



Council of the
European Union

Brussels, 24 November 2017
(OR. en)

14790/17

FISC 302
ECOFIN 1001

'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 mentioned, in particular in its conclusions of March and June 2012, May 2013 and December 2014.
2. A draft ECOFIN Report to the European Council on Tax issues was prepared and agreed in the Council High Level Working Party on Tax issues (HLWP) on 23 November 2017, for submission to the Council via Coreper.
3. The Permanent Representatives Committee is therefore invited to:
 - confirm the agreement on the report reached at the HLWP (as set out in the Annex);
 - forward the draft Report to Council (ECOFIN) of 5 December 2017 for endorsement, on the understanding that factual updates (concerning parts in square brackets) would be reflected in the version forwarded to the December 2017 European Council.

ECOFIN REPORT TO THE EUROPEAN COUNCIL ON TAX ISSUES

1. This report provides an overview of the progress achieved at the Council during the term of the Estonian Presidency, as well as an overview of the state of play on the most important dossiers under negotiations in the area of taxation.
2. The report gives an overview on 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 2012², 22 May 2013³, 24/25 October 2013⁴, 19/20 December 2013⁵, 20/21 March 2014⁶, 26/27 June 2014⁷, 18 December 2014⁸, and 19 October 2017⁹ as well as the Council Conclusions in the VAT area of 2012¹⁰ and of 2016¹¹.
3. In line with the request from the European Council on 18 December 2014¹², during the Estonian 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 7 July 2017¹³. In carrying out this work, the Presidency has paid particular attention to consistency between EU work and OECD actions in the area of BEPS.

¹ EUCO 4/3/12 REV 3 (items 9 and 21).

² EUCO 76/12, 28/29 June 2012.

³ EUCO 75/1/13 REV 1, 22 May 2013.

⁴ EUCO 169/13, 24/25 October 2013.

⁵ EUCO 217/13, 19/20 December 2013.

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

⁷ Doc. EUCO 79/14 CO EUR 4 CONCL 2, point 2.

⁸ Doc. EUCO 237/14 CO EUR 16 CONCL 6, point 3.

⁹ Doc. EUCO 14/17 CO EUR 17 CONCL 5, point 11.

¹⁰ Docs 9586/12 FISC 63 OC 213 and 14877/12 ECOFIN 864 FISC 136 OC 579.

¹¹ Doc. 9494/16 FISC 86 ECOFIN 509 and 14257/16 FISC 190 ECOFIN 1023.

¹² EUCO 237/14, 18 December 2014.

¹³ Doc. 10998/17 FISC 157.

4. The Estonian Presidency paid particular attention to the digital economy. It focused on relevant aspects both in the area of direct and indirect taxation.
5. More specifically in the area of direct taxation, the Council has adopted a Council Directive on Double Taxation Dispute Resolution Mechanisms in the European Union [and Council conclusions on Responding to the Challenges of Taxation of Profits of the Digital Economy]. It has also completed the article by article examination of chapters 1 to 5 of the Common Corporate Tax Base (CCTB) proposal, started the technical examination of the proposal for amending the directive on administrative cooperation as regards reportable cross-border arrangements (DAC6), and continued the discussions on the recast of the Interest and Royalty Directive (IRD).
6. In the area of indirect taxation, the Council has adopted [the VAT e-commerce package,] [Council conclusions on the Commission report to the Council on the implementation and evaluation of Council directive 2008/118/EC concerning the general arrangements for excise duty] and started the examination of the VAT Definitive System package.
7. The Code of Conduct Group (Business Taxation) continued further its work on the various matters falling within its mandate, including work in the context of the process leading to establishment of the EU list of non-cooperative jurisdictions in tax area, as foreseen in the Council conclusions of 8 November 2016.¹⁴ The results of the work was submitted in coordination with the High Level Working Party on tax issues (HLWP), to ECOFIN on 5 December 2017.
8. More detailed information on individual dossiers can be found below.

¹⁴ Doc. 14166/16 FISC 187 ECOFIN 1014.

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)

9. 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" (doc. 13730/16 FISC 170 IA 99). The proposal lays down common rules for computing the tax base of multinational companies within the EU.
10. The main changes compared to the 2011 proposal are its mandatory character for large companies, a super-deduction for research and development expenses to support innovation (Article 9), a new Allowance for Growth and Investment to address the debt financing bias (Article 11), and a temporary loss relief (Article 42).
11. The proposal was presented to the Working Party on Tax Questions (WPTQ) on 3 November 2016 and followed by a general exchange of views. The accompanying impact assessment (doc. 13730/16 FISC 170 IA 99 ADD 2 + 3) was examined at the same meeting and raised a number of questions, notably on the expected impact on national tax revenues.
12. On 6 December 2016, the ECOFIN Council took the view (doc. 15315/16) 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)*".
13. The WPTQ subsequently proceeded with the article-by-article examination of the novel aspects of the proposal (Articles 9-11-42), and followed up the discussion on the impact assessment at its meeting of 16 February 2017.

14. The issue of the right mix between harmonisation and flexibility in the context of increased international competition being constantly resurfacing in technical discussions, the ECOFIN Council held a policy debate on the matter on 23 May 2017. Elements mentioned to be considered in further work included finding an appropriate balance between the need for flexibility required for national economic policy decisions on the one hand and the goal of harmonizing the corporate tax base on the other hand, in particular in view to a possible consolidation phase, as well as the objective of an as broad as possible corporate tax base to preserve national tax revenues.
15. During the Estonian Presidency, the WPTQ concluded the article-by-article examination of chapters I to V of the CCTB proposal, in line with the first step set out in the Council conclusions of 6 December 2016 (doc. 15315/16).
16. The Presidency also initiated a debate on the extent to which the CCTB proposal could provide an appropriate policy response to the direct taxation challenges posed by the digital economy, which led to the preparation of a new set of Council conclusions (see below).

b) Common Consolidated Corporate Tax Base (CCCTB)

17. The Commission also put forward a proposal for a Council Directive on a Common Consolidated Corporate Tax Base, hereafter "CCCTB" (13731/16 FISC 171). The proposal complements the CCTB proposal with the consolidation element.
18. 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.

19. In terms of working method, the ECOFIN Council took the view on 6 December 2016 (doc. 15315/16) 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.

c) Dispute resolution mechanisms

20. With the aim of improving the current dispute resolution mechanisms, the Commission put forward a proposal for a Council Directive on Double Taxation Dispute Resolution Mechanisms in the European Union (13732/16 FISC 172) on 26 October 2016. The proposal builds on the current Arbitration Convention¹⁵, by maintaining a system of mandatory binding arbitration that would be broadened whilst adding obligations of results and time constraints.
21. Enhancing dispute resolution mechanisms between Member States is considered as important by many stakeholders, in order to ensure a fair, efficient and competitive economy. Tax certainty plays an important role in promoting investment and growth, and should be part of the tax environment in which businesses operate. Potential cases of double taxation should therefore be solved quickly and conclusively.
22. In line with those objectives, the Maltese Presidency had flagged this proposal as a priority, and dedicated a significant amount of meetings to this file.
23. During the technical meetings, experts commented on several aspects of the Commission proposal, and extensive discussions took place. Areas of focus were mainly on the scope, procedural steps and deadlines, the role, type and composition of the Advisory Commission and of the Alternative Dispute Resolution Commission, the costs of the procedure, the interaction with national proceedings, whether a simplified procedures should be put in place for individuals and smaller undertakings and the publicity of the decisions.

¹⁵ Convention 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, OJ L 225, 20.8.1990, p. 10.

24. The outcome of those discussions resulted in a compromise text that was presented to the ECOFIN Council at its meeting on 23 May 2017, which comprised the following elements:
- a) The Directive lays down mechanisms to resolve disputes between Member States when these arise from the interpretation or application of agreements and conventions that provide for the elimination of double taxation of income and, where applicable, capital.
 - b) A taxpayer affected by such dispute may submit a complaint to the authorities of each of the Member States concerned, following which, when such complaint is accepted, the competent authorities of the Member States concerned will endeavour to resolve the dispute. The decision reached by the authorities on how to resolve the dispute will be binding on Member States provided that the taxpayer accepts such decision and renounces to other remedies.
 - c) When the competent authorities do not reach a decision within the required time limit, or when the complaint is rejected by some but not all of the competent authorities, the taxpayer may require that the dispute be resolved by an Advisory Commission, composed of representatives of the competent authorities, of independent persons of standing and of a chair, which will give, where applicable, a decision on the acceptance of the complaint, and deliver an opinion on how to resolve the dispute.
 - d) Instead of an Advisory Commission, the competent authorities of the Member States concerned may agree to set up an Alternative Dispute Resolution Commission, that may apply other dispute resolution processes and techniques to resolve the dispute in a binding manner.
 - e) When the Advisory Commission or the Alternative Dispute Resolution Commission issues its opinion on the question of dispute, the latter will be notified to the competent authorities, which must then reach an agreement on how to resolve the dispute. If they fail to reach an agreement on how to resolve the dispute, then they will be bound by the opinion of the Advisory Commission or the Alternative Dispute Resolution Commission.
 - f) A simplified procedure has been put in place for individuals and smaller businesses.

25. At its meeting on 23 May 2017, the ECOFIN Council reached a general approach on the compromise text (9420/17). In addition, a Statement by all Member States was made in the minutes of the ECOFIN Council that "*Member States shall endeavour to explore the possibilities to further enhance the resolution of disputes among Member States relating to the interpretation and application of tax agreements and conventions by way of a permanent body, including the possibilities provided for under Article 273 TFEU.*"
26. After having received the opinion of the European Parliament, the ECOFIN Council, at its meeting on 10 October 2017, adopted the Directive on Tax Dispute Resolution Mechanisms in the European Union¹⁶.

Mandatory Disclosure rules Directive (DAC 6)

27. On 21 June 2017, the European Commission submitted a legislative proposal to amend Directive 2011/16/EU ("DAC"). Since this is the 5th amendment to the DAC since 2014, it may be referred to as "DAC 6".
28. The Commission's proposal would require Member States to:
- lay down mandatory disclosure rules (for tax advisers/intermediaries) of potentially aggressive tax planning schemes with a cross-border element; and
 - ensure that their national tax authorities automatically exchange this information with the tax authorities of other Member States by using the mechanism provided for in the DAC.
29. Under the Estonian Presidency, five working parties were held on 14 July, 27 September, 25 October, 8 November and 15 November 2017.
30. At the High Level Working Party (Taxation) on 4 July 2017 and at the Working Party on Tax Questions (Direct Taxation) on 14 July 2017, the Commission made a presentation of the proposal, followed by an exchange of views.

¹⁶ OJ L 265, 14.10.2017, p. 1-14

31. On 27 September 2017, based on a compilation of Member States' written comments, the Working Party discussed the following matters :
- the material scope i.e. the definitions of "Cross-border arrangement" and "Reportable cross-border arrangement";
 - the personal scope i.e. the definitions of Intermediary, Taxpayer, Associated Enterprises and the waiver due to Professional Secrecy;
 - the exchange of information and the timing for Reporting and Exchanging Information
 - the penalties;
 - the retroactivity of the Directive and its timeframe for implementation;
 - the use of delegated acts; and
 - the hallmarks.
32. On 25 October 2017, the Presidency presented a first compromise text relating to the whole directive (the main text and the annex relating to hallmarks). On 8 November, the Working Party discussed a second compromise relating to the main text and, on 15 November 2017, a new compromise on hallmarks, as well as issues relating to the purpose of DAC 6, namely the amount of information to be reported and the Member State where the reporting should be done.
33. At the HLWP on 23 November, Member States had an exchange of views on the state of play and the way forward.

Interest and Royalties Directive (IRD) recast

34. 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. The proposal mainly provided for:
- a) the extension of the list of companies to which the Directive applies and to reduce the shareholding requirements to be met for companies to qualify as associated;
 - b) the addition of a new requirement for the tax exemption to ensure that the tax relief is not granted when the corresponding income is not subject to tax and thus close a loophole that could be used by tax evaders; and
 - c) a technical amendment to avoid situations where payments made by a permanent establishment and deriving from its activities are denied the exemption on the grounds that they do not constitute a tax-deductible expense.
35. 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.
36. During past Presidencies, substantial work was devoted to examining different alternatives to include a Minimum Effective Taxation (MET) clause in the IRD.
37. Not all Member States were in a position to support the proposed compromises put on the table by previous Presidencies

38. The Estonian Presidency consulted Member States on the basis of a new compromise along the following lines :
- accepting technical changes (wording changes, deleting transposition periods, updating list of companies, etc.);
 - adding the ‘subject to tax’ requirement to Article 1 (1) and aligning the wording of the targeted anti-abuse rule with the one contained in the Parent-Subsidiary Directive (PSD) and the Anti-tax avoidance Directive 1 (ATAD 1);
 - maintaining the current scope of the directive by excluding the insertion of a specific tax rate and preserving the participation threshold of the current directive;
 - adding a declaration of Member States to the adoption of IRD recast emphasising the need to have a separate and full discussion on how to avoid non-taxation in bona fide situations (i.e. not aimed at tax avoidance) on all appropriate levels of the Council bodies and, if appropriate, in Code of Conduct (Business Taxation).
39. Following written comments by Member State, the state of play of this file was discussed at the HLWP on 23 November 2017.

Council conclusions on Responding to the Challenges of Taxation of Profits of the Digital Economy

40. The Presidency launched the discussion on the challenges of the taxation of the digitalising economy at the HLWP meeting of 4 July 2017. At that time, the OECD was already preparing for its interim report on the state-of-play of taxation of the digital economy for Spring 2018, but there was no active debate at the level of the EU. Some MSs had however already been taking unilateral actions or these were under way.

41. A number of developments have occurred subsequently:
- a) Presidency conference on 'Current Issues in European Tax Law', with the main session devoted to the concept of virtual permanent establishment, in Tallinn on 7 September;
 - b) Letter of intent by President Juncker to President Tajani and Prime Minister Ratas on 13 September 2017 in the context of his State of the Union 2017 speech, announcing a legislative proposal establishing rules at EU level allowing taxation of profits generated by multinationals through the digital economy for Spring 2018;
 - c) Political statement ('Joint initiative on the taxation of companies operating in the digital economy') co-signed by 10 EU finance ministers;
 - d) Session on the 'Corporate Taxation Challenges of the Digital Economy' at the informal ECOFIN Council meeting of 16 September 2017 in Tallinn;
 - e) Communication by the Commission on a 'Fair and Efficient Tax System in the European Union for the Digital Single Market' (doc. 12429/17) issued on 21 September 2017;
 - f) Discussions at the Digital Summit in Tallinn on 29 September 2017;
 - g) Completion of the first round of technical discussions at WPTQ level on the concept of virtual permanent establishment (12 July), the specifics of the sharing economy (21 September) and the valuation of data for tax purposes (3 October 2017);
 - h) Follow-up presentations at the ECOFIN Council meeting of 10 October 2017;
 - i) Technical discussions on possible tax policy responses at the WPTQ meeting of 16 October 2017;
 - j) **European Council** conclusions of 19 October 2017, which underlined the need for an effective and fair taxation system fit for the digital era.

42. Against this background, the Presidency presented a preliminary draft of Council conclusions on 'Responding to the Challenges of Taxation of Profits of the Digital Economy' at the HLWP meeting of 27 October 2017, which were discussed at the WPTQ meeting of 8 November, Fiscal Attachés meeting of 13 November and HLWP meeting of 23 November 2017 [and adopted by ECOFIN on 5 December 2017].
43. The objective of these Council conclusions is three-fold:
- a) input into parallel OECD discussions on their interim report to be delivered at the G20 finance ministers meeting of April 2018;
 - b) follow-up to the above-mentioned **European Council** conclusions of 19 October 2017; and
 - c) political guidance to the Commission in the preparation of its above-mentioned possible legislative proposal.

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

44. 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 taxes (doc. 12977/06). 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).
45. 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 (doc. 17247/08 **FISC 188**).

46. Following the conclusions adopted by the ECOFIN Council on 10 February 2009 (doc. 6116/09 FISC 18; doc. 6069/09 Press 32), 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.
47. 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 (doc. 10252/4/09 REV 4 FISC 72).
48. 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 (doc. 11640/09 FISC 93). On the basis of this recommendation, a draft negotiating mandate was prepared (doc. 14523/09). However, the discussions were put on hold as priority was given to the finalisation of the negotiations with Liechtenstein.
49. On 23 November 2009, the Commission presented amended proposals regarding the signing (doc. 16989/09) and on the conclusion (doc. 16990/09) of the agreement with Liechtenstein. A revised version of the proposal regarding the Conclusion of the agreement was presented by the Commission (doc. 16990/2/09 REV 2) which took into account the new provisions of the Treaty on the Functioning of the European Union.
50. The file was discussed at 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.

51. Given that the political issues which were preventing progress are now solved, the Maltese Presidency relaunched discussions on the above 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 signing (doc. 16989/09) and the conclusion (doc. 16990/2/09 REV 2) of the agreement. In this regard, it was agreed that the HLWP would be informed on the findings of OLAF at one of its next meetings as soon as their technical scrutiny has been finalised.
52. The technical scrutiny has been ongoing during the Estonian Presidency.

Value added tax (VAT)

53. 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. Those proposals aim to modernise the VAT system to adapt it to the digital economy and the needs of SMEs, and to tackle the VAT gap. A strategic discussion on the way forward was held at the HLWP meeting of 27 October 2017.
- a) VAT e-commerce package
54. In line with the objectives developed in its Digital Single Market (DSM) Strategy, the Commission has put forward its VAT e-commerce package on 1st December 2016, composed of amendments to Council Directives 2006/112/EC ("VAT Directive") and 2009/132/EC as regards certain VAT obligations for supplies of services and distance sales of goods (doc. 14820/16), Council Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of VAT (doc. 14821/16), and Council Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of VAT (doc. 14822/16).

55. These proposed amendments introduce measures that would enter into force in two steps:
- a) The first step (short term) would involve simplifications to the current Mini One Stop Shop ("MOSS") scheme, such as a low, optional for businesses, EU-wide threshold related to the supply of telecommunication, broadcasting and electrical services;
 - b) The second step (2021) would introduce further simplifications and an extension of the MOSS scheme, e.g. with regard to distance sales of goods from third countries and low value consignments.
56. The Maltese Presidency focused work at technical level on changes to the VAT Directive and Council Implementing Regulation and presented a progress report on the negotiations on these two proposals at the 16 June 2017 ECOFIN Council meeting (doc. 10044/17 FISC 131 ECOFIN 505), together with a Presidency compromise reflecting the state of play (doc. 10043/17 FISC 130 ECOFIN 504).
57. Against this background, the Estonian Presidency started the technical work on the changes to Council Regulation 904/2010 at the WPTQ meeting of 6 July 2017 and, on this basis, subsequently presented a first Presidency compromise on the entire VAT e-commerce package at the WPTQ meeting of 6 September 2017.
58. A total of 17 Working Party on Tax Questions (WPTQ) meetings have been held to examine the three proposals at technical level during the Slovak, Maltese and Estonian Presidencies, followed by 3 meetings of Fiscal Attachés (18, 23 and 24 October 2017). The VAT e-commerce package was also discussed at the High Level Working Party on tax issues (HLWP) meetings of 6 June and 27 October 2017. These meetings have examined a total of 12 iterations of a possible compromise text.
59. In three of the abovementioned WPTQ meetings, experts from the Working Party on the Customs Union were invited to participate in the discussion regarding the Import OSS and to submit questions to the Commission. Tax experts were furthermore invited to co-ordinate with their Customs counterparts in preparation for WPTQ meetings.

60. Since the start of the examination of the package, most delegations expressed support, in principle, for the Commission proposals. The Presidency compromise texts have therefore not altered its general philosophy. Nevertheless, the technical examination revealed several technical difficulties to be overcome, hence the number of expert meetings that were held.
61. In particular, delegations insisted on extending the scope of the Commission's proposals by making electronic interfaces (such as platforms, marketplaces and portals) liable for collecting VAT in order to ensure effective and efficient collection of VAT in this field. This work was initiated during the Maltese Presidency and continued during the Estonian Presidency and led to the insertion of 3 new Articles in the Commission's proposal.
62. The Presidency compromise text on the VAT e-commerce package received a wide support from Ministers at the ECOFIN Council meeting of 7 November 2017 but one delegation was not yet in a position to lift its reservations and agreement on the file was postponed to the next ECOFIN Council meeting on 5 December 2017.
63. The remaining open issues were then discussed by WPTQ on 9 November, Fiscal Attachés on 14 and 17 November and HLWP on 23 November 2017 and resulted in a number of amendments to the compromise package. [The ECOFIN Council subsequently adopted the VAT e-commerce package at its meeting of 5 December 2017].

b) *VAT Definitive System*

64. 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 States¹⁷; (ii) a proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards certain exemptions for intra community transactions¹⁸ and (iii) a proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards the certified taxable person¹⁹.
65. 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. When the customer is a certified taxable person, certain simplifications will apply. Those proposals tackle intra-Union B2B supplies. Technical detailed provisions for their actual implementation are expected to be proposed in 2018.
66. The proposals further set out, in reply to the Council conclusions of 8 November 2016, short term improvements of 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 for the exemption.
67. The Council has examined the proposals during the meetings of the High Level Working Party on 27 October 2017, and of the Working Party on Tax Questions (Indirect Taxation) on 9 November 2017 and will continue to do so during the meeting of the Working Party on Tax Questions (Indirect Taxation) on 13 December 2017.

¹⁷ 12882/17

¹⁸ 12881/17

¹⁹ 12880/17

68. Those proposals, together with the implementing provisions announced for 2018, form the intended first phase of the introduction of the proposed Definitive System. In a second phase, the Definitive System is intended to be extended to all cross-border supplies of goods and services. The Commission will only propose this second phase after due monitoring of the implementation of the first phase.

c) reform of the rates, reinforcement of the administrative cooperation and simplification for SMEs

69. In its Communication of 4 October 2017 Towards a Single EU VAT, the Commission has announced that it would adopt, by the end of 2017, three legislative proposals that aim to (i) reform the rates, (ii) reinforce administrative cooperation and (iii) introduce simplification measures for SMEs. Work on those proposals is likely to start under the next term of Presidency.

d) VAT treatment of e-publications

70. 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 (doc 14823/16).

71. 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).

72. In line with the objectives developed in its DSM 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.

73. The Council examined this proposal during the Council WPTQ meetings of 26 January, 8 February, 8 March and 4 April 2017. The ECOFIN Council, on 21 March 2017, held an orientation debate. 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.
74. During the meeting of the ECOFIN Council on 16 June 2017, no agreement could be reached, due to diverging views of Member States. More time is needed to proceed with file.
- e) General reverse charge mechanism (GRCM)*
75. 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 (doc. 15817/16 FISC 241).
76. Under the Maltese Presidency, a compromise text was presented for an orientation debate at the Council (ECOFIN) meeting on 21 March 2017 (doc. 7118/17 FISC 61).
77. Following further technical work, the ECOFIN Council was invited to reach a general approach on the text at its meeting on 16 June 2017.
78. During the meeting of the ECOFIN Council on 16 June 2017, no agreement could be reached, due to diverging views of Member States. More time is needed to proceed with this file.

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

79. 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 tax²⁰; and Directives for the negotiations on this future agreement²¹.
80. The negotiations are expected to result in establishing 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.
81. 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 Agreement²², 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.
82. 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.
83. On 26 October 2017 the Commission has issued the proposals for Council decisions authorising signature and conclusion of the mentioned agreement.²³ These proposals were discussed at the Fiscal Attachés meeting of 14 November.

²⁰ Doc. 15942/14 FISC 207 N 32 ECOFIN 1080 LIMITE and doc. 16153/14 FISC 219 N 33 ECOFIN 1110 LIMITE + COR 1.

²¹ Doc. 15942/14 ADD 1 FISC 207 N 32 ECOFIN 1080 RESTREINT UE/EU RESTRICTED + COR 1.

²² Doc. 13607/2/16 FISC 163 N 61 ECOFIN 947 LIMITE and, for the draft text of the Agreement - doc. 13527/16 FISC 159 N 60 ECOFIN 940 RESTREINT UE/EU RESTRICTED.

²³ Doc. 13773/17 FISC 239 N 43 ECOFIN 894 + ADD1 and doc. 13774/17 FISC 240 N 44 ECOFIN 895 + ADD1.

84. 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 revision²⁴, the Council Decision on signature of the Agreement, accompanied by the Council statement, [is scheduled for adoption] [has been adopted] on [...] at the meeting of [...] Council.] [The ceremony of signing the Agreement is scheduled to take place on [...]].

²⁴ Documents to be issued.

Eurovignette taxation

85. On 31 May 2017, the Commission submitted to the Council a proposal for a Directive amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures, as regards certain provisions on vehicle taxation²⁵ (the Eurovignette Proposal on Taxation). This proposal is part of the Mobility Package, and is linked to the proposal for a Directive amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures²⁶ (the Eurovignette Proposal).
86. The objective of the proposed amendments to the Eurovignette directive is to move towards polluter-pays and user-pays principles. Taxation of the heavy goods vehicles is differentiated only based on the weight of the vehicles and the number of axels, but does not provide for environmental performance of the vehicles or is not linked to the use of the vehicles.
87. Hence, the aim of the Eurovignette Proposal on Taxation is to gradually reduce the minima for heavy goods vehicle taxes set out in Directive 1999/62/EC, over 5 consecutive years, in order to eventually reduce them to zero. This would create an incentive to move to distance-based road charging, namely the introduction of tolls. In this way the two proposals are linked closely to each other in substance.
88. Given the clear link with the Mobility package, the Eurovignette Proposal on Taxation is being discussed in the Working Party on Land Transport.

²⁵ Doc.10175/17.

²⁶ Doc. 9672/17.

Excise duties (Commission Report on Council Directive 2008/118/EC)

89. On 21 April 2017 the Commission submitted a Report to the Council and the European Parliament on the implementation and evaluation of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty²⁷. The Commission Report provides an overview of the relevant background, the scope and methodology used for the external evaluation of Council Directive 2008/118/EC. Building on evidence gathered through the studies, this report summarises the evaluation conclusions of the Commission.
90. At the meeting of Fiscal Attachés on 31 May 2017 delegations indicated their willingness to work towards drafting conclusions that Council could possibly adopt in response to this Report and provide additional political guidance to the Commission in its expected follow-up work, which could also be taken into account in the upcoming legislative proposal.
91. Following the preparatory work at the WPTQ level, as well as the exchange of views at the meeting of the HLWP on 27 October, all delegations were in a position to lift their remaining reserves and unanimously supported the draft Council Conclusions on the Commission report to the Council on the implementation and evaluation of Council directive 2008/118/EC concerning the general arrangements for excise duty.
92. [The Council endorsed these conclusions in its meeting of 5 December 2017.²⁸]

²⁷ Doc. 8523/17 FISC 84 ECOFIN 309 + ADD1.

²⁸ Doc. ST 14169/17 FISC 259 ECOFIN 927 [to be issued] [after 5 Dec 2017 reference to be changed to the doc. with "outcome of the Council"]

The common system of Financial Transaction Tax (FTT)

93. 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 2013²⁹, 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.
94. 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").³⁰

²⁹ OJ L 22, 25.1.2013, p. 11.

³⁰ On 16 March 2016, the Republic of Estonia has left the enhanced co-operation on FTT. See doc. 7808/16 FISC 47 LIMITE.

95. 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 2014³¹, 7 November 2014³², 9 December 2014³³, and 8 December 2015³⁴;
- 17 June 2016³⁵, where, as a follow-up to the statement of ten participating Member States that was inserted into the minutes of the 8 December 2015 ECOFIN³⁶, 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 FTT³⁷; exemption from FTT of market making activities³⁸; scope of transactions in derivatives contracts to be subject to the FTT³⁹);
- 6 December 2016⁴⁰, where the Council took note of the ongoing discussion on the constitutive parts (the "building blocks")⁴¹ 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.

³¹ Doc. 9399/14 FISC 79 ECOFIN 445 and doc. 9576/14 PV/CONS 22 ECOFIN 460.

³² Doc. 14949/14 FISC 181 ECOFIN 1001.

³³ Doc. 16498/14 FISC 222 ECOFIN 1159 and doc. 16753/14 FISC 230 ECOFIN 1188 CO EUR-PREP 50, points 36 to 46.

³⁴ Doc. 14942/15 FISC 181 ECOFIN 947.

³⁵ Doc. 9602/16 FISC 90 ECOFIN 522.

³⁶ Doc. 15112/15 PV/CONS 72 ECOFIN 961 ADD 1.

³⁷ Doc. 9602/16 FISC 90 ECOFIN 522, point 6 to 8, and doc. 14942/15 FISC 181 ECOFIN 947, point 7 to 11.

³⁸ Doc. 9602/16 FISC 90 ECOFIN 522, point 9 to 12, and doc. 14942/15 FISC 181 ECOFIN 947, point 15 to 17.

³⁹ Doc. 9602/16 FISC 90 ECOFIN 522, point 13 to 15, and doc. 14942/15 FISC 181 ECOFIN 947, point 18 to 19.

⁴⁰ Doc. 13608/16 FISC 164 ECOFIN 948.

⁴¹ Doc. 14942/15 FISC 181 ECOFIN 947, point 3.

96. In the light of the foregoing, as already indicated in the December 2016 ECOFIN report to the European Council on tax issues⁴², 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.

B. Tax Policy Coordination

97. 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): rollback and standstill

98. The Code of Conduct Group met four times under the Estonian Presidency, on 20 July, April 18 September, 17 October and 22 November 2017. The Group continued the work on the basis of the new Work Package approved by the Council (ECOFIN) on 8 December 2015 (14302/15 FISC 159).

99. The Code of Conduct Group continued work on standstill and rollback of harmful preferential tax regimes, focusing on Patent boxes. It reviewed rollback of existing Patent Boxes and standstill aspects concerning new or amended patent boxes separately.

100. 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, which was invited to the Code of Conduct Group on 17 October 2017.

101. More detailed information on the work of the Code of Conduct Group can be found in its report to the Council (ECOFIN) (doc. 14784/17).

⁴² Doc. 15254/16 FISC 227 ECOFIN 1160 CO EUR-PREP 48, point 45.

b) Code of Conduct Group: process leading to the establishment of the EU list of non-cooperative jurisdictions

102. The ECOFIN Council, in its Conclusions of 25 May 2016 on an “External Strategy for Effective Taxation and Commission Recommendation on the implementation of measures against tax treaty abuse” invited “*the Code of Conduct Group to start work [...], with a view to establishing an EU list of non-cooperative jurisdictions and exploring defensive measures at EU level to be endorsed by the Council in 2017. Those defensive measures could be considered to be implemented in the tax as well as in the non-tax area.*”⁴³.
103. In its 8 November 2016 Conclusions⁴⁴ the Council set out the criteria on tax transparency, fair taxation and implementation of anti-BEPS standards, as well as the guidelines for the process of screening jurisdictions with a view to establishing an EU list of non-cooperative jurisdictions for tax purposes.
104. Since then, the Code of Conduct Group (Business Taxation) (COCG) and Council Presidency, chairing the COCG subgroup on third countries⁴⁵ have worked intensely on this dossier.
105. The COCG, in line with the mandate (the Guidelines⁴⁶) by the Council, finalised the preparatory work, launched an assessment (“screening”) exercise on a number of jurisdictions on the basis of the Commission's Scoreboard, and invited these jurisdictions to engage in the process of analysis of their tax systems against the criteria, set out in the Council conclusions of 8 November 2016, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures.

⁴³ Doc. 9452/16 FISC 85 ECOFIN 502, point 10.

⁴⁴ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

⁴⁵ Doc. 6674/16 FISC 33 ECOFIN 189.

⁴⁶ See doc. 14166/16, point 7 of the “Guidelines for the process of screening of jurisdictions with a view to establishing an EU list of non-cooperative jurisdictions for tax purposes” (as endorsed by ECOFIN of 8 November 2017)

106. Technical analysis was conducted by the experts appointed by the COCG, on the basis of the publically available sources as well as information provided by the jurisdictions concerned, as most of the jurisdictions chose to engage in this process.
107. At its meeting of 17 October 2017 the COCG considered the outcome of this analysis⁴⁷ and agreed that letters, drafted on the basis of the templates agreed by the COCG and signed by the Chair of the COCG, should be sent to all jurisdictions concerned, informing them of the results of this work and, where relevant, seeking high level political commitment from the jurisdictions to address the identified concerns.⁴⁸
108. Notably, an important part of the work of COCG evolved around the screening criterion 2.2 (*"the jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction."*). The scope of this criterion was further specified by the COCG, as mandated by the Council, specifically on how the absence of a corporate tax or applying a nominal corporate tax rate equal to zero or almost zero by a jurisdiction should be assessed, while the Council has also agreed that the absence of a corporate tax or applying a nominal corporate tax rate equal to zero or almost zero cannot alone be a reason for concluding that a jurisdiction does not meet the requirements of criterion 2.2.

⁴⁷ Doc. 12831/17 EU RESTRICTED; doc. 12939/17 EU RESTRICTED; doc. 13015/17 EU RESTRICTED; doc. 13182/17 EU RESTRICTED; doc. 13235/17 EU RESTRICTED.

⁴⁸ The relevant parts of these letters sent out to jurisdictions, setting out the commitments sought by the Code of Conduct Group are reproduced in the Annex I to doc. 13890/17 EU RESTRICTED.

109. Jurisdictions where concerns with regard to criterion 2.2 were determined, were invited to discuss with the COCG what further steps could be taken to ensure that businesses have sufficient economic substance. A clear message was conveyed to the jurisdictions concerned that they are expected to make concrete progress in the areas where the concerns were identified and that only appropriate solutions that will solve the problem identified can be considered adequate. The substance requirement will be a part in the discussions with these jurisdictions, although not limited to it. The individual discussions with each jurisdiction concerned should indeed take up all specific problems that were identified by the COCG as well as Member States and address them in a clear manner.
110. The COCG agreed to put on hold the screening process to the jurisdictions that were affected by natural disasters. Nevertheless, these jurisdictions will be asked to address the concerns identified as soon as the situation improves, with the view to resolving these concerns by the end of 2018. By February 2018, the COCG will therefore contact these jurisdictions to prepare the next steps of co-operation.
111. The COCG also took as a basis the work carried out by the Presidency, chairing the COCG Subgroup on third countries, on the draft of the Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes, which provided the framework for setting out the EU list, the defensive measures in tax and non-tax area, as well as outlined the principal aspects of further work on how the commitments of jurisdictions to comply with the screening criteria should be monitored.
112. On this basis, following a balanced review of all information collected in the screening process, the COCG reported to the Council.

113. As requested by the Council⁴⁹, the report of the COCG contained the draft Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes and the opinion of the COCG on those jurisdictions that do not comply with the screening criteria which, in the view of the COCG, the Council would decide by consensus, as appropriate, to include in the list of non-cooperative jurisdictions.
114. At the HLWP meeting of 23 November, all delegations could support the text of the draft Council conclusions.
115. [The EU list of non-cooperative jurisdictions was endorsed by the Council.⁵⁰] [reflect the results of HLWP/CRP2/December ECOFIN]
116. The dialogue with relevant jurisdictions to promote tax transparency, fair taxation and implementation of anti-BEPS standards and the process of promoting the standards in the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures will continue and the COCG will act in co-ordination with the work of the Global Forum on Transparency and Exchange of Information for tax Purposes, the OECD Inclusive Framework for Tackling Base Erosion and Profit Shifting, and of the Forum on Harmful tax Practices.

c) Code of Conduct Group: tax good governance clause

117. In its Conclusions on an external taxation strategy and measures against treaty abuse from 25 May 2016 (doc. 9452/16 FISC 85) the Council also 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*".

⁴⁹ Doc. 10397/17 FISC 141 ECOFIN 551 CO EUR-PREP 32, paragraph 90.

⁵⁰ Doc. 10397/17 FISC 141 ECOFIN 551 CO EUR-PREP 32, paragraph 91.

118. At its meeting of 20 July 2016, the Group agreed that Code of Conduct subgroup on third countries should deal with this issue.
119. The subgroup on third countries discussed the issue under the Maltese Presidency on a basis of a proposed text.. Whilst the initial draft put forward at the meeting was mostly welcomed by delegations, it was concluded that further work will be undertaken on this issue.

d) Code of Conduct Group: clarification of the third and fourth criteria

120. The Council conclusions of March 2016 (doc. 6900/16, point 10) supported the creation of the new subgroup to deal with the clarification of the third and fourth criteria of the Code.
121. The Council conclusions of 6 December 2016 (doc. 15276/16) agreed to consider the principles of the OECD BEPS modified nexus approach as a starting point for the work on preferential regimes other than patent boxes when interpreting the third criterion of the Code and to substantiate these principles on a case-by-case basis depending on the type of regime in a manner consistent with the OECD.
122. Under the Maltese Presidency, agreement was reached on a revision of the guidance note on tax privileges related to special economic zones (SEZ), agreed by the Code of Conduct Group on 8 June and endorsed by the ECOFIN Council at its meeting of 16 June 2017, and work was initiated on a new guidance on the interpretation of the fourth criterion.
123. Under the Estonian Presidency, agreement was reached on the above-mentioned guidance on the interpretation of the fourth criterion and endorsed by the Code of Conduct Group on 22 November [and by the ECOFIN Council at its meeting of 5 December 2017]. Work was furthermore initiated on a new guidance on the interpretation of the third criterion.

e) International developments

124. The Estonian Presidency launched a discussion on interaction between work in the EU and other international fora at the HLWP meeting of 4 July 2017.
125. Against this background, the Estonian Presidency strived to ensure EU coordination in advance of the December 2017 meeting of the OECD task force on the taxation of the digital economy through work on the above-mentioned Council conclusions in order to ensure a common input to the OECD interim report to the G20 finance ministers meeting of April 2018.
126. The Estonian Presidency also invited US representatives at the HLWP meeting of 23 November 2017 to discuss US tax reform plans.

f) Tax in non-tax dossiers

127. 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.

128. Recent alerts covered:

- a) Collaborative economy in the tourism accommodation sector;
- b) Proposal for a Regulation of the EP and Council on the 'European Fund for Sustainable Development (EFSD) and establishing the EFSD Guarantee and the EFSD Guarantee Fund';
- c) Proposal for a Regulation of the European Parliament and of the Council on establishing a single digital gateway to provide information, procedures, assistance and problem solving services and amending Regulation (EU) No 1024/2012;
- d) Code of Conduct on withholding tax (WHT).

129. An updated overview of tax provisions in non-tax dossiers was discussed at the HLWP meeting of 27 October 2017.
