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'I/A' ITEM NOTE

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

Subject: ECOFIN Report to the European Council on tax issues

- Endorsement

1. The Council (ECOFIN) was invited to report back to the European Council on various tax issues as mentioned, in particular in its conclusions of March and June 2012, May 2013, December 2014 and October 2017.
2. A draft ECOFIN report to the European Council on tax issues was prepared and agreed in the High Level Working Party on tax questions (HLWP) on 6 June 2018, for submission to the Council via Coreper.
3. The Permanent Representatives Committee is therefore invited to:
 - i. confirm the agreement on the report reached at the HLWP (as set out in the Annex);
 - ii. forward the draft report to Council (ECOFIN) of 22 June 2018 for endorsement, on the understanding that factual updates (concerning parts in square brackets) would be reflected in the version forwarded to the June 2018 European Council.

ECOFIN REPORT TO THE EUROPEAN COUNCIL ON TAX ISSUES

1. This report provides an overview of the progress achieved in the Council during the term of the Bulgarian Presidency, as well as an overview of the state of play of the most important dossiers under negotiations in the area of taxation.
2. The report gives an overview of the state of play of relevant Council work and 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 2012,² 22 May 2013,³ 24/25 October 2013,⁴ 19/20 December 2013,⁵ 20/21 March 2014,⁶ 26/27 June 2014,⁷ 18 December 2014,⁸ and 19 October 2017,⁹ the Council conclusions in the VAT area of 2012¹⁰ and of 2016¹¹ as well as Council conclusions on "Responding to the challenges of taxation of profits of the digital economy" of 2017.¹²
3. During the Bulgarian 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, as well as on the indirect taxation tax issues. This has been done, in particular, on the basis of a Presidency tax policy roadmap, discussed at the High Level Working Party on tax questions (HLWP) meeting of 17 January 2018 and issued on 26 January 2018.¹³ This roadmap is also set out in Annex I of this report.

¹ Doc. EUCO 4/3/12 REV 3 (items 9 and 21).

² Doc. EUCO 76/12, 28/29 June 2012.

³ Doc. EUCO 75/1/13 REV 1, 22 May 2013.

⁴ Doc. EUCO 169/13, 24/25 October 2013.

⁵ Doc. EUCO 217/13, 19/20 December 2013.

⁶ Doc. EUCO 7/1/14 REV 1, 20/21 March 2014.

⁷ Doc. EUCO 79/14, point 2.

⁸ Doc. EUCO 237/14, point 3.

⁹ Doc. EUCO 14/17, point 11.

¹⁰ Docs. 9586/12.

¹¹ Docs. 9494/16.

¹² Doc. 15175/17.

¹³ Doc. 5668/18.

4. The Bulgarian Presidency devoted particular attention to the taxation of digital economy. After the Commission presented the digital taxation package on 21 March 2018, the Presidency proceeded to examine the package as a matter of priority. Strategic discussions on digital taxation at the HLWP on 18 April 2018 and the Informal meeting of Ministers meeting in Sofia on 28 April 2018. These discussions resulted in the preparation of the Bulgarian Presidency digital taxation roadmap, which is aimed at outlining the direction of work during the Bulgarian Presidency.¹⁴ This roadmap is also set out in Annex II of this report.
5. More specifically in the area of direct taxation, the Council has adopted the Council Directive on mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (DAC 6) and Council conclusions related to "EU standard provision on good governance in tax matters for agreements with third countries."¹⁵
6. It has also reached agreement to voluntarily evaluate the impact of the Common Corporate Tax Base (CCTB) proposal on national corporate tax revenues based on a common model and common hypotheses,¹⁶ set out in a Presidency note (Annex III of this report). The Presidency held a strategic discussions on the recast of the Interest and Royalty Directive (IRD) aiming to explore possible way forward on the dossier.
7. In the area of indirect taxation, the Council, most importantly:
 - a) reached a general approach on the Council Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of value added tax;
 - b) adopted decisions authorising the signature and conclusion of the agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax;
 - c) adopted the Directive amending Directive 2016/112/EC on the common system of value added tax as regards the obligation to respect a minimum standard rate;

¹⁴ Doc. 9052/18.

¹⁵ Doc. 8344/1/18.

¹⁶ Doc. 8155/18.

- d) started or, as appropriate, continued work on a number of important legislative proposals in the area of VAT, including on the details of the definitive system of VAT, rates of VAT, special scheme for SMEs, etc.;
 - e) started technical analysis of the latest legislative proposals in the area of excise duties.
8. The Code of Conduct Group (Business Taxation) continued further its work on the various matters falling within its mandate, including the EU list of non-cooperative jurisdictions for tax purposes, as foreseen in the Council conclusions of 5 December 2017¹⁷ as well as the discussions on the Guidance on the interpretation of the third criterion. The results of the work of the Code of Conduct Group was submitted, in coordination with the HLWP, to ECOFIN on 22 June 2018.¹⁸
9. More detailed information on individual dossiers can be found below.

A. Initiatives in the area of EU tax law

Building a fair, competitive and stable corporate tax system for the EU

a) Common Corporate Tax Base (CCTB)

10. As part of relaunching the 2011 Common Consolidated Corporate Tax Base ("CCCTB") proposal, the Commission put forward a proposal for a Council Directive on a Common Corporate Tax Base, hereafter "CCTB."¹⁹ The proposal lays down common rules for computing the tax base of multinational companies within the EU.
11. On 6 December 2016, the ECOFIN Council took the view²⁰ that work should focus as a priority on the "*elements of a common tax base*" and invited Member States, as a start, to "*concentrate their efforts on the rules for calculating the tax base and, in particular, on the new elements of the relaunched initiative (chapters I to V)*". Furthermore, "*Member States should then concentrate on the remaining elements of the common base (chapters VI to XI)*".

¹⁷ Doc. 15429/17.

¹⁸ Doc. 9637/18.

¹⁹ Doc. 13730/16.

²⁰ Doc. 15315/16.

12. The Maltese Presidency focused technical discussions on the novel elements of the proposal, that is the super-deduction for research and development expenses to support innovation (Article 9), the new allowance for growth and investment to address the debt financing bias (Article 11), and the temporary loss relief (Article 42). The issue of the right mix between harmonisation and flexibility in the context of increased international competition being constantly resurfacing, the ECOFIN Council held a policy debate on the matter on 23 May 2017. At this occasion, several ministers supported the objective of an as broad as possible corporate tax base to preserve national tax revenues.
13. During the Estonian Presidency, the WPTQ concluded the article-by-article examination of chapters I to V, and a debate was initiated on the extent to which the CCTB proposal could provide an appropriate policy response to the direct taxation challenges posed by the digital economy.
14. In its tax policy roadmap²¹ and following a strategic discussion on the way forward on this file initiated at the HLWP meeting of 17 January 2018, the Bulgarian Presidency announced its intention to "*limit immediate work on defining as broad as possible common corporate tax base at the EU level,*" after closing the article-by-article examination of the remaining chapters.
15. The first two WPTQ meetings (18 January and 1 February 2018) allowed to close the article-by-article examination of the CCTB proposal and discussed a number of horizontal aspects: impact on national tax revenues, level of harmonisation, scope and flexibility for Member States. The third meeting on 22 February 2018 discussed a preliminary Presidency compromise text on chapter IV.
16. During the meeting of the HLWP on 28 February 2018, delegations agreed to the idea of evaluating the impact of the CCTB proposal on national tax revenues using a common methodology and common hypotheses (Presidency compromise text) for the sake of comparability of results, on a voluntary basis. Member States remain free to run an evaluation on their national tax revenues based on different/complementary scenarios or not to run the evaluation at all, but it was agreed that those Member States that will run the evaluation do it, as a minimum, based on these common hypotheses.

²¹ Doc. 5668/18.

17. The following two WPTQ meetings (8 March and 16 April 2018) therefore focused technical work on the key provisions of the CCTB proposal for the purpose of evaluating its impact on national tax revenues and the HLWP meeting of 18 April 2018 endorsed the Presidency note that resulted from this work.²²
18. This voluntary evaluation will be done in the course of 2018 by Member States (who hold the data necessary for running such exercise) with the technical assistance of the Commission services. A technical workshop was organised by the Commission services for this purpose on 23-24 April 2018 in Seville, Spain.
19. The informal HLWP on 29 May 2018 discussed EU response to recent global tax policy trends in relation to future policy actions, including in the area of corporate taxation with a view to ensuring fair and effective taxation across the EU and at the same time creating and maintaining an attractive climate for investment.

b) Common Consolidated Corporate Tax Base (CCCTB)

20. The Commission also put forward a proposal for a Council Directive on a Common Consolidated Corporate Tax Base, hereafter "CCCTB."²³ The proposal complements the CCTB proposal with the consolidation element.
21. The proposal for a CCCTB lays down the conditions for having a group, including technical rules on consolidation, reorganisations, how to treat losses and unrealised capital gains, on transactions between the group and entities outside the group, for instance regarding withholding taxes and credit relief. The proposal also sets out rules for the apportionment of profit, by describing mechanisms of weights to allocate the consolidated base to the eligible Member State.

²² Doc. 8155/18.

²³ Doc. 13731/16.

22. In terms of working method, the ECOFIN Council took the view²⁴ on 6 December 2016 that "*tax consolidation should be examined without delay once the discussion on these elements has been successfully concluded*" - without prejudice to the competence of incoming Presidencies to organise their work as appropriate.

Mandatory Disclosure and Exchange rules on Reportable Cross-border Tax Arrangements

23. The Commission presented the proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements on 21 June 2017.²⁵ The main purpose of this initiative is to strengthen tax transparency and fight against aggressive tax planning by including into the existing Council Directive 2011/16/EU on administrative cooperation in the field of taxation²⁶ (DAC) new provisions, which would require Member States to:
- i. lay down rules for mandatory disclosure to national competent authorities of potentially aggressive tax planning schemes with a cross-border element ("arrangements") by the "intermediaries" (e. g. tax advisers or other actors that are usually involved in designing, marketing, organising or managing the implementation of such "arrangements"); and
 - ii. ensure that national tax authorities automatically exchange this information with the tax authorities of other Member States by using the mechanism provided for in DAC.

²⁴ Doc. 15315/16.

²⁵ Doc. 10582/17.

²⁶ OJ L 64, 11.3.2011, p. 1, as amended.

24. The issues covered by this legislative proposal are high on the EU and wider international agenda. In its conclusions of 25 May 2016, on an external taxation strategy and measures against tax treaty abuse, the Council of the EU invited the Commission "to consider legislative initiatives on mandatory disclosure rules inspired by Action 12 of the OECD BEPS project²⁷ with a view to introducing more effective disincentives for intermediaries who assist in tax evasion or avoidance schemes."²⁸
25. Following preparatory work at WPTQ and HLWP level, on 13 March 2018, the Council reached a political agreement on the Presidency compromise text and agreed on a Council statement to be entered into the minutes.²⁹
26. On 25 May 2018, ECOFIN Council adopted this Directive.³⁰

Interest and Royalties Directive (IRD) recast

27. In November 2011, the Commission presented a proposal to recast Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (hereafter "IRD"), aiming at solving some shortcomings resulting from the limited scope of the Directive.
28. A split of the file focusing on a new common anti-abuse rule was presented by the Latvian Presidency at the ECOFIN Council on 19 June 2015 for political agreement. However, such an agreement could not be reached as some Member States insisted on the inclusion of a provision setting up a minimum effective level of taxation, in particular of royalty payments, which would require substantial technical work.

²⁷ The OECD Base Erosion and Profit Shifting (BEPS) Action Plan, was endorsed in 2015 by G20 Finance Ministers and G20 Heads of State, and it was welcomed by ECOFIN in its December 2015 "Council conclusions on base erosion and profit shifting (BEPS) in the EU context (doc. 15150/15, point 6).

²⁸ Doc. 9452/16, point 12.

²⁹ Doc. 7213/18, point 3, and doc. 6804/18.

³⁰ OJ L 139, 05.06.2018, p. 1.

29. During past Presidencies, substantial work was devoted to examining different alternatives to include a Minimum Effective Taxation (MET) clause in the IRD. Not all Member States were, however, in a position to support the proposed compromises put on the table by previous Presidencies.
30. The state of play of this file was presented at the HLWP on 28 February 2018, where a strategic discussion aiming to explore a possible way forward was held. At this occasion the Presidency suggested to focus immediate work on exploring an EU coordinated defensive measure targeted at jurisdictions listed on the basis of non-modified-nexus-compliant IP regimes (criterion 2.1.) or because facilitating offshore structures or arrangements aimed at attracting interest/royalty payments which do not reflect real economic activity in the jurisdiction (criterion 2.2.), as well as on a possible revision of the Code of Conduct Group (business taxation) mandate, and postpone agreement on the IRD recast (without a MET clause) to that moment when these discussions will have concluded. Further discussions on the way forward may be envisaged.

Digital taxation package

31. Following the conclusions of the Council of 5 December 2017 on responding to the challenges of taxation of profits of the digital economy the Commission presented its "digital taxation package" on 21 March 2018:
- i. a proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence (based on TFEU Article 115);
 - ii. a Commission recommendation relating to the corporate taxation of a significant digital presence;
 - iii. a proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services (based on TFEU Article 113);
 - iv. a Communication "Time to establish a modern, fair and efficient taxation standard for the digital economy".

32. The Presidency proceeded to ensure the examination of the package without delay and as a matter of priority.
33. On a strategic level, exchanges took place in the margins of the March 2018 European Council (Leaders Agenda debate), at the informal Coreper lunch on 11 April 2018, at the HLWP on 18 April 2018 and at the informal meeting of Ministers on 28 April 2018.
34. Technical examination started on 11 April 2018. Subsequently meetings at technical level took place on 2 and 14 May to discuss digital services tax proposal and on 4 and 5 June 2018 to discuss significant digital presence and the recommendation. Following these discussions on the digital services tax proposal, the significant digital presence directive and a discussion on the Commission recommendation, the first Presidency compromise text on the draft Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services was discussed on 13 June at the WPTQ level.
35. The Bulgarian Presidency organized a general discussion on digital taxation at the informal meeting of ECOFIN Ministers at the end of April 2018. During the meeting most Member States re-affirmed their position that the EU needs to address the challenges linked to the digitalization of the economy and stated that a comprehensive solution has to be reached on global level.
36. To take account of the strategic discussions and to accord prominence to the topic, the Bulgarian Presidency prepared a roadmap to guide, during this Presidency term, the direction of work in the field of digital taxation.³¹ This roadmap is also set out in Annex I of this report.

³¹ Doc. 9052/18

Developments at international level with regard to digital taxation

37. The OECD Task Force on Digital Economy met on 13-15 March 2018 in Paris. The Task Force adopted the interim report on tax challenges arising from digitalisation which is an important milestone for work at international level.³² The next meeting of the Task Force has provisionally been scheduled for 9-11 July 2018.
38. The first meeting of G20 finance ministers and central bank governors under Argentina's Presidency of G20 took place on 19-20 March in Buenos Aires, Argentina. The agenda of that meeting also included a discussion on tax matters, in particular as regards tax transparency and taxation of the digital economy.
39. President-in-Office of the Council of the European Union (Minister of Finance of Bulgaria) , Mr Vladislav Goranov, attended the meeting on behalf of the European Union. The discussions resulted in a communiqué.³³ On digital taxation the OECD interim report was welcomed, but there was no agreement on the features of the digitalized economy and the required policy response. The communiqué mentions the commitment to continue working together to seek a consensus based solution by 2020 with an update in 2019.

EU anti-fraud and tax information exchange agreement with Liechtenstein and other non-EU countries (Andorra, Monaco, San Marino and Switzerland)

40. On 7 November 2006, the Council authorised the Commission to negotiate with the Principality of Liechtenstein an agreement to counter fraud and all other illegal activities to the detriment of public financial interests, including the resources and expenditures, in particular grants and taxes³⁴ The aim was to get an agreement which could serve as a model for negotiating anti-fraud and tax information exchange agreements with other non-EU Countries (Andorra, Monaco, San Marino and Switzerland).

³² <http://www.oecd.org/ctp/tax-challenges-arising-from-digitalisation-interim-report-9789264293083-en.htm>

³³ <https://www.g20.org/en/press/press-kit/press-releases/communique-first-g20-meeting-finance-ministers-and-central-bank>

³⁴ Doc. 12977/06.

41. On 11 December 2008, the Commission adopted a proposal for a Council Decision on the signing and conclusion, on behalf of the European Community, of the Cooperation Agreement between the European Community and its Member States, of the one part, and the Principality of Liechtenstein, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests.³⁵
42. Following the conclusions adopted by the ECOFIN Council on 10 February 2009,³⁶ Liechtenstein was expected to encompass in the agreement with the EU at least a similar scope of obligations as it had agreed with third countries. The Council also mandated the Commission to obtain changes to ensure effective administrative assistance and access to information with regard to all forms of investments, in particular foundations and trusts.
43. On 9 June 2009, recalling the Council conclusions of 10 February 2009, the Council urged the Commission to swiftly present the negotiating result on the anti-fraud agreement with Liechtenstein and noted the intention of the Commission to present negotiating directives for anti-fraud agreements with the Principality of Andorra, the Principality of Monaco, the Republic of San Marino and with the Swiss Confederation.³⁷
44. On 1 July 2009, the Commission submitted to the Council a Recommendation for a mandate authorising the Commission to open negotiations for anti-fraud and tax information exchange agreement with Andorra, Monaco, San Marino and Switzerland.³⁸ On the basis of this recommendation, a draft negotiating mandate was prepared (doc. 14523/09).³⁹ However, the discussions were put on hold as priority was given to the finalisation of the negotiations with Liechtenstein.

³⁵ Doc. 17247/08.

³⁶ Doc. 6116/09 and doc. 6069/09 Press 32.

³⁷ Doc. 10252/4/09 REV 4.

³⁸ Doc. 11640/09.

³⁹ Doc. 14523/09.

45. On 23 November 2009, the Commission presented amended proposals regarding the signing⁴⁰ and on the conclusion⁴¹ of the agreement with Liechtenstein. A revised version of the proposal regarding the Conclusion of the agreement was presented by the Commission⁴² which took into account the new provisions of the Treaty on the Functioning of the European Union.
46. The file was discussed in Coreper on 12 May 2010. The discussions revealed that further work was necessary, in particular due to the requests by two delegations to add an external conditionality clause and to clarify the link with the transitional period in the savings taxation directive.
47. The Maltese Presidency relaunched discussions at the HLWP meeting of 6 April 2017. It was agreed at this occasion to continue to concentrate first on the anti-fraud and tax information exchange agreement with Liechtenstein, and identify points to be technically updated before the possible adoption of the Commission proposals regarding the signing⁴³ and the conclusion⁴⁴ of the agreement. In this regard, it was agreed that the HLWP would be informed on the findings of the Commission at one of its next meetings as soon as their technical scrutiny has been finalised.
48. On 16 May 2018, the Commission informed the HLWP on the state of play of the agreement. Regarding administrative cooperation on tax matters, it was noted that the draft agreement was overtaken by the EU-Liechtenstein agreement on the taxation of savings as amended in 2015, while on fraud matters the draft agreement would have only limited value. One Member State entered a scrutiny reservation, in particular regarding the mutual legal assistance aspects of the draft agreement. Based on the outcome of the debate, the Commission may examine whether it is appropriate to propose the withdrawal of its recommendations to the Council on signing and the conclusion of the agreement.

⁴⁰ Doc. 16989/09.

⁴¹ Doc. 16990/09.

⁴² Doc. 16990/2/09 REV 2.

⁴³ Doc. 16989/09.

⁴⁴ Doc. 16990/2/09 REV 2.

Council conclusions on the "EU standard provision on good governance in tax matters for agreements with third countries"

49. On 14 May 2008, the existing EU standard provision on good governance in tax matters was adopted by the ECOFIN Council, which contained a standard clause on commitment to the principles of good governance in the tax area, to be introduced in relevant agreements concluded by the EU and third countries or third-country groupings. Good governance in the tax area was defined as meaning the principles of transparency, exchange of information and fair tax competition.
50. At its meeting of 16 April 2015 HLWP discussed the negotiation of tax provisions in agreements with third countries and agreed that "*a coordinated tax clause that should be included in free trade agreements the EU concludes with third countries, should take into account discussions in relevant Council preparatory bodies*" (ECOFIN report to the European Council of June 2015, doc. 10161/15, paragraph 64).
51. In its conclusions on an external taxation strategy and measures against treaty abuse from 25 May 2016 (doc. 9452/16) the Council supported "*the need to update the principles of tax good governance to be used as the new standard provision in future negotiations with third countries*" and invited the Code of Conduct Group "*to examine key elements which should be contained in a clause to be inserted in agreements between the EU and those countries*".
52. At the Code of Conduct Group meeting of 20 July 2016, the Group mandated the subgroup on third countries (CoC subgroup) to start work, with the task of preparing the ground for further discussions at Group level.

53. On 16 March 2018, at the meeting of the CoC subgroup, an updated version of the text of the draft Council conclusions as suggested by the Presidency was discussed. Delegations largely supported it.
54. Consequently, the Presidency circulated to delegations for approval by e-mail a final compromise of the draft Council conclusions under the silence procedure, which was completed successfully on 6 April 2018.
55. On 25 May 2018, ECOFIN adopted the conclusions as set out in the Annex to 8344/18 as an "A" item and agreed on the publication of those conclusions in the Official Journal.

Value added tax (VAT)

56. Following up on its VAT Action Plan - Towards a Single EU VAT area - of 7 April 2016, the Commission proposed a significant number of legislative proposals in the field of VAT (most recently, on 25 May 2018, a legislative proposal on detailed technical measures for the operation of the definitive VAT system and a proposal to extend application of the rules governing optional reverse charge mechanism and the Quick Reaction Mechanism). As a whole, those proposals aim at modernising the VAT system to adapt it to the digital economy and the needs of SMEs, to tackle the VAT gap and improve administrative co-operation in the area of VAT .
57. The following legislative dossiers in the area of VAT have been dealt with during the Bulgarian Presidency by the Council preparatory bodies:
 - a) A package of three legislative proposals – the first step towards the definitive system:
 - Proposal for a Council Directive amending Directive 2006/112/EC as regards harmonising and simplifying certain rules in the value added tax system and introducing the definitive system for the taxation of trade between Member States;
 - Proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards certain exemptions for intra-Community transactions;

- Proposal for a Council Regulation amending Regulation (EU) No 904/2010 (as regards the certified taxable person and as regards measures to strengthen administrative cooperation in the field of VAT);
- b) Amended proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of value added tax
- c) Proposal for a Council Directive amending Directive 2016/112/EC on the common system of value added tax as regards the obligation to respect a minimum standard rate
- d) Proposal for a Directive amending Directive 2006/112/EC as regards rates of value added tax;
- e) Proposal for a Directive amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises;
- f) Proposal for a Council Directive amending Directive 2006/112/EC as regards the introduction of the detailed technical measures for the operation of the definitive VAT system for the taxation of trade between Member States;
- g) Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the period of application of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud and of the Quick Reaction Mechanism against VAT fraud;
- h) Proposal for a Council Directive amending Directive 2006/112/EC, as regards rates of value added tax applied to books, newspapers and periodicals;

- i) Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the temporary application of a generalised reverse charge mechanism (GRCM) in relation to supplies of goods and services above a certain threshold;
- j) the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax.

a) *The first step towards VAT Definitive System - VAT "quick-fix"*

- 58. On 4 October 2017, the Commission issued three legislative proposals that pave the way towards a VAT Definitive System: (i) a proposal for a Council Directive amending Directive 2006/112/EC as regards harmonising and simplifying certain rules in the value added tax system and introducing the definitive system for the taxation of trade between the Member States⁴⁵; (ii) a proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards certain exemptions for intra community transactions⁴⁶ and (iii) a proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards the certified taxable person.⁴⁷
- 59. The idea being to gradually introduce the definitive system, those proposals set out, as a first step, the cornerstone of the definitive system, under which cross-border supplies will be taxed in the Member State of destination with the supplier being liable as a rule. Those proposals tackle intra-Union B2B supplies of goods. Technical detailed provisions for their actual implementation were tabled by the Commission on 25 May 2018.

⁴⁵ Doc. 12882/17.

⁴⁶ Doc. 12881/17.

⁴⁷ Doc. 12880/17 (which was later amended by a legislative proposal set out in doc. 14893/17, by incorporating the provisions on "certified taxable person" into that new proposal to amend Regulation No. 904/2010).

60. The proposals further set out, in reply to the Council conclusions of 8 November 2016, short term improvements to the current system: (i) simplification and harmonisation of rules regarding call-off stock arrangement, (ii) the VAT identification number of the customer becomes a substantive condition for exempting the intra-Community supply of goods, (iii) simplification of chain transactions in order to enhance legal certainty and (iv) harmonisation and simplification of the rules for proving the intra-Community transport of goods for the purposes of applying the exemption. The Commission proposed that simplifications in points (i), (iii) and (iv) above would only apply where certified taxable persons (a notion defined in the proposal) are involved.
61. Particular attention was devoted to the following legislative proposals during the term of the Bulgarian Presidency
62. [In the course of the negotiations, Member States deemed appropriate and necessary, that the provisions of this Commission proposal relating to the certified taxable person [and the text of amendments to Article 402 of the VAT Directive (2006/112/EC)] are discussed in the context of other legislative proposals of VAT (proposals on technical details of the definitive VAT system/VAT rates). In this context, it was therefore appropriate and necessary, in order to allow for early progress and to solve important issues in the VAT area, to advance the work on the core of this Commission proposal to amend Directive 2006/112/EC as regards harmonising and simplifying certain rules in the value added tax system and the proposal for Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards certain exemptions for intra-Community transactions, while noting that the remaining parts of the proposal relating to the certified taxable person [and Article 402 of the VAT directive] will require further discussion.]
63. [On 22 June 2018, ECOFIN Council was [not] in a position to reach a general approach on this legislative proposal⁴⁸, [which will be adopted following legal-linguistic revision and once the European Parliament has delivered its opinion].

⁴⁸ [to be updated]

b) Administrative co-operation in the area of VAT

64. On 30 November 2017, the Commission presented an amended proposal for a Council Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of value added tax.⁴⁹ Since the Commission had tabled on 4 October 2017 a proposal amending Regulation (EU) No 904/2010,⁵⁰ and in particular Articles 17 and 31 thereof to apply from 1 January 2019 to certified taxable persons, the amended proposal includes these provisions.
65. This initiative is part of the ‘fair taxation package for the creation of a single EU value added tax area’ set out in the Commission roadmap for a more united, stronger and more democratic Union. It aims at tackling cross-border VAT fraud by implementing the Council, European Parliament and European Court of Auditors recommendations and drastically and swiftly improving how tax administrations cooperate together and with other law enforcement bodies.
66. The proposal aims at adding measures specifically designed to tackle the main types of cross-border fraud schemes across the EU to Council Regulation (EU) No 904/2010⁵¹, the reference legal basis for administrative cooperation and the fight against VAT fraud.
67. The Bulgarian Presidency has granted high priority for this file. In its tax policy roadmap, the Bulgarian Presidency committed to seek agreement on the key elements on the basis of the legislative proposal presented by the Commission.⁵²
68. On 25 May 2018, ECOFIN Council was not in a position to agree on a general approach on this important legislative proposal. [Nevertheless, following the exchange of views at the HLWP of 6 June 2018, the 22 June 2018 ECOFIN Council reached a general approach on an updated Presidency compromise text.]⁵³

⁴⁹ Doc. 14893/17.

⁵⁰ Doc. 12880/17.

⁵¹ Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (recast).

⁵² Doc. 5668/18, point 34.

⁵³ [to be updated]

c) VAT rates: making the minimum standard rate permanent and VAT rates reform

69. On December 2017, the Commission issued a proposal for a Council Directive amending Directive 2016/112/EC on the common system of value added tax as regards the obligation to respect a minimum standard rate.⁵⁴
70. This Directive amends Article 97 of the VAT Directive, by making permanent the current minimum standard VAT rate of 15 % in the EU.
71. This Directive was adopted by the Council at its meeting of 22 June 2018.⁵⁵
72. On 18 January 2018, the Commission issued a proposal for a Directive amending Directive 2006/112/EC as regards rates of value added tax.⁵⁶ The objective of this legislative proposal is to introduce the rules on setting of VAT rates across the EU, with effect from the entry into force of definitive arrangements for the taxation of trade between Member States.
73. In summary, and most essentially, with this specific legislative proposal, the Commission proposes to:
- i) amend the EU rules on setting of reduced VAT rates (e.g. abolish current transitional provisions allowing to temporarily derogate from the general rules; revise Article 98 of the VAT Directive, etc.);
 - ii) grant Member States more freedom in their setting of rates (however Member States would have to ensure that their weighted average VAT rate exceeds 12% at any given time);
 - iii) introduce a "negative list" of goods and services on which application of reduced rates is not permissible (instead of the current "positive" list)
74. The Presidency started technical examination of this file at WPTQ level.

⁵⁴ Doc. 10582/17 + ADD 1, ADD2, ADD 3.

⁵⁵ Doc. 7635/18.

⁵⁶ Doc. 5335/18.

d) Simplification of VAT rules for SMEs

75. In January 2018, the Commission tabled the legislative proposal for a Directive amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises.⁵⁷
76. In the view of the Commission, the revision of rules applicable to SMEs was dictated by the following three main reasons:
- i) despite the fact that Member States may exempt SMEs from VAT – an option that is widely used – SMEs continue to suffer from disproportionate VAT compliance costs due to how the SME exemption is designed;
 - ii) the current system has distortive effects on competition on both domestic and EU markets;
 - iii) the review provides the opportunity to encourage voluntary compliance and therefore help reduce revenue losses due to non-compliance and VAT fraud.
77. The proposal consists of:
- i) revision of the rules on VAT exemption for small enterprises and
 - ii) simplification of VAT obligations for both exempt and non-exempt small enterprises.
78. It should be noted that the proposal introduces simplification measures also for non-exempt SMEs – something that is not foreseen under the current rules in the VAT Directive.
79. The Presidency started the technical examination of this file at WPTQ level.

e) VAT treatment of e-publications

80. On 1 December 2016, the Commission submitted a proposal for a Council Directive amending Directive 2006/112/EC, as regards rates of value added tax applied to books, newspapers and periodicals.⁵⁸

⁵⁷ Doc. 5334/18.

⁵⁸ Doc. 14823/16.

81. In its current form, Directive 2006/112/EC on the common system of value added tax provides that electronically supplied services, including electronically supplied publications, are taxed at the standard rate. Publications on means of physical support may be taxed at a reduced VAT rate, and some Member States were also granted the possibility to continue to apply super-reduced rates, including exemptions with the deductibility of the VAT paid at the preceding stage (zero rate).
82. In line with the objectives developed in its Digital Single Market Strategy, the Commission has undertaken to modernise VAT for the digital economy, and has accordingly proposed to open up the possibility of applying reduced, super-reduced, and zero rates to electronic publications.
83. The Council examined this proposal during the Council WPTQ meetings of 26 January, 8 February, 8 March and 4 April 2017. The ECOFIN Council held an orientation debate on 21 March 2017. During that orientation debate, most Member States confirmed their willingness to open the reduced rates to electronically supplied publications. Super-reduced rates and zero rates, however, given their extraordinary nature, should only be granted to electronic publications under the same conditions as the ones under which they are granted to paper publications. It was also recalled that Member States should maintain discretion to set VAT rates for publications and restrict the scope of reduced VAT rates, including, subject to objective justification, where digital publications offer the same reading content.
84. During the meeting of the ECOFIN Council on 16 June 2017, no agreement could be reached, due to diverging views of Member States.
85. Following the HLWP meeting of 16 May 2018 the dossier was submitted to 25 May 2018 ECOFIN Council, where unanimity could not be obtained, as one Member State could not support the compromise text. Despite these efforts by the Presidency, it can be concluded that more time will be needed to make further progress with this file.

f) General reverse charge mechanism (GRCM)

86. On 21 December 2016, the Commission presented a Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the temporary application of a generalised reverse charge mechanism (GRCM) in relation to supplies of goods and services above a certain threshold.⁵⁹
87. A Presidency compromise text was presented for an orientation debate at the Council (ECOFIN) meeting on 21 March 2017.⁶⁰
88. Following further technical work, the ECOFIN Council was invited to reach a general approach on the text at its meeting on 16 June 2017.
89. During the meeting of the ECOFIN Council on 16 June 2017, no agreement could be reached, due to diverging views of Member States.
90. Following the HLWP meeting of 16 May 2018 the dossier was submitted to the May ECOFIN Council, where unanimity could not be obtained due to diverging political positions of some Member States. Despite these efforts by the Presidency, it can be concluded that more time will be needed to make further progress with this fil

g) Campione d'Italia and the Italian waters of Lake Lugano

91. On 8 May 2018, the Commission tabled a proposal for a Council Directive amending Directives 2006/112/EC and 2008/118/EC as regards the inclusion of the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano in the customs territory of the Union and in the territorial application of Directive 2008/118/EC

⁵⁹ Doc. 15817/16.

⁶⁰ Doc. 7118/17.

92. This proposal has also a link with VAT as Italy considers that the inclusion of the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano in the EU customs territory and in the scope of the excise Directive is not incompatible with maintaining the application of a special tax system on value added tax and, in particular, with continuing to exclude these territories from the territorial application of Directive 2006/112/EC on the common system of value added tax. The inclusion of these territories in the EU customs territory therefore only requires a formal change to the VAT Directive, moving them from Article 6(2) (territories not forming part of the EU customs territory excluded from the territorial application of the VAT Directive) to Article 6(1) (territories forming part of the EU customs territory excluded from the territorial application of the VAT Directive).

h) EU - Norway agreement on administrative co-operation in the area of VAT

93. On 9 December 2014 the Council (ECOFIN) adopted a Decision authorising the Commission to open negotiations for an agreement between the European Union and Norway on administrative cooperation, combating fraud and recovery of claims in the field of value-added tax⁶¹ and Directives for the negotiations on this future agreement.⁶²

94. The agreement will establish a common European framework for administrative cooperation between EU Member States and Norway in the field of VAT in order to exchange information and best practices and cooperate for the recovery of claims in a manner similar to the way it takes place between Member States.

95. At the meeting of 8 November 2016, ECOFIN took note of the state of play on these negotiations, and of the text of the draft agreement,⁶³ which could be supported by all MS delegations as a possible outcome of these negotiations, on the basis of which the Commission was invited to continue and complete these negotiations.

⁶¹ Doc. 15942/14 and doc. 16153/14.

⁶² Doc. 15942/14 + COR 1.

⁶³ Doc. 13607/2/16 and, for the draft text of the agreement – doc. 13527/16.

96. The agreement was initialled by the EU and Norway in May 2017 and the outcome of negotiations was discussed at the WPTQ meeting of 28 September 2017.
97. On 26 October 2017 the Commission issued the proposals⁶⁴ for Council decisions authorising signature and conclusion of the mentioned agreement.
98. Following the analysis of these Commission proposals at the Fiscal Attachés' meeting of 14 November 2017, all delegations were in a position to lift their remaining reserves and agreed that the Council decision on signature of the agreement is accompanied by a Council statement, which will be entered into the Council minutes and form an integral part of the context in which the Council adopts the decision to authorise the signature of the agreement. Following the legal-linguistic revision,⁶⁵ the Council Decision on signature of the agreement, accompanied by the Council statement has been adopted on 5 December 2017 at the meeting of the ECOFIN Council.⁶⁶
99. The ceremony of signing the agreement took place on 6 February 2018, in Sofia. The agreement was signed by Mr. Vladislav Goranov, President-in-Office of the Council of the European Union (Minister of Finance of Bulgaria) and Ms. Siv Jensen, Minister of Finance of the Kingdom of Norway.
100. The European Parliament adopted on 29 May 2018 its legislative resolution on the conclusion of this agreement.⁶⁷ [The Council adopted its decision on the conclusion of this agreement on 22 June 2018.⁶⁸] In accordance with its Article 44(2) this agreement will enter into force the first day of the second month following the date on which the EU and Norway have notified each other of the completion of the internal legal procedures.

⁶⁴ Doc. 13773/17 + ADD1 and doc. 13774/17 + ADD1.

⁶⁵ Doc. 14381/17, 14382/17 and 14390/17.

⁶⁶ Doc. 14703/17 + COR 1.

⁶⁷ European Parliament legislative resolution of 29 May 2018 on the proposal for a Council decision on the conclusion, on behalf of the European Union, of the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of Value Added Tax (C8-0407/2017 – 2017/0272(NLE))

⁶⁸ [to be updated]

Excise duties

a) Campione d'Italia and the Italian waters of Lake Lugano

101. As stated above, on 8 May 2018, the Commission tabled a proposal as regards their inclusion in the customs territory of the Union and in the territorial application of Directive 2008/118/EC.
102. At Italy's request, the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano should be included in the EU customs territory and in the territory of the Union to which Directive 2008/118/EC concerning the general arrangements for excise duty⁶⁹ (the 'excise Directive') applies. The geographic location of the two territories as Italian enclaves within the territory of Switzerland has historically justified their exclusion from the EU customs territory but Italy considers this exclusion to be no longer necessary.

b) Common provisions for excise duties

103. Furthermore, on 25 May 2018, the Commission proposed to recast Directive 2008/118/EC which lays down the common provisions which apply to all products subject to excise duties (alcohol, tobacco and energy)
104. The proposed recast Directive contains improvements as suggested in the report of the Council and the European Parliament and in the conclusions of the Council on the implementation and evaluations of Directive 2008/118/EC. At the same time it aligns provisions of Directive 2008/118/EC with the evolution of customs and other relevant legislation and to procedural requirements resulting from the Treaty of Lisbon. The modifications envisaged relate, among others, to excise and customs interaction and intra-EU movements of excise goods released for consumption

⁶⁹ Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ L 9, 14.1.2009, p. 12).

105. On 25 May 2018, the Commission also tabled a Proposal for a Council Directive amending Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages to reshape the rules governing excise duty on alcohol within the EU, paving the way for a better business environment and reduced costs for small alcohol-producing businesses and better protection for consumer health.

106. Concretely, the proposal on alcohol taxation aims at:

- i) Putting in place a uniform certification system, recognisable in all EU countries confirming the status of independent small producers throughout the Union. This will reduce the administrative and compliance costs for small producers who should benefit from reduced excise rates under certain conditions.
- ii) Ensuring a precise and consistent classification of cider across the EU, the current absence of which is a major obstacle for small cider producers who do not have access to the reduced rates afforded to small beer and spirit producers.
- iii) Clarifying the correct manufacturing processes and conditions for denatured alcohol in the EU. Such alcohol is used in the production of goods such as cleaning products, screen wash, perfume and anti-freeze and is exempt from excise duty. This exemption can be exploited by unscrupulous producers who use denatured alcohol to make and sell potentially dangerous counterfeit drinks without paying tax and, even more importantly, endangering consumer health. Today's proposal will establish a modern system for reporting the misuse of certain alcohol formulations so that they will no longer be usable as denaturants.

- iv) Using of IT for tracking partially denatured alcohol: where partially denatured alcohol consists of at least 90% alcohol the new rules will replace the outdated paper-based procedures used to track movement of such products with the mandatory use of the Excise Movement and Control System (EMCS). This will make it easier to follow movements of these high-risk products in real time, reducing the fraudulent use of this exemption and protecting consumers.
- v) Increasing the threshold for lower strength beer that can benefit from reduced rates from 2.8% volume to 3.5% volume, to provide an incentive for brewers to be innovative and create new products. This should encourage consumers to choose low-strength alcoholic drinks over standard ones, reducing alcohol intake.
107. The proposal on the common provisions includes measures in general excise duty rules to remove barriers for SMEs. This will allow SMEs to use modern IT systems when they wish to do so, rather than an outdated paper-based system and lifts their existing obligation on distance sellers to employ tax representatives. Member States can currently insist that distance sellers of excise goods employ tax representatives, which can make legitimate trade financially unviable.

The common system of Financial Transaction Tax (FTT)

108. 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. Given that unanimous agreement by all Member States could not be attained, on the basis of the request of eleven Member States, and in accordance with the authorization of the Council of 22 January 2013⁷⁰, and consent of the European Parliament's of 12 December 2012, the Commission on 14 February 2013 submitted a proposal for a Council Directive implementing enhanced cooperation in the area of financial transaction tax.

⁷⁰ OJ L 22, 25.1.2013, p. 11.

109. At this stage, 10 Member States continue to participate in the enhanced co-operation in the area of FTT: Austria, Belgium, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain (hereafter referred to as "participating Member States").⁷¹
110. Following the preparatory work by the WPTQ, and, where relevant, by the HLWP, the state of play on this dossier has been discussed at the following meetings of ECOFIN Council:
- 6 May 2014⁷², 7 November 2014⁷³, 9 December 2014⁷⁴, and 8 December 2015⁷⁵;
 - 17 June 2016⁷⁶, where, as a follow-up to the statement of ten participating Member States that was inserted into the minutes of the 8 December 2015 ECOFIN⁷⁷, the Council took note of the state of play on this dossier regarding a number of selected issues (application of "issuance" and "residence" principles and the territorial scope for the FTT⁷⁸; exemption from FTT of market making activities⁷⁹; scope of transactions in derivatives contracts to be subject to the FTT⁸⁰);
 - 6 December 2016⁸¹, where the Council took note of the ongoing discussion on the constitutive parts (the "building blocks")⁸² of the FTT and the assembly of those "building blocks" into possible FTT models. The Council also took note of the discussions on issues relating to cost efficiency of possible FTT collection models.

⁷¹ On 16 March 2016, the Estonia left the enhanced co-operation on FTT. See doc. 7808/16.

⁷² Doc. 9399/14 and doc. 9576/14.

⁷³ Doc. 14949/14.

⁷⁴ Doc. 16498/14 and doc. 16753/14, points 36 to 46.

⁷⁵ Doc. 14942/15.

⁷⁶ Doc. 9602/16.

⁷⁷ Doc. 15112/15 ADD 1.

⁷⁸ Doc. 9602/16, point 6 to 8, and doc. 14942/15, point 7 to 11.

⁷⁹ Doc. 9602/16, point 9 to 12, and doc. 14942/15, point 15 to 17.

⁸⁰ Doc. 9602/16, point 13 to 15, and doc. 14942/15, point 18 to 19.

⁸¹ Doc. 13608/16.

⁸² Doc. 14942/15, point 3.

111. At the HLWP meeting of 18 April 2018, participating Member States indicated that they are evaluating the impact of the latest international developments and possible options, in particular as far as FTT revenue expectations are concerned.
112. In the light of the foregoing, as already indicated in the December 2016 ECOFIN report to the European Council on tax issues,⁸³ further work at the Council and its preparatory bodies will be required, before a final agreement on this dossier can be reached among the Member States participating in the enhanced co-operation, that respects the competences, rights and obligations of the Member States not participating in the enhanced co-operation on FTT.

⁸³ Doc. 15254/16, point 45.

B. Tax Policy Coordination

113. Important work in the area of tax policy coordination (outside of the scope of EU legislation in tax area) has been taken forward, as set out below.

a) Code of Conduct Group (business taxation)

114. The Code of Conduct Group met three times under the Bulgarian Presidency, on 14 February, 12 April and 31 May 2018.

115. The Group continued the work on the basis of the work package approved by the Council (ECOFIN) on 8 December 2015⁸⁴ and agreed on a new multiannual work package submitted for endorsement by the ECOFIN Council on 22 June 2018.

116. Its subgroup on third countries met on 2 February, 16 March and 4 May 2018, whilst its subgroup on the clarification of the third and fourth criteria met on 2 February 2018. Both were chaired by the Bulgarian Presidency.

117. The Group continued work on standstill and rollback of harmful preferential tax regimes, focusing on patent boxes and notional interest deduction regimes.

118. The Group's work was however mostly focused on the follow-up to the Council conclusions of 5 December 2017 on the EU list of non-cooperative jurisdictions for tax purposes and the related monitoring of commitments taken by jurisdictions in this context.

119. The Group reached in this respect various agreements, notably on:

- the listing and de-listing of several jurisdictions;
- procedural guidelines for carrying out the process of monitoring commitments concerning the EU list of non-cooperative jurisdictions for tax purposes (doc. 6213/18);
- a way forward for revising the geographical scope of the EU listing exercise.

⁸⁴ Doc. 14302/15.

120. The Group and its subgroup on third countries initiated discussions on further coordination of defensive measures against listed jurisdictions.
121. The Group agreed on a guidance on the interpretation of the third criterion, prepared by the subgroup on the clarification of the third and fourth criteria of the Code.
122. Furthermore, in line with the Council conclusions of 8 December 2015 and 8 March 2016, the HLWP held a strategic debate on the revision of the mandate of the Code of Conduct Group on 16 May 2018, at the occasion of its 20 years anniversary.
123. With regard to broader governance issues, the reform of the Group can be considered to have been settled through the Council conclusions of 8 December 2015 and 8 March 2016. The main developments over the last two years can in this respect be summarised as follows:
- a) a new Chair was elected at the beginning of 2017;
 - b) the Group decided that a new guidance on the interpretation of the gateway criterion is not needed but adopted in November 2016 a new guidance on the notification of tax measures under paragraph E of the Code;
 - c) the Group prepared an EU list of non-cooperative jurisdictions for tax purposes, which adopted by the ECOFIN Council on 5 December 2017.
 - d) as invited by paragraph 14 of the 8 March 2016 Council conclusions, political visibility of the work of the Group was ensured by involving the ECOFIN Council, e.g. through discussions on the EU list of non cooperative jurisdictions for tax purposes at the November 2016 and December 2017 ECOFIN Council meetings;

- e) the Group created a new subgroup on the clarification of the third and fourth criterion, which already almost completed its mandate, and a subgroup on third countries, which is now in charge of the technical monitoring process of the implementation by jurisdictions of their commitments (whilst the main Group remains responsible for procedural and political dialogues with jurisdictions during the monitoring process);
- f) the decision-making process, including the move from the agreed description to the assessment phase, is going smoothly;
- g) the transparency of the Group's work has increased with the publication of its results (in particular its 6-monthly reports to ECOFIN, now more substantial), the creation of new webpages on the Council's website (on the Group and on the EU list), the publication of a compilation of agreed guidance, the publication of compilations of letters seeking commitment sent to, and commitment letters⁸⁵ received from, jurisdictions, etc.
- h) the Group has developed a more systematic approach to reviewing the implementation of its guidance notes by Member States.

124. More detailed information on the work of the Group can be found in its report to the ECOFIN Council⁸⁶ and accompanying Council conclusions.⁸⁷

b) International developments

125. On 20 February 2018, ECOFIN Ministers were updated by the Commission on the US tax reform.

⁸⁵ When consent was received from these jurisdictions.

⁸⁶ Doc. 9637/18.

⁸⁷ Doc. 9638/18.

126. As follow-up, delegations agreed at the HLWP meeting of 28 February 2018 to send a letter to the OECD with a view to fast-track the review of the US tax reform in its Forum on Harmful Tax Practices (FHTP). As a result, the FHTP agreed in April 2018 to examine the FDII regime at its next meeting in October 2018.
127. At the HLWP meeting of 16 May 2018, delegations also agreed to send a letter to the OECD on BEPS Action 4 (interest limitation rule) to query about level playing field issues and whether they have any plans to make a minimum standard in this area, in follow up to Article 11(6) of the Anti Tax Avoidance Directive and considering the interest limitation rule introduced through the US tax reform. This letter was sent on 6 June 2018 following agreement at the HLWP meeting.

c) Tax in non-tax dossiers

128. 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, including on negotiations of agreements between the EU and third countries.
129. Recent alerts covered:
- a) Negotiations on the European Personal Pension Product (PEPP);
 - b) Trade Policy aspects of the US tax reform;
 - c) WHO Framework Convention on Tobacco Control (FCTC): preparation of the 8th Session of the Conference of the Parties (COP8) (Autumn 2018).
130. An updated overview of tax provisions in non-tax dossiers was discussed at the HLWP meeting of 18 April 2018.

TAX POLICY ROADMAP**OF THE BULGARIAN PRESIDENCY OF THE COUNCIL**

1. The Bulgarian Presidency starts in a period where EU Tax Policy has to respond to many trends, challenges and expectations, coming both from within the EU, its citizens and businesses and from international developments. This deserves a strategic look by the Council, through the High Level Working Party for Tax Issues (HLWP), at how the EU is considering Tax Policy issues both in the area of direct and indirect taxation.
2. Building on the work carried out in the HLWP so far (EU BEPS roadmaps, preparation of strategic Council conclusions on the future of VAT, the EU's external strategy etc.), the Presidency would like to go into further consideration of horizontal matters ahead of us and go beyond presenting the usual Presidency Programme.
3. Based on the comments received at the HLWP of January, it has prepared, under its own responsibility, a comprehensive Tax Policy Roadmap, for the months to come. This document may also serve as a source of inspiration beyond the Bulgarian Presidency term, as appropriate.

I. DIRECT TAXATION

1. In the area of direct taxation, as a starting point, the Bulgarian Presidency will base its work on the achievements and BEPS roadmap by previous Presidencies, taking into account the views expressed by Member States in informal bilateral contacts and against the background of the recent Commission initiatives, as well as the results of the OECD work on BEPS. Its evolution since 2015 reflects that the EU has already adopted an important number of BEPS-related EU legislative initiatives that are now being implemented in Member States.
2. Therefore the Bulgarian Presidency will also continue to take into account horizontal aspects such as tax certainty, international developments and competitiveness in the area of taxation, digitalisation of economies, overall tax burden for businesses, fair allocation of tax revenues, specific situations of multinationals, in order to address all relevant strategic aspects of work in the Council in the area of direct taxation.

I.1. SHORT-TERM WORK

3. The Presidency will aim at reaching agreement during the coming months on the following EU-BEPS work items:
 - A. *Transparency: Mandatory Disclosure Rules Directive ("DAC6")*
4. There have been significant advances at EU level in the area of tax transparency, notably through amendments to the Directive on Administrative Cooperation (DAC) implementing the common reporting standard (CRS) (under the Italian Presidency), the exchange of rulings (under the Luxembourg Presidency) and country-by-country reporting (CbCR) (under the Netherlands Presidency), and access to anti-money laundering information (under the Slovak Presidency).

5. The last remaining element of disclosure and transparency that has not been addressed by the EU is in the area of mandatory disclosure rules (MDR). In its conclusions adopted on 8 December 2015, the Council invited the COCG "*to assess the opportunity of developing EU guidance for implementing OECD BEPS conclusions on Action 12 (disclosure of aggressive tax planning), notably with a view to facilitate exchange of such information between tax authorities*" (doc. 15150/15, paragraph 25).
6. The issue was also discussed at the informal ECOFIN on 22-23 April 2016 and in its conclusions adopted on 25 May 2016, the Council invited the Commission "*to consider legislative initiatives on Mandatory Disclosure Rules inspired by Action 12 of the OECD BEPS project with a view to introducing more effective disincentives for intermediaries who assist in tax evasion or avoidance schemes*".
7. On 21 June 2017, the European Commission submitted a proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements ("DAC 6").
8. The Estonian Presidency started the technical examination of the proposal and organised an exchange of views on the state of play and way forward.
9. The Bulgarian Presidency intends to work towards achieving an early agreement on this file.

B. *'Good Governance in Tax Matters' clause in the EU agreements with third countries*

10. The Council conclusions on the External Strategy from 25 May 2016 prepared by the HLWP called for the updating of the existing EU standard provision on good governance in tax matters which dates back to May 2008, and asked the COCG to examine the key elements which should be contained in a clause to be inserted in the agreements between the EU and those countries.
11. The aim of the Bulgarian Presidency is to seek agreement on these key elements, on the basis of the proposal presented by the Commission in Annex 2 of its External Strategy Communication of 28 January 2016.

C. *Implementation of the Council conclusions on the 'Future of the Code of Conduct (Business Taxation)'*

12. In line with the Council conclusions of 8 March 2016, the Bulgarian Presidency is ready to seek agreement on a guidance note on the interpretation of the third criterion of the Code.
13. The Bulgarian Presidency also intends to continue exploring possible ways forward as regards the revision of the mandate of the Code of Conduct (gateway criterion), taking into account the successes so far of this intergovernmental working method within the Council as set out in various Council conclusions.

I.2. MEDIUM-TERM WORK

14. The Presidency also notes the willingness of the Member States to undertake work on the following items:

A. *Legislative proposal establishing rules at EU level allowing taxation of profits generated by multinationals through the digital economy*

15. The European Commission is expected to table a legislative proposal establishing rules at EU level allowing taxation of profits generated by multinationals through the digital economy by the end of the first quarter of 2018.

16. The Bulgarian Presidency therefore intends to start the technical examination of the proposal.

B. *Follow-up work on the EU list of non-cooperative jurisdictions for tax purposes*

17. The Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes were adopted by the Council on 5 December 2017 (doc. 15429/17).

18. Further work is however required notably to:

- i) update the list (annex I of the Council conclusions) based on new commitments;
- ii) monitor the implementation of the commitments received (annex II) and agreeing on procedures to carry out this monitoring process based on Annex IV of the CCs;
- iii) continue exploring further coordinated defensive measures in the tax area.

19. The Bulgarian Presidency is ready to support efforts in all preparatory bodies it is chairing, in co-ordination with the Code of Conduct Group (Business Taxation).

C. *Interest and Royalties Directive (IRD)*

20. In June 2015, the Latvian Presidency proposed a split of the proposal concentrating work first on the insertion of an anti-abuse provision similar to the one in the Parent-Subsidiary Directive (Articles 1(2) to 1(4) of Directive 2011/96/EU) and to discussing later the remaining provisions from the 2011 Commission proposal. The ECOFIN Council on 19 June 2015 could not, however, reach political agreement as some Member States insisted on the inclusion of a provision setting up a minimum effective level of taxation (hereafter "MET"), which was not foreseen in the original proposal of the Commission.
21. During the last Presidencies, substantial work was devoted to making progress in examining different alternatives to include a MET clause in the IRD. No agreement could, however, be found on any of these compromise suggestions.
22. Taking into account the input received from bilateral discussions with Member States as well as other recent developments, the Bulgarian Presidency will explore how to take the proposal forward.

D. Proposal for a renewed Common (Consolidated) Corporate Tax Base

23. On 25 October 2016, the Commission re-launched its proposal for the Common Consolidated Corporate Tax Base (CCCTB) through the new proposals for the Common Corporate Tax Base (CCTB) that includes a cross-border loss relief mechanism with a view to balancing out the absence of the benefits of consolidation during that phase.
24. On 6 December 2016, the Council supported the view that, as a priority, the work should focus on the elements of the common tax base (doc. 15315/16) and invited Member States to “concentrate their efforts on the rules for calculating the tax base and, in particular, on the new elements of the relaunched initiative (chapters I to V)”.
25. The Maltese Presidency started the examination of the CCTB proposal concentrating on the new elements of the proposal, whilst the Estonian Presidency closed the article-by-article technical examination of chapters I to V and launched a parallel debate on the challenges of the taxation of profits of the digital economy.
26. Against this background, the Bulgarian Presidency has initiated a debate on the way forward on this file and, after closing the article-by-article examination of the remaining chapters, intends to limit immediate work on defining as broad as possible common corporate tax base at the EU level.

E. Outbound payments

27. In July 2009, the COCG agreed to establish guidelines on outbound payments and included the issue in its Work Package 2015. In April 2017 the COCG mandated its subgroup on anti-abuse issues to resume work on this topic.
28. A preliminary draft of possible guidance was discussed by the subgroup in May 2017, but Member States expressed different perspectives on the way forward and agreed that the issue should be dealt with again when the new data on the effectiveness of anti-abuse measures in EU Directives have become available. The issue could also be revisited in the light of future discussions exploring further coordinated defensive measures in the tax area (see above), as appropriate.

II. INDIRECT TAXATION

II.1. VAT

29. In response to the Commission VAT Action Plan, the Economic and Financial Affairs Council at its meeting of 25 May 2016 adopted a set of conclusions, which contained chapters "On Urgent Measures to Fight VAT Fraud and Tackle the VAT Gap", "On Short and Medium-term Actions in VAT Area and SMEs", "On the Definitive VAT System (Single EU VAT Area)" and "On VAT Rates".⁸⁸

⁸⁸ Doc. 9494/16 FISC 86 ECOFIN 509.

30. At its meeting of 8 November, ECOFIN adopted Council conclusions "On Improvements to the current EU VAT rules for cross-border transactions"⁸⁹. These Council conclusions cover certain aspects related to improvement of the current EU VAT rules, applicable within intra-EU supplies of goods: **VAT identification number, VIES data, chain transactions, call-off stock simplification and proof of intra-EU supply**, which should be addressed within the work on definitive VAT system and, in the first legislative step phased-in as appropriate.
31. **The work in the Council during the Bulgarian Presidency will therefore be carried out with this guidance in mind. Particular attention will be given to the value the EU can add in the most relevant fields, such as combatting VAT fraud, simplification of administrative burden for citizens, businesses and administration, strengthening of IT systems, improving administrative co-operation, new business models (digital economy, globalisation of trade, etc.).**

II.1.1. SHORT-TERM WORK

A. *Signature of the EU-NO Agreement on administrative cooperation, combating fraud and recovery of claims in the field of VAT*

32. The Council adopted the Decision for the signature of the Agreement. The signature ceremony could be arranged as soon as **possible** so that to proceed with the conclusion of the Agreement after the Parliamentary consultation and the work on the implementation measures to be adopted by the Joint Committee established by the Agreement.

⁸⁹ Doc. 14257/16 FISC 190 ECOFIN 1023.

B. *Proposal for a Council Directive amending Directive 2006/112/EC as regards harmonizing and simplifying certain rules in the value added tax system and introducing the definitive system for the taxation of trade between Member States; Proposal for a Council Implementing Regulation amending Implementing Regulation (EU) 282/2011 as regards certain exemptions for intra-Community transactions*

33. The Presidency will handle this file as one of its priorities by conducting technical and political negotiations on this dossier and further exploring possible ways forward.

C. *Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of value added tax*

34. The European Commission has unveiled on 30 November 2017 new tools to make the EU's VAT system more fraud-proof and close loopholes which can lead to large-scale VAT fraud. The new rules aim to build trust between Member States so that they can exchange more information and boost cooperation between national tax authorities and law enforcement authorities. The proposed measures follow up on the 'cornerstones' for a new definitive single EU VAT area proposed in October 2017 and the VAT Action Plan towards a single EU VAT area presented in April 2016.

35. The Bulgarian Presidency will aim to seek agreement on the key elements on the basis of the proposal presented by the Commission.

D. Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, with regard to the obligation to respect a minimum standard rate

36. The European Commission made a proposal on 19 December 2017 to confirm 15% as being the minimum standard VAT rate. The Presidency will handle this file as one of its priorities and will seek to have it adopted during their Presidency.

II.1.2. MEDIUM-TERM WORK

A. Report on the prolongation of the sectorial reverse charge

37. The European Commission intends to present an overall assessment report on the application of the sectorial reverse charge of Article 199a of the VAT Directive 2006/112/EC and on the application of the quick reaction mechanism foreseen under Article 199b of the same Directive. The Presidency will seek agreement on a (possible) legislative proposal for its prolongation if it is tabled in due time by the European Commission during the first half of 2018.

B. Proposal on VAT simplifications for SMEs

38. In view of the incoming legislative proposal on VAT simplifications for SMEs, the Bulgarian Presidency intends to start the first round of technical examination.

C. Proposal on VAT rates

39. The Presidency intends to launch discussions on the expected legislative proposal on VAT rates.

II.2. INDIRECT TAXATION AND FINANCIAL SERVICES

40. Discussion on indirect taxation of financial services has been ongoing for a number of years in the Council,

A. Financial transaction tax

41. At this stage, 10 Member States continue to participate in the negotiations on the basis of a Commission proposal of 14 February 2013 for a Council Directive implementing enhanced cooperation in the area of financial transaction tax (FTT). The Presidency will ensure that any progress among the FTT-ins, once achieved, is taken forward in a constructive, inclusive and transparent manner among the 28 EU Member States.

42. The objectives of this Commission proposal are the same as those of the proposal of 28 September 2011 for a common system of financial transaction tax (FTT): to ensure a fair contribution of the financial sector to the costs of the financial crisis, avoid fragmentation of the Single Market and create appropriate disincentives for transactions that do not enhance the efficiency of financial markets.

B. VAT and financial services

43. Before these proposals were made, technical discussions took place on the Commission proposal to amend the VAT Directive 2006/112/EC as regards the treatment of insurance and financial services. The Commission withdrew this proposal in spring of 2016, as, given the outbreak of the financial crisis, time was needed to complete the overhaul of the EU regulation and supervision of the financial services industry.

C. Way forward in short and medium term

44. Against this background, the Bulgarian Presidency is ready to facilitate a strategic debate, at HLWP level, on the future of the financial services taxation, in order to assess the need for further action by the Council in the short and medium term in this area.

II.3. EXCISE DUTIES

45. Taking into account the relevance of the excise duties sector for national revenues, it seems appropriate to continue the strategic debate on the improvements of the existing regulation, and start the discussion on a number of legislative proposals and reports from the European Commission.
46. The Bulgarian Presidency intends to organise an in-depth discussion and start negotiations, as appropriate, building on the work carried out in the following areas, following the relevant Commission proposals/reports:
- i) the Council in its 8 March 2016 conclusions on the REFIT evaluation of Directive 2011/64/EU and on the structure and rates of excise duty applied to manufactured tobacco⁹⁰ requested that the European Commission, taking into account the Council Conclusions, as well as the objectives set out in Directive 2011/64/EU, undertakes all relevant studies and, after carrying out relevant technical analysis, public consultations and impact assessment, submits to the Council an appropriate legislative proposal in 2017 or, in case it chooses not to submit a proposal, informs the Council of the reasons. The Commission is finalising a report on Directive 2011/64/EU;
 - ii) the Council, in its 6 December 2016 conclusions⁹¹, inter alia, requested that the Commission, taking into account these Council Conclusions, as well as the objectives set out in the Directive 92/83/EEC, undertakes all relevant studies and, after carrying out relevant technical analysis, public consultations and impact assessments, submits to the Council an appropriate legislative proposal in 2017. The Commission is finalising work on an Impact Assessment Report on the possible revision of Directive 92/83/EEC and foresees possible legislative proposals by spring 2018;

⁹⁰ Doc. 6899/16 FISC 34 ECOFIN 207.

⁹¹ Doc. 15009/16 FISC 212 ECOFIN 1134.

- iii) Council Conclusions of 5 December 2017 on the Commission report to the Council on the implementation and evaluation of Council Directive 2008/118/EC concerning the general arrangements for excise duty⁹² are guiding the Commission in the finalisation of an Impact Assessment Report on possible amendments to Directive 2008/118/EC. The Commission foresees possible legislative proposals by spring 2018.
- iv) the Commission is also expected to present the Staff working document of the evaluation of Directive 95/60/EC on fiscal marking of gas oil and kerosene and this document would be discussed in the Council preparatory bodies as appropriate.

III. AGREEMENTS WITH FIVE THIRD COUNTRIES TO COUNTER FRAUD AND ALL OTHER ILLEGAL ACTIVITIES TO THE DETRIMENT OF PUBLIC FINANCIAL INTERESTS ("EU ANTI-FRAUD AGREEMENTS")

- 47. Under the Maltese Presidency, the HLWP confirmed the need for updating the mandate of negotiations for EU anti-fraud agreements with the Principality of Andorra, the Principality of Monaco, the Republic of San Marino and the Swiss Confederation (doc. 11640/09) and for a possible relaunch of the negotiations on the EU anti-fraud agreement with the Principality of Liechtenstein (doc. 16990/2/09 REV 2), following the repeal of the Savings Taxation Directive, the adoption of DAC2, and the completion of all agreements on automatic exchange of information with the five European third countries.
- 48. The objective of the Bulgarian Presidency will be to continue discussions on the Commission proposal regarding the signing of the anti-fraud and tax information exchange agreement with Liechtenstein (doc. 16989/09) with a view to assessing if the agreement is still needed and appropriate.

⁹² Doc. 14481/17 FISC 271 ECOFIN 957.

BULGARIAN PRESIDENCY ROADMAP ON THE DIGITAL TAXATION PACKAGE**I. INTRODUCTION**

1. On 19 October 2017, the **European Council** in its conclusions⁹³ underlined the "*need for an effective and fair taxation system fit for the digital era.*"
2. On 5 December 2017, the Council (ECOFIN) adopted its conclusions on "Responding to the challenges of taxation of profits of the digital economy."
3. On 21 March 2018 the Commission presented the "digital taxation package:"
 - i) a proposal for a Council Directive laying down rules relating to the **corporate taxation of a significant digital presence** (based on TFEU Article 115, further referred to as "SDPD");
 - ii) a Commission **Recommendation** relating to the corporate taxation of a significant digital presence;
 - iii) a proposal for a Council Directive on the **common system of a digital services tax** on revenues resulting from the provision of certain digital services (based on TFEU Article 113, further referred to as "DSTD");
 - iv) a **Communication** "Time to establish a modern, fair and efficient taxation standard for the digital economy".

⁹³ Doc. EUCO 14/17.

4. Following the presentation of the digital taxation package by the Commission and initial exchange of views by Member States in the informal meeting of Ministers, Committee of Permanent Representatives and High Level Working Party on Tax Questions, the Presidency sets out the roadmap on the way forward regarding work on the digital taxation package for the remainder of the Bulgarian Presidency term.
5. The Presidency deems appropriate that the highest degree of priority is granted to the digital taxation package in the coming months of work in the Council and its preparatory bodies.

II. WAY FORWARD

a) *Proposal for a Council Directive on the **common system of a digital services tax** on revenues resulting from the provision of certain digital services ("DSTD")*

6. Many Member States deem it appropriate that the EU takes temporary measures in the area of taxation of digital economy in a co-ordinated manner before a solution at a global level is reached.
7. With this objective in mind by June 2018 the Presidency intends to carry out a first round of detailed technical analysis of the DSTD legislative proposal at the Working Party on Tax Questions.
8. Should this objective be obtained, time permitting, the Presidency would like to table a first compromise proposal of draft DSTD for perusal at the WPTQ.

b) *Proposal for a Council Directive laying down rules relating to the **corporate taxation of a significant digital presence** ("SDPD")*

9. It is expected that by June 2018 initial technical analysis of this Commission proposal will be completed at WPTQ level as well.

10. It is clear that work on this legislative proposal will have to be calibrated with a view to monitoring and reflecting, as appropriate, progress made in the G20/OECD debate, which is expected to conclude by 2020. At the same time, it can be expected that discussion on this legislative proposal in the Council can also serve as useful input to the global discussions that are ongoing on digital taxation within the G20/OECD.

c) *Commission **Recommendation** relating to the corporate taxation of a significant digital presence and **Communication** "Time to establish a modern, fair and efficient taxation standard for the digital economy"*

11. While the negotiations on the legislative part of the digital taxation package can be seen as a priority, it is possible that the Council might wish to politically respond (e.g. by way of Council conclusions) to the Commission Recommendation and the Communication.

12. The issue on whether and how exactly agreements of Member States in the area of avoidance of double taxation (DTAs) would have to be adjusted, once the EU legislates in the area of digital taxation and significant digital presence, remains open and depends on the outcome of the negotiations on the legislative part of the digital taxation package. It is possible that the provisions of the Commission Recommendation might have to be further reviewed or clarified.

13. To attain the objectives set out in this roadmap, the Bulgarian Presidency has started the initial technical examination of both DSTD and PSPD. For that purpose the meetings of 2 and 14 May as well as on 13 June 2018 are devoted to DSTD and the meetings of 4 and 5 June 2018 to SDPD.

14. The state of play in these negotiations would be summarised in the six-monthly ECOFIN report to **European Council** on taxation issues.
