assess possibilities to introduce a provision allowing to effectively combat base erosion and profit shifting, in particular towards third countries.

C. Minimum effective taxation

12. During the discussions on the IRD a number of Member States expressed the need to hold a discussion on the minimum effective level of taxation. This issue has also been raised in the context of the discussions on the PSD and CCCTB and in the Commission's Action Plan of 17 June 2015.
13. The Presidency notes that this topic requires a thorough and comprehensive examination of the feasibility of a common approach. Any solution should respect the Single Market acquis and the Treaty freedoms, as well as the related case law of the Court of Justice of the European Union. The Luxembourg Presidency intends to hold a broad discussion on the minimum level of effective taxation taking into account the abovementioned aspects. The Council HLWP should serve as a focal point for this issue and ensure a coherent approach.

D. CCCTB proposal

14. In previous discussions, many Member States stressed the need to focus on the international anti-BEPS aspects (in particular definition of permanent establishment, CFC rules, switch-over clause, general anti-abuse rule, exit taxation, interest limitation and, possibly, hybrid mismatches), taking into account the work done at the OECD, where appropriate. Several Member States also expressed the opinion that further steps on the proposal can be taken only after the outcome of the OECD work will have become available. Several opinions were also expressed on a possible continuation of the work on selected matters of the proposal, namely exit taxation, the general anti-abuse rule (GAAR) and hybrid mismatches.
15. Taking into account the opinions expressed by a number of Member States and the Commission regarding the need to continue the work on the international anti-BEPS aspects of the CCCTB, the Luxembourg Presidency intends:
 - a) As a first step, to continue work in the WPTQ inter alia on the abovementioned selected international anti-BEPS aspects, taking into account the work already done under previous Presidencies. If considered useful a possible split of the CCCTB proposal could be envisaged;
 - b) As a second step, to finalise this technical examination of all international aspects, taking into account the final results of the work of the OECD BEPS project(which should be known in Autumn 2015), to the extent that they are compatible with the EU legal framework. The aim would be to ensure a consistent implementation of the OECD recommendations in the EU context;
 - c) As a final step, to take stock of the results of the discussions in the WPTQ, wrap up technical examination into a Presidency compromise and see whether a political agreement on enshrining these international aspects into EU legislation (or any other EU instrument) is reachable.

16. In its Communication of 17 June 2015, the Commission underlined the importance of ongoing work on this file in the Council and indicated further proposals it could make in the mid term.

E. Hybrid mismatches

17. A guidance and explanatory notes on Hybrid Permanent Establishments were finalised by the Code of Conduct Subgroup and agreed by the Code of Conduct Group under the Latvian Presidency.
18. The Luxembourg Presidency notes that on 2 June 2015 the Code of Conduct Group decided to extend the mandate of the Subgroup to continue work on further cases of hybrid mismatches (hybrid entities and hybrid permanent establishments in situations involving third countries; hybrid financial instruments other than dividends/interest; hybrid transfers; dual resident companies and imported mismatches). The Presidency will facilitate discussions with a view to providing guidance on these issues, taking into account the work of the OECD.

F. Patent boxes

19. The Presidency notes that the Code of Conduct Group will continue monitoring the legislative process necessary to change existing patent box regimes following the agreement reached on the interpretation of the third criterion of the Code of Conduct. In this context, some Member States stressed the importance of addressing transitory timing and windfall effects regarding new entrants. The Luxembourg Presidency will pay particular attention to the ongoing work at the OECD in this field.

G. Code of Conduct Group (business taxation)

20. A discussion was held during the Latvian Presidency on the scope and the governance of the Group, on the basis of various proposals from Member States. The HLWP welcomed in June 2015 that the Code of Conduct Group will continue work on this issue in July 2015, focusing on: a) making better use of the existing mandate of the Code; b) examining the possibilities to extend the mandate and to update the criteria; c) the possible need to adjust the governance of the Code of Conduct accordingly. ECOFIN Ministers endorsed this approach on 19 June 2015.
21. The Presidency will discuss the future of the Code of Conduct in the HLWP, on the basis of the contribution from the Code of Conduct Group, with the aim of bringing the decision on the future work under the Code to the ECOFIN Council by the end of the Luxembourg Presidency.

H. Good governance in Tax matters in third countries

22. In line with the ECOFIN conclusions of 14 May 2013 (item 20), the Luxembourg Presidency will pay attention to good governance in tax matters in third countries.
23. With a view to facilitating discussions on how to proceed within the Council, discussions in the HLWP could focus on the principles of good governance (transparency, exchange of information, fair competition), and on the most appropriate means to promote these principles in third countries, and in particular in non-cooperative jurisdictions, whilst taking into account work done at the OECD.

II. Medium-term work

24. The Presidency also notes the willingness of Member States to undertake work in the medium term on the following items:

A. Country-by-country reporting (CBCR) on transfer pricing agreements

25. The Commission has launched a public consultation on various possible options, which will feed into the impact assessment work which it expects to conclude at the latest in the first quarter of 2016. An early inclusion of elements resulting from OECD work into EU legislation could be envisaged. The Council HLWP will monitor further developments on this issue as appropriate.

B. Beneficial ownership of non-transparent entities

26. Some Member States expressed strong interest in a possible extension of the access to the register foreseen in the 4th Anti-Money Laundering proposal (articles 29-30) to tax authorities in order to exchange information for tax purposes. This Directive has come into force in June 2015.
27. The outcome of the negotiations on the 4th Anti-Money Laundering proposal could therefore be discussed.

C. Outbound payments

28. The discussions showed an interest in work to be undertaken on this issue, even though the suggested possible solutions differ among Member States (some consider the topic strictly connected with the discussion on the Interest and Royalties directive, while others believe it is more of a transfer pricing issue). A possible forum could be the Code of Conduct Group, given the previous discussion of this topic in connection with dividend payments.

D. Transfer Pricing and Arbitration

29. Several Member States stressed the need to ensure coordination between EU work in the area of Transfer Pricing and the OECD's work in the context of its BEPS project (Working Party N°6), against the background of BEPS priorities defined within the Council and its preparatory bodies.
30. The Council HLWP could assess ongoing work in this field. It could also discuss the state of play regarding the Arbitration Convention allowing the settlement of disputes concerning transfer pricing. This issue is also covered by the Commission Action Plan from 17 June 2015.

III. Long-term work

31. The discussion showed that the following issues would not need to be addressed as a matter of priority, but could be dealt with in the long term.

A. Conditions and rules for the issuance of tax rulings

32. It was noted that any work going beyond mere transparency aspects would require more time. Some exploratory talks could nevertheless be conducted in the mid term in the context of the Code of Conduct Group. In addition, the Commission has organized a technical WPIV meeting on 6 February 2015 to open a discussion on this topic.

B. Residency rules

33. This matter is considered important by some Member States and could be explored, taking into account the wider work being done by the OECD on BEPS. Issues arise notably with regard to residency rules that allow businesses to shift their tax residence outside the EU, tax structures making use of "double residency" or "double non-residency" effects within the EU, and broader tax provisions and mismatches that may be associated with aggressive tax planning and double non-taxation.
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