



Brussels, 6 December 2018  
(OR. en)

15082/18

FISC 519  
ECOFIN 1158  
CO EUR-PREP 57

**NOTE**

---

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

---

1. The Council (ECOFIN) was invited to report back to the European Council on various tax issues 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 22 November 2018, for submission to the Council via Coreper.
3. ECOFIN on 4 December 2018 endorsed the report as set out in the Annex, and agreed to forward it to the European Council on 13 December 2018.

**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 Austrian 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 2012<sup>1</sup> devoted to growth, as well as in the European Council conclusions of 28-29 June 2012,<sup>2</sup> 22 May 2013,<sup>3</sup> 24-25 October 2013,<sup>4</sup> 19-20 December 2013,<sup>5</sup> 20-21 March 2014,<sup>6</sup> 26-27 June 2014,<sup>7</sup> 18 December 2014,<sup>8</sup> and 19 October 2017,<sup>9</sup> the Council conclusions in the VAT area of 2012<sup>10</sup> and of 2016<sup>11</sup> as well as the Council conclusions on "Responding to the challenges of taxation of profits of the digital economy" of 2017.<sup>12</sup>
3. The Austrian Presidency devoted particular attention to the taxation of digital economy with the objective of securing agreement by the end of its term. On 4 December 2018, the Presidency brought the Digital Services Tax Directive to the ECOFIN meeting.

---

<sup>1</sup> EUCO 4/3/12 REV 3 (items 9 and 21).  
<sup>2</sup> EUCO 76/12, 28/29 June 2012.  
<sup>3</sup> EUCO 75/1/13 REV 1, 22 May 2013.  
<sup>4</sup> EUCO 169/13, 24/25 October 2013.  
<sup>5</sup> EUCO 217/13, 19/20 December 2013.  
<sup>6</sup> EUCO 7/1/14 REV 1, 20/21 March 2014.  
<sup>7</sup> EUCO 79/14, point 2.  
<sup>8</sup> EUCO 237/14, point 3.  
<sup>9</sup> EUCO 14/17, point 11.  
<sup>10</sup> 9586/12.  
<sup>11</sup> 9494/16.  
<sup>12</sup> 5175/17.

4. More specifically, the Council:
- a) adopted the Directive amending Directive 2006/112/EC as regards the harmonisation and simplification of certain rules in the value added tax system for the taxation of trade between Member States;
  - b) adopted the Regulation amending Regulation (EU) No 904/2010 as regards the exchange of information for the purpose of monitoring the correct application of call-off stock arrangements;
  - c) adopted the Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards certain exemptions for intra-Community transactions;
  - d) adopted the Regulation amending Council Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of value added tax;
  - e) adopted the Directive amending Directive 2006/112/EC as regards rates of value added tax applied to books, newspapers and periodicals;
  - f) adopted the Directive amending Directive 2006/112/EC 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;<sup>13</sup>
  - g) reached a general approach on the Directive amending Directive 2006/112/EC on the common system of VAT as regards the temporary application of a generalised reverse charge mechanism in relation to supplies of goods and services above a certain threshold;
  - h) made substantial progress on a number of important legislative proposals in the area of VAT, including on the details of the definitive system of VAT, special scheme for SMEs, etc.;

---

<sup>13</sup> *OJL 282, 12.11.2018, p. 5.*

i) made substantial progress in the area of excise duties as regards the proposal for a Directive amending Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages as well as the proposal for a Directive laying down the general arrangements for excise duty (recast), accompanied by a proposal for a Decision on computerising the movement and surveillance of excise goods (recast) and a proposal for a Regulation amending Regulation (EU) No 389/2012 on administrative cooperation in the field of excise duties.

5. The Code of Conduct Group (business taxation) further continued its work on the various matters falling within its mandate, including several issues regarding the EU list of non-cooperative jurisdictions for tax purposes, as foreseen in the Council conclusions of 5 December 2017.<sup>14</sup> The results of the work of the Code of Conduct Group was submitted, in coordination with the HLWP, to ECOFIN on 4 December 2018.<sup>15</sup>

6. More detailed information on individual dossiers can be found below.

#### **A. Initiatives in the area of EU tax law**

##### **Common (Consolidated) Corporate Tax Base**

7. As part of relaunching the 2011 Common Consolidated Corporate Tax Base proposal, the Commission put forward proposals for Council Directives on a Common Corporate Tax Base, hereafter "CCTB,"<sup>16</sup> and on a Common Consolidated Corporate Tax Base, hereafter "CCCTB."<sup>17</sup> The CCTB proposal lays down common rules for computing the tax base of multinational companies within the EU, whilst the CCCTB proposal complements the CCTB proposal with the consolidation element.

---

<sup>14</sup> 15429/17.

<sup>15</sup> 14364/18 / ADD 1-15.

<sup>16</sup> 13730/16.

<sup>17</sup> 13731/16.

8. On 6 December 2016, the ECOFIN Council took the view<sup>18</sup> that work on the CCTB proposal 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)*". In respect of the CCCTB proposal, the Council agreed that it would only be examined at technical level once discussions on the CCTB proposal will have been successfully concluded.
9. The Maltese Presidency subsequently focused technical discussions on the novel elements of the CCTB 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 inter-national 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.
10. During the Estonian and Bulgarian Presidencies, the WPTQ concluded the article-by-article examination of all chapters of the CCTB proposal, 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.
11. The Bulgarian Presidency furthermore developed a first compromise text on CCTB chapter IV (depreciation rules) and reached agreement among delegations on the idea of evaluating the impact of certain articles 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. It also initiated discussions on the level of harmonisation, scope and flexibility for Member States.

---

<sup>18</sup> 15315/16.

12. The result of these national tax revenue assessments was discussed in the HLWP on 26 October 2018 on the basis of a questionnaire sent to delegations on 1 October 2018: in total, 23 Member States have been working on a revenue assessment of the selected articles, but only 12 were able to report (preliminary) results. These discussions allowed to provide guidance to ongoing discussions at technical level in the WPTQ.
  
13. With regard to the scope of the proposal, two possible approaches to address this issue were discussed: either the compulsory scope is extended to cover all corporate income taxpayers (extended scope), or Member States that wish so may voluntarily also cover companies below the EUR 750 million threshold by adjusting their national corporate income taxation rules to bring them in line with the CCTB rules (unilateral adjustment). The downsides of an extended scope were also highlighted:
  - a) more harmonised rules would be needed in the CCTB (e.g. for SMEs or specific sectors) which are typically below the EUR 750 million threshold;
  - b) the flexibility for Member States' national tax policy measures would be strongly restricted, i.e. there would be an increased need for having flexible solutions in place for swift and targeted amendments/changes to the CCTB;
  - c) finally, questions could arise on the subsidiarity and proportionality aspects - in particular from national parliaments.
  
14. While delegations had different views on the above, the Presidency noted that the national evaluations of the impact of the CCTB proposal on national tax revenues could shed a new light on this matter, since the feedback received from delegations showed that:

- a) The optional nature of the CCTB for companies falling below the threshold results in a reduction of the tax base since taxpayers are expected to pick the system that favours them most;
  - b) The impact of the CCTB proposal on national tax revenues is overall more positive when it is applied to all corporate taxpayers (or in some cases even avoids a negative impact - tax incentives left aside).
15. Against this background, the Presidency proposed to extend the compulsory scope of the CCTB to cover all CIT taxpayers and explore new specific (but principle-based) provisions in the CCTB for SMEs and specific sectors, complemented, where necessary by Council implementing acts. Views of delegations, however, remained divided: whilst several delegations supported this way forward, several on the contrary opposed it or supported the need for a new Commission legislative proposal, and several delegations remained undecided.
16. As for the issue of the proposed tax incentives in CCTB Articles 9 (3), 11 and 42, the Presidency proposed that they should be discussed at a later stage after the technical core of the common corporate tax base has been agreed upon, considering their major impact on national tax revenues. Most delegations supported this way forward, but some delegations opposed it. One delegation furthermore suggested to explore the opportunity of a transitional provision to offset the preliminary negative budgetary impact, expected to decrease over time.
17. Discussions on the CCTB Article 5 (Permanent establishment in a Member State of a taxpayer who is resident for tax purposes in the Union) have also been postponed to a later stage considering that significant changes to this Article are included in the Commission's proposal on significant digital presence (SDP) and work is ongoing on this in the OECD (see section below on developments at international level with regard to digital taxation).

18. The Austrian Presidency put forward compromise texts on CCTB chapters I to V, capitalising on the work of the Maltese and Bulgarian Presidencies with a view to advancing discussions on this technical core. The outcome of these discussions is reflected in the latest Presidency compromise text.<sup>19</sup>

### **Digital taxation package**

19. 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."
20. The Austrian Presidency continued the work of the previous Presidency to ensure the examination of the package without delay and as a matter of priority.
21. To set the scene, the Presidency organised on 5-6 July 2018 a conference on the taxation of digital economy in order to exchange ideas in an informal setting.

---

<sup>19</sup> See doc. 13024/18. Note: parts related to a possible scope extension and tax incentives are marked with square brackets.



22. In line with the digital taxation roadmap of the Bulgarian Presidency,<sup>20</sup> it was agreed to focus the discussions on the proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services (further referred to as "DSTD").
23. Technical examination of the DSTD proposal during the Austrian Presidency started on 18 July 2018 in the Working Party on Tax Questions (WPTQ).
24. On 8-9 September 2018 the informal meeting of ECOFIN Ministers discussed the DSTD proposal on the basis of a Presidency discussion paper.
25. DSTD was further examined at the meetings of WPTQ on 13 September, 24 September, 11 October, 25 October, 12 November and 21 November 2018; at the fiscal attachés meeting of 16 November and at HLWP meetings on 25 September, 26 October and 22 November 2018.
26. The Presidency brought the DSTD to the ECOFIN Council on 6 November 2018 for a state of play as well as for the discussion of two specific elements: scope as regards taxable services and the expiry of the Directive. The ECOFIN Council gave a clear mandate to the technical level to work further on technical issues. The Presidency acted accordingly with a view to its decision to prepare the DSTD for agreement by the December 2018 ECOFIN meeting, as requested by several Member States.
27. The Presidency brought the DSTD to the ECOFIN Council on 4 December 2018 with a view to a general approach. Technical work will continue on the basis of ECOFIN discussions.

---

<sup>20</sup> 9052/18

## Developments at international level with regard to digital taxation

28. The OECD Task Force on Digital Economy met on 10-11 July 2018 in Paris to continue work after the adoption of the interim report on tax challenges arising from digitalisation, which is an important milestone for work at international level<sup>21</sup>, with a view to adopting the final report by 2020.
29. The meeting of the Task Force is scheduled on 4-5 December 2018 to discuss a note by the OECD Secretariat elaborating on concrete proposals made at the last meeting. The Presidency organised an exchange of views at the meeting of the HLWP on 22 November 2018 to prepare for the meeting of the Task Force.

## Value Added Tax (VAT)

30. In 2016, the Council adopted two sets of conclusions: in May 2016<sup>22</sup> the Council responded to the Commission VAT Action Plan - Towards a Single EU VAT area, of 7 April 2016, and in November 2016 the Council expressed its views on improvements to the current EU VAT rules for cross-border transactions.<sup>23</sup>
31. Following up on its VAT Action Plan, the Commission proposed a significant number of legislative proposals in the field of VAT. 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 .

---

<sup>21</sup> [https://back-g20.argentina.gob.ar/sites/default/files/media/communique\\_g20.pdf](https://back-g20.argentina.gob.ar/sites/default/files/media/communique_g20.pdf)

<sup>22</sup> 9494/16.

<sup>23</sup> 14257/16.

32. During the term of the Austrian Presidency, the legislative dossiers that were on the table of the Council and/or its preparatory bodies, as appropriate, covered the following areas:
- a) VAT "quick-fix" legislative package;
  - b) Administrative co-operation in the area of VAT;
  - c) VAT applied to e-publications;
  - d) Definitive VAT System;
  - e) VAT rates reform;
  - f) Simplification of VAT rules for SMEs;
  - g) Optional sectoral reverse charge mechanism and the Quick Reaction Mechanism;
  - h) Generalised reverse charge mechanism (GRCM);
  - i) Campione d'Italia and the Italian waters of Lake Lugano.
33. It is also expected that the Commission will table a legislative proposal that is necessary as a result of the adoption by the Council of the "VAT e-commerce package" in December 2017. The proposal concerns the implementation of the VAT Digital Package as regards certain value added tax obligations for supplies of services and distance sales of goods. In this context, the importance of the Digital Single Market, as well as the statement made to the minutes of the Council meeting at the time of adoption of these acts should be recalled. Therefore, it remains a top priority to make progress on this dossier as soon as possible. If the expected proposal by the Commission is tabled in time, the Austrian Presidency intends to discuss it in a forthcoming meeting of a WPTQ still under its term.
34. More detailed information on individual dossiers in the area of VAT can be found below.

a) VAT "quick-fix"

35. On 4 October 2017, the Commission issued three legislative proposals:

- 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 States<sup>24</sup>;
- ii) a proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards certain exemptions for intra community transactions<sup>25</sup> and
- iii) a proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards the certified taxable person.<sup>26</sup>

36. Besides the "cornerstones" of the definitive system of VAT and the concept of a certified taxable person (CTP), which the Council agreed to discuss in the context of the overall work on the definitive system of VAT (for more details, see points 48 to 87 of this Report), the proposals further set out, in reply to the Council conclusions of 8 November 2016, a number of short term improvements to the current system of VAT:

- i) simplification and harmonisation of rules regarding call-off stock arrangements,
- ii) the VAT identification number of the customer becomes a substantive condition for exempting the intra-Community supply of goods,
- iii) simplification and harmonisation of chain transactions in order to enhance legal certainty, and
- iv) simplification and harmonisation of the rules for proving the intra-Community transport of goods for the purposes of applying the exemption.

---

<sup>24</sup> 12882/17.

<sup>25</sup> 12881/17.

<sup>26</sup> 12880/17 (which was later amended by a legislative proposal set out in 14893/17, by incorporating the provisions on "certified taxable person" into that new proposal to amend Regulation No. 904/2010).

37. Particular attention was devoted to these legislative proposals during the term of the Austrian Presidency.
38. The Council deemed 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 a 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.
39. On 22 June 2018, the ECOFIN Council was not yet in a position to agree on these legislative proposals.<sup>27</sup> During the term of the Austrian Presidency, on 2 October 2018, ECOFIN Council reached a general approach on the "VAT quick-fix" legislative package.<sup>28</sup>
40. The Commission and the Council made a joint statement to the minutes, that they are aware of a certain divergence in the VAT treatment of independent groups of persons that pool their services and share costs between their members. The Council and the Commission recognize the need to clarify such VAT rules on independent groups of persons. The Commission will analyse this matter in detail in a study to be launched shortly with a view, subject to its right of initiative, to a possible proposal.

---

<sup>27</sup> 10335/18.

<sup>28</sup> 12564/18.

41. The following three legislative acts were adopted by the ECOFIN Council on 4 December 2018<sup>29</sup>:

- i) Directive amending Directive 2006/112/EC as regards the harmonisation and simplification of certain rules in the value added tax system for the taxation of trade between Member States;
- ii) Regulation amending Regulation (EU) No 904/2010 as regards the exchange of information for the purpose of monitoring the correct application of call-off stock arrangements;
- iii) Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards certain exemptions for intra-Community transactions.

b) Administrative co-operation in the area of VAT

42. On 30 November 2017, the Commission presented an amended proposal for amending Council Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of value added tax,<sup>30</sup> which also included the provisions of Commission proposal of 4 October 2017 for a Regulation amending Regulation (EU) No 904/2010 as regards the certified taxable person.<sup>31</sup>

43. 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 between themselves and with other law enforcement bodies.

---

<sup>29</sup> 13020/18.

<sup>30</sup> 14893/17.

<sup>31</sup> 12880/17.

44. The proposal aimed at adding measures specifically designed to tackle the main types of cross-border fraud schemes across the EU to Council Regulation (EU) No 904/2010,<sup>32</sup> the reference legal basis for administrative cooperation and the fight against VAT fraud.
45. This dossier was granted a high priority and on 22 June 2018, the Council reached a general approach on the Presidency compromise text.<sup>33</sup>
46. At the meeting of 2 October 2018, ECOFIN Council adopted the Council Regulation amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of value added tax.<sup>34</sup>

c) VAT applied to e-publications

47. 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.<sup>35</sup>
48. Directive 2006/112/EC on the common system of value added tax provided 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).
49. 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.

---

<sup>32</sup> Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (recast).

<sup>33</sup> 9820/18.

<sup>34</sup> 12621/18.

<sup>35</sup> 14823/16.

50. The ECOFIN Council held an orientation debate on this dossier on 21 March 2017. Following the preparatory technical work, the ECOFIN Council discussed this dossier at its meetings on 16 June 2017<sup>36</sup>, 25 May 2018 and 13 July 2018<sup>37</sup>, however, the required unanimous support to the compromise text could not be obtained.
51. At the meeting of 2 October 2018, the ECOFIN Council reached a political agreement,<sup>38</sup> and the Council Directive amending Directive 2006/112/EC as regards rates of value added tax applied to books, newspapers and periodicals was adopted by the ECOFIN Council at its meeting of 6 November 2018<sup>39</sup>.

d) Definitive VAT System

### Background

52. Following up on its VAT Action Plan - Towards a Single EU VAT area - of 7 April 2016, as regards the definitive VAT system (which is the primary policy objective in VAT area), the Commission chose a two-step legislative approach.<sup>40</sup>

---

<sup>36</sup> 8076/17 and 10040/17 + COR 1.

<sup>37</sup> 8771/18.

<sup>38</sup> 12622/18.

<sup>39</sup> OJ L 286, 14.11. 2018, p.20

<sup>40</sup> 12617/17.



53. As the **first part of the first legislative step**, the October 2017 package of three legislative proposals (the so-called VAT "quick fix" dossier, which consisted of three legislative acts<sup>41</sup> aimed at four short-term improvements (i.e. "quick-fixes") to the current VAT system) contained a number of new provisions on the concept of the certified tax payer (CTP) and the so-called "cornerstones" of the definitive system of VAT (set out as amendments to Article 402 of the VAT Directive).
54. When discussing the "VAT quick-fix" legislative package (see points 31-37 of this Report for more details), all Member States agreed in the Council that it was appropriate and necessary to advance the work on the core of the Commission proposals on the VAT "quick-fix", in order to allow for early progress and to solve important issues in the VAT area, while noting that the remaining parts of the proposals relating to the CTP and the text of amendments to Article 402 of the VAT Directive will require further discussion, in the context of other legislative proposals in the area of VAT (proposals on the technical details of the definitive system of VAT / VAT rates<sup>42</sup>).
55. As the **second part of the first legislative step**, in May 2018, the Commission tabled the legislative proposal on detailed technical measures for the operation of the definitive VAT system of VAT (hereafter "Commission proposal"). This proposal was presented by the Commission in more detail at one of the WPTQ meetings during the term of the Bulgarian Presidency.

---

<sup>41</sup> 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 States ( 12882/17); Proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards certain exemptions for intra community transactions ( 12881/17); Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards the certified taxable person ( 12880/17 (which was later amended by a legislative proposal set out in 14893/17, by incorporating the provisions on "certified taxable person" into that new proposal to amend Regulation No. 904/2010).

<sup>42</sup> Proposal for a Directive amending Directive 2006/112/EC as regards rates of value added tax.

56. During the term of the Austrian Presidency, the Commission proposal on the definitive system of VAT was granted a high priority and was the main subject of a large number of WPTQ meetings, as this dossier requires thorough technical analysis before the final policy choices are made that will permit designing a compromise text on the basis of a Commission proposal, leading to an agreement between all Member States on the details of the definitive system of VAT.

### **State of play**

57. Member States appreciate the initiative taken by the Commission to reach a definitive VAT system.
58. The functioning of the future definitive VAT system, together with any accompanying measures that might be agreed, as appropriate, will highly depend on the specifics of its design. The main objective of the discussions under the Austrian Presidency was therefore to identify and evaluate the key design components of the Commission proposal together with their effects and to explore if adjustments or additions, proportional to their objective, would be considered necessary and appropriate by Member States.
59. Instead of an "Article by Article" analysis of the proposal, which would not have generated much progress on this dossier given the scale, complex nature and sensitivity of the proposal, the discussions have focused on six key components:
- i) taxation in the Member State of destination;
  - ii) change of the rules for cross-border B2B supplies of goods within the EU towards having a single B2B transaction (intra-Union supply of goods in the Member State of destination) instead of current two transactions (exempt intra-Community supply of goods in the Member State where the dispatch or transport begins and intra-Community acquisition in the Member State of destination);

- iii) design and functioning of the provisions relating to the notion of CTP and his certification;
- iv) rules for supplies of goods to CTPs;
- v) rules for supplies of goods to non-CTPs including accompanying measures; and
- vi) extension of the One-Stop-Shop (“OSS”).

60. To be noted, the views on the general objective on the way forward were shared by all Member States: the benefits of the definitive VAT system should outbalance its costs. In other words, the definitive system of VAT should effectively result in reduction of risks of fraud, tax avoidance or evasion, thus having positive effects on tax revenues and should have positive or at least proportionate effects on compliance costs of businesses and tax authorities, while observing the principle of neutrality of VAT. Supplementary administrative costs to tax authorities, if any, should effectively contribute to outweighing risks of fraud, tax avoidance, tax evasion or tax revenue loss, and be instrumental to increasing tax compliance.

**i) Taxation in the Member State of destination**

61. In its 2016 Conclusions on the Commission Action Plan on VAT the Council has reiterated that the principle of “taxation in the Member State of origin of the supply of goods or services”, as envisaged in Article 402 of Directive 2006/112/EC on the common system of value added tax, should be replaced by the principle of “taxation in the Member State of destination” for the definitive VAT system for B2B transactions, as stated in the Council conclusions of 15 May 2012”. The Council also stressed that “the work has to continue to set ground for the political choice to be made with regard to the definitive VAT system”.<sup>43</sup>
62. During the discussions under the Austrian Presidency, delegations again emphasised that the work on this Commission proposal should be carried out with this political guidance in mind.

---

<sup>43</sup> 9494/16 point 24 and 26.

## **ii) One transaction instead of two**

63. According to the Commission proposal, the current system (for VAT purposes) of cross-border B2B supplies of goods within the EU with two transactions should be replaced by a system with only one transaction.
64. Under the current system, the supplier has a supply of goods in the Member State where the goods are located at the time when dispatch or transport of the goods to the customer begins which is exempt from VAT, if all requirements for the exemption are fulfilled (intra-Community supply of goods). The customer has an intra-Community acquisition in the Member State of destination.
65. Under the Commission proposal, there would only be an intra-Union supply of goods by the supplier in the Member State of destination.
66. Member States have expressed that, essentially, they agree to build on the idea of having one transaction instead of two.

## **iii) Design and functioning of the CTP and his certification**

67. The Commission proposal contains different rules, e.g. regarding the person liable to pay the tax, dependent on whether the customer is a CTP or not. The CTP concept in the proposal is inspired by the authorized economic operator concept as used in customs.
68. During the discussions under the Austrian Presidency, a number of Member States opposed the idea to introduce a CTP-concept and to apply different rules dependent on whether the customer is a CTP or not.

69. While a number of Member States seemed to support the idea to introduce the new notion of a CTP, many Member States have expressed concerns about possible complexity and its negative effects on businesses and tax authorities, as well as potential neutrality issues if a system were introduced, where different rules apply dependent on whether the customer is a CTP or not.
70. Almost all of the Member States agree though that if a CTP concept were introduced, it should not mirror the notion of "authorized economic operator" as currently used for customs purposes. Equality of access between SMEs and larger businesses should be ensured.
71. Other than this, Member States currently have very different views on the design and functioning of the CTP concept and the certification of CTPs, so, pending further discussions, it remains to be assessed whether and how the notion of a CTP should be part of the definitive system of VAT.

**iv) Rules for supplies of goods to CTPs**

72. In accordance with the Commission proposal, reverse charge would apply to supplies of goods from a non-established supplier to a CTP. The recapitulative statement would be limited to supplies of services.
73. Provided that a satisfactory solution is found in the ongoing debate on the CTP, Member States could overall agree that reverse charge could be applied to supplies of goods from a non-established supplier to a CTP.
74. However, Member States strongly oppose the abolition of the recapitulative statement requirement for intra-Union supplies of goods, if there is no effective replacement of this measure, which would ensure proper information for the purposes of tax control.

**v) Rules for supplies of goods to non-CTPs and accompanying measures**

75. The core element in the Commission proposal for making the EU VAT system more fraud proof is to place an obligation on the supplier to charge VAT on intra-Union supplies of goods to his customer. One of the main goals is to counter missing trader fraud.
76. Missing trader fraud related to supplies of goods notably occurs on a “domestic” transaction, where the supplier “disappears” before having paid VAT due, while the customer is still remitted his input VAT. When the missing trader intra-Community (MTIC) fraud occurs, which is currently the most common type of missing trader fraud, the “missing trader”, in order to maximise his gain, acquires the goods from another Member State to obtain them effectively free of VAT, before using them for fraudulent “domestic” transaction.
77. The Commission proposal intends to counter MTIC fraud by making the supplier of an intra-Union supply of goods liable for the VAT, if the customer is not a CTP. Even if the customer of the intra-Union supply of goods disappears before having paid the VAT on the subsequent “domestic” transaction, the Member State where VAT is due should at least receive the VAT on the intra-Union supply of goods, thus reducing the loss for the Member State, reducing the “gain” by the fraudster and, consequently, the incentive to commit this type of fraud.
78. The discussions under the Austrian Presidency regarding the proposed switch to a “supplier liability” for intra-Union supplies of goods to non-CTPs have shown that, in the view of almost all Member States, such an overhaul of the current system of VAT, if agreed, should be supplemented with solid and proportionate accompanying safeguard measures to the Commission proposal.
79. The majority of Member States are concerned, inter alia, about potential negative effects, such as administrative burden and costs for businesses, burden and costs for tax authorities, revenue losses in cases of insolvency and/or negative impact due to other forms of fraud.

80. While acknowledging that the Commission proposal may have a positive effect on the MTIC fraud, many Member States see the risk that fraudsters may adapt and that new fraud patterns may occur. A number of Member States have voiced concerns that they may have difficulties to ensure collection of tax from non-established suppliers while having to refund input VAT to customers.
81. In order to prevent such potential new risks, many Member States wish to further explore the development of safeguard measures accompanying the switch to the “supplier liability” which are compatible with the Commission proposal.
82. For example, many Member States deem it worthy to analyse in parallel or combined possibilities of reporting obligations and measures linked to the person that gets the right to deduct input VAT: these measures could either take the form of a restriction of the right for input VAT deduction of the customer if VAT is not paid by the supplier, or the form of a joint and several liability. However, in order to allow the customer to escape the consequences of these measures, they would have to be combined with a split payment, i.e. that the customer withholds the VAT and transfers it directly to the tax authorities.

**vi) Extension of the OSS**

83. The Commission proposal generally aims at extending the OSS to all supplies of goods and services for which the taxable person has to pay VAT in a Member State where he is not established. Furthermore, the proposal, if adopted, would allow for input VAT deduction through the OSS under certain circumstances.
84. The discussions under the Austrian Presidency have shown that, essentially, Member States agree to an extension itself and see the benefits it would have for businesses.
85. Member States agree that a “supplier liability” for intra-Union supplies of goods, if agreed, would need to be accompanied by an extension of the OSS to these supplies.

86. Some Member States have, however, observed that, in any case, they would still need to have the necessary information to ensure tax control and that the extension of the OSS should not lead to new fraud opportunities.
87. Similarly, some Member States have observed that, in any case, a possibility to deduct input VAT through the OSS should not lead to new fraud opportunities.
88. One of the main differences between the proposed possibility to deduct input VAT through the OSS in certain cases and a refund under the VAT Refund Directive<sup>44</sup> is the timing of the refund. A number of Member States argue that applying the current rules of the VAT Refund Directive under the definitive system would not be proportionate and may negatively influence the customer's cash flow (especially for instance, in case of transfers of goods between Member States or where the taxable person is the recipient of a supply subject to VAT reverse charge).

### Way forward

89. During the discussions under the Austrian Presidency, it became evident that the best way forward is to continue focusing on the key elements of the Commission proposal and the analysis of options of accompanying measures.
90. Member States agree that the next step could be to continue further exploring accompanying measures, also taking into consideration, where appropriate, possible broader application of new technologies. For the time being, with a view to agreeing on a VAT system that would be better than the temporary one, it seems appropriate to consider a variety of options. These could include, for example, the options already discussed at the WPTQ level: the proposed switch to a "supplier liability" for cross-border B2B supplies of goods within the Community combined with reporting obligations and/or a restriction of the right of input VAT deduction and/or a joint and several liability of the customer together with a "split payment".

---

<sup>44</sup> Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State.



91. To be noted, Member States agree that the discussion on the definitive VAT system should remain one of the priorities in the area of VAT. Nevertheless, this debate should not prevent or slow down efforts to improve, as appropriate, the current VAT system, which will remain in place until the agreement is reached on the definitive regime.

e) VAT rates reform

92. On 18 January 2018, the Commission issued a proposal for a Directive amending Directive 2006/112/EC as regards rates of value added tax.<sup>45</sup> 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.

93. 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).

94. The technical examination of this file was started during the term of Bulgarian Presidency, at WPTQ level.

---

<sup>45</sup> 5335/18.

*f) Simplification of VAT rules for SMEs*

95. 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.<sup>46</sup>
96. 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.
97. 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.
98. Technical examination of this file started during the term of the Bulgarian Presidency. Under the Austrian Presidency, this dossier was discussed at five WPTQ meetings. Exchange of views at WPTQ level demonstrated that 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.

---

<sup>46</sup> 5334/18.

99. To be noted, appropriate balance will have to be obtained by providing a fair and proportionate simplification of VAT obligations for small enterprises, while ensuring that appropriate measures of administrative co-operation (including IT solutions) between tax authorities of Member States are in place, so that the modified scheme for small enterprises is applied correctly, and does not lead to weakened tax control and increase of risks of VAT fraud/evasion.

g) Optional sectoral reverse charge mechanism and the Quick Reaction Mechanism

100. On 25 May 2018, the Commission transmitted the 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.<sup>47</sup>

101. The purpose of this legislative proposal for a Directive amending Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax<sup>48</sup> (hereafter the VAT Directive) is to prolong:

- i) the possibility for Member States to apply the reverse charge mechanism to combat existing fraud in supplies of goods and services (Article 199a(1) of the VAT Directive); and
- ii) the possibility to use the Quick Reaction Mechanism (QRM) to combat fraud (Article 199b(1) of the VAT Directive).

102. The Council reached a general approach on the draft Directive on 2 October 2018.<sup>49</sup>

---

<sup>47</sup> 9461/18.

<sup>48</sup> OJ L 347, 11.12.2006, p. 1.

<sup>49</sup> 12659/18.

103. On 6 November 2018 the ECOFIN Council adopted the Directive amending Directive 2006/112/EC 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.<sup>50</sup>

*h) Generalised reverse charge mechanism (GRCM)*

104. 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.<sup>51</sup>

105. The objective of this proposal is that Member States, if they meet a number of very strict conditions, could apply the GRCM in relation to non-cross border supplies of goods and services above a certain threshold. As stated by the Commission, "this measure is intended to help Member States particularly affected by fraud to fight against carousel fraud, while a comprehensive and EU-wide solution is put in place".<sup>52</sup>

106. A Presidency compromise text was presented for an orientation debate at the Council (ECOFIN) meeting on 21 March 2017.<sup>53</sup> This dossier was also discussed in the ECOFIN Council meetings in June 2017<sup>54</sup>, May 2018 and July 2018<sup>55</sup>, where the Austrian Presidency suggested that, following further technical work, the compromise text should be ready in time for the 2 October 2018 ECOFIN meeting.

---

<sup>50</sup> OJL 282, 12.11.2018, p. 5.

<sup>51</sup> 15817/16.

<sup>52</sup> 12617/17, page 6.

<sup>53</sup> 7118/17.

<sup>54</sup> 10041/17.

<sup>55</sup> 8770/1/18.

107. On 2 October 2018, the Council reached a general approach on the Directive amending Directive 2006/112/EC on the common system of VAT as regards the temporary application of a generalised reverse charge mechanism in relation to supplies of goods and services above a certain threshold.<sup>56</sup>

108. The Council will adopt this Directive at its forthcoming meeting, subject to receiving the opinion of the European Parliament and legal-linguistic revision.

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

109. 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.

110. 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).

---

<sup>56</sup> 12565/18.

111. At the meeting of the WPTQ on 28 November 2018, all Member States could agree on the substance of this legislative proposal and the starting date of application being 1 January 2020. The Council is expected to adopt this Directive at its forthcoming meeting, subject to legal-linguistic revision.

## **Excise duties**

### *a) Common provisions for excise duties*

112. On 25 May 2018, the Commission tabled four proposals in the field of excise duties.

113. Firstly, the Commission proposed to recast Directive 2008/118/EC which lays down the general arrangements that apply to all products subject to excise duties (alcohol, tobacco and energy). The proposed recast Directive<sup>57</sup> contains improvements as suggested in the report to 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 already released for consumption. The proposal includes measures to remove barriers for SMEs. This will allow SMEs to use modern IT systems rather than an outdated paper-based system and lifts the 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.

---

<sup>57</sup> 9571/18 + ADD1, ADD2, ADD3.

114. Secondly, the Commission tabled a proposal for a Decision of the European Parliament and of the Council on computerising the movement and surveillance of excise goods (recast).<sup>58</sup> This proposal accompanies the proposal for a Council Directive laying down the general arrangement for excise duty mentioned above and aims at integrating into the current computerised system the automation of the procedure for movements of excise goods which have been released for consumption in the territory of one Member State and that are moved to the territory of another Member State in order to be delivered for commercial purposes in that other Member State.
115. Thirdly, the Commission also put forward a proposal for a Council Regulation amending Regulation (EU) No 389/2012 on administrative cooperation in the field of excise duties as regards the content of electronic register.<sup>59</sup> This proposal also accompanies the said proposal for a Directive laying down the general arrangements for excise duty.
116. The Presidency completed a technical examination of these three proposals that had started under the Bulgarian Presidency. A compromise text of the Directive was tabled, discussed and amended accordingly. Further discussions on the draft Decision and the draft Regulation were postponed as depending on the amendments of the Directive.
117. Fourthly, 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<sup>60</sup> 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.

---

<sup>58</sup> 9567/18 + ADD1.

<sup>59</sup> 9568/17.

<sup>60</sup> 9570/18 + ADD1, ADD2.

118. 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 of certain goods 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 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. The Commission'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) 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.

119. The Presidency completed a technical examination of the proposal that had started under Bulgarian Presidency. Three compromise proposals were tabled, discussed and amended accordingly, taking into account the issues raised by Member States. Exchange of views at WPTQ level demonstrated that 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.



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

120. 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.
121. 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 duty<sup>61</sup> (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.
122. At the meeting of the WPTQ on 28 November 2018, all Member States could agree on the substance of this legislative proposal and the starting date of application being 1 January 2020. The Council is expected to adopt this Directive at its forthcoming meeting, subject to legal-linguistic revision.

### **Fiscalis**

123. On 8 June 2018 the Commission submitted a proposal for a Regulation of the European Parliament and of the Council establishing the "Fiscalis" programme for cooperation in the field of taxation.<sup>62</sup> The proposal lays down the objectives, budget, funding forms and rules for the period 2021-2027 for the Fiscalis programme for cooperation in the field of taxation.

---

<sup>61</sup> 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).

<sup>62</sup> 9932/18

124. The proposal has been examined in the Working Party on Tax Questions (Fiscalis) on 26 June, 9 July and 5 September 2018. WPTQ managed to reach broad agreement on the text. The text includes bracketed provisions<sup>63</sup> that are still under consideration and that are likely to form part of horizontal negotiations on the MFF.
125. The European Economic and Social Committee delivered its opinion on 17 October 2018.<sup>64</sup>
126. The Presidency intends to bring the text to Coreper for a partial general approach with a view to commencing negotiations with the European Parliament in the context of the ordinary legislative procedure.<sup>65</sup>

### **The common system of Financial Transaction Tax (FTT)**

127. 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 2013<sup>66</sup>, and consent of the European Parliament 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.
128. 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").<sup>67</sup>

---

<sup>63</sup> Recital 18, Article 4(1) and Article 5(c).

<sup>64</sup> 14207/18.

<sup>65</sup> 14208/18 and 14209/18.

<sup>66</sup> OJ L 22, 25.1.2013, p. 11.

<sup>67</sup> On 16 March 2016, the Estonia left the enhanced co-operation on FTT. See 7808/16.

129. 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 2014<sup>68</sup>, 7 November 2014<sup>69</sup>, 9 December 2014<sup>70</sup>, and 8 December 2015<sup>71</sup>;
- 17 June 2016<sup>72</sup>, where, as a follow-up to the statement of ten participating Member States that was inserted into the minutes of the 8 December 2015 ECOFIN<sup>73</sup>, 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 FTT<sup>74</sup>; exemption from FTT of market making activities<sup>75</sup>; scope of transactions in derivatives contracts to be subject to the FTT<sup>76</sup>);
- 6 December 2016<sup>77</sup>, where the Council took note of the ongoing discussion on the constitutive parts (the "building blocks")<sup>78</sup> 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.

130. 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.

---

<sup>68</sup> 9399/14 and 9576/14.

<sup>69</sup> 14949/14.

<sup>70</sup> 16498/14 and 16753/14, points 36 to 46.

<sup>71</sup> 14942/15.

<sup>72</sup> 9602/16.

<sup>73</sup> 15112/15 ADD 1.

<sup>74</sup> 9602/16, point 6 to 8, and 14942/15, point 7 to 11.

<sup>75</sup> 9602/16, point 9 to 12, and 14942/15, point 15 to 17.

<sup>76</sup> 9602/16, point 13 to 15, and 14942/15, point 18 to 19.

<sup>77</sup> 13608/16.

<sup>78</sup> 14942/15, point 3.

131. In the light of the foregoing, as already indicated in the December 2016 ECOFIN report to the European Council on tax issues,<sup>79</sup> further work of 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**

132. 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)**

133. The Code of Conduct Group met four times under the Austrian Presidency, on 24 July, 21 September, 12 October and 15 November 2018.

134. The Group started working on the basis of the new multiannual work package approved by the Council (ECOFIN) on 22 June 2018.<sup>80</sup>

135. Its subgroup on third countries, chaired by the Austrian Presidency, met on 10 July, 20 September and 14 November 2018.

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

137. 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.

---

<sup>79</sup> 15254/16, point 45.

<sup>80</sup> 10420/18.

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

- amendments to the Annexes of the Council conclusions of 5 December 2017, including the de-listing of several jurisdictions;
- a revision of the geographical scope of the EU listing exercise;
- a draft guidance on criterion 3.2.

139. The Group and its subgroup on third countries furthermore continued discussions on:

- further coordination of defensive measures in the tax area against non-cooperative jurisdictions;
- future criterion 1.4 (exchange of beneficial ownership information).

140. Furthermore, in line with the Council conclusions of 8 December 2015 and 8 March 2016, the HLWP continued discussions on the revision of the mandate of the Code of Conduct Group at its meetings of 25 September and 22 November 2018, whilst the Code of Conduct Group reviewed some related technical issues at its meeting of 24 July 2018.

141. More detailed information on the work of the Group can be found in its report to the ECOFIN Council<sup>81</sup> and accompanying Council conclusions.<sup>82</sup>

## **b) International developments**

142. The HLWP was regularly informed of relevant international developments, notably in relation to meetings of the Inclusive Framework on BEPS, OECD Task for on Digital Economy (TFDE) and OECD Forum on Harmful Tax Practices (FHTP).

---

<sup>81</sup> 14364/18 + ADD 1-15.

<sup>82</sup> 14363/18.

**c) Tax in non-tax dossiers**

143. 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.

144. Recent alerts covered:

- a) the proposal for a Directive of the European Parliament and the Council on the protection of persons reporting on breaches of Union law;
- b) the proposal for a Council Decision on the accession of Samoa to the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part;
- c) the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations;
- d) the proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions
- e) the proposal for a Regulation of the European Parliament and of the Council on a pan-European Personal Pension Product (PEPP).

145. An updated overview of tax provisions in non-tax dossiers was discussed at the HLWP meeting on 26 October 2018.

**d) Interactions with EP TAX 3 Committee**

146. The HLWP and COCG were regularly informed and consulted on exchange of information and access to documents requests by the TAX3 Committee of the European Parliament.<sup>83</sup>

147. On 10 October 2018 the Chair of the Code of Conduct Group participated in an exchange of views with the members of the TAX 3 Committee and shared information on key topics of COCG work with the TAX 3 Committee members.<sup>84</sup>

---

---

<sup>83</sup> WK 8210/2018 and WK 8212/2018.

<sup>84</sup> WK 9052/2018.