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Delegations will find attached document COM(2019) 8 final.

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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL**

**Towards a more efficient and democratic decision making in EU tax policy**

## 1. Introduction

**Taxation is essential to the functioning of our society and a key instrument of public policy at all levels of governance.** It is the primary source of revenue for governments and is central to securing an efficient and stable economy in a fair and inclusive society. This is why measures aimed at coordination, approximation or harmonisation of national legislations in the field of taxation are an important tool for policy at EU level, within the bounds set by the Treaties and in line with the principle of subsidiarity. Therefore, already the 1957 Treaty establishing the European Economic Community provided for the legal bases for such measures, as a necessary element for European integration. Initially, EU tax policy focussed mostly on removing obstacles to the Single Market<sup>1</sup> and on preventing distortions to competition. This led to a number of success stories, such as legislation to minimise double taxation for cross-border businesses<sup>2</sup>, which have been instrumental to building the Internal Market.

**For many years, legislation in the field of taxation has been closely linked to national sovereignty,** due to its role in national revenues, budgets and policy choices. Member States have defended this sovereignty and seen decision-making based on unanimity, entailing the possibility of a national veto, as a means of protecting it. As a result, the Treaties retained the general rule that the Council must decide unanimously on proposals in the area of taxation before they can be adopted at EU level, a requirement suited to a smaller Union with limited integration, a more traditional economy and fewer cross-border challenges than the current Union.

**New challenges that have emerged, in the EU and globally, have exposed the limits of unanimity in tax policy at both EU and national levels.** In today's larger, modern and more integrated EU, a purely national approach to taxation no longer works and unanimity is neither a practical nor an effective way of decision-making. National and common interests are intertwined. The increased mobility of businesses and citizens means that one Member State's tax decisions can significantly affect the revenues of the others and the scope to make their own policy choices. Globalisation and digitalisation have created common challenges that need common solutions. External competitive pressures, such as the recent US tax reform, require Member States to act together to safeguard the interests of the Union by reinforcing the competitiveness of the EU tax system. Coordinated EU action in taxation is essential to protect Member States' revenues and ensure a fair tax environment for all. In order to keep pace with today's rapidly changing environment, EU tax policy must be able to react and adapt quickly. However, this is not possible when unanimity is the rule. Issues that could perhaps afford to be deliberated over several years in the past, today may need to be brought to conclusions in a matter of months. The scale of challenges facing Member States

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<sup>1</sup> In particular by the non-discrimination clause in, now, Article 110 of the Treaty on the Functioning of the European Union (TFEU) as well as by the introduction of common rules such as for turnover taxes and the value added tax (VAT).

<sup>2</sup> For example the Parent-Subsidiary Directive, the Interest and Royalty Directive, and the Mergers Directive.

today means that important decisions should not be allowed to be blocked by one single Member State.

**Taxation is the last EU policy area where decision-making exclusively relies on unanimity.** Through successive Treaty changes over the past 30 years, decision-making procedures in other areas have evolved in response to economic, environmental, social and technological changes and delivered clear results. Qualified majority voting is now the standard rule, including for policies that are just as politically sensitive as taxation<sup>3</sup>. Moving from unanimity to qualified majority voting in other policy areas was not easy to accept for Member States. But they did so because they realised that the EU needs efficient decision-making tools to respond effectively to modern challenges and to unleash the benefits of the Single Market and of the Economic and Monetary Union more broadly. Some of the most important achievements of European integration in the last decades would not have been possible without this change.

**Although decision-making by qualified majority was provided, for certain policies, in the original Treaties, only from the second half of the 1980s was qualified majority voting effectively applied, where possible.** It was the shift to qualified majority voting for most decisions pertaining to the Single Market, as a result of the Single European Act of 1986, that acted as the main catalyst for the completion of the iconic project, instilling a fresh dynamism within the Community, with unprecedented results.

**The only remaining current exception hampers progress in achieving EU policy goals and completing the Single Market.** It is time to align decision-making relating to tax legislation with that of other, equally important policy areas.

**Taxation is also one of the few policy areas where decisions are still taken by means of a special legislative procedure.** Currently, and since 1958, EU initiatives on taxation are taken by the Council following a proposal from the Commission; the European Parliament has a mere consultative role. Excluding the directly elected European Parliament from decision-making in such an important policy area as taxation, is at odds with the democratic goals of the Union. A move to the ordinary legislative procedure would close this democratic deficit.

**Since the beginning of the current mandate, the Commission has pushed for a fairer and more efficient European tax system.** Member States have agreed to a series of advanced new rules to protect their resources against corporate tax avoidance throughout the EU, while ensuring a fairer and more stable environment for businesses.

**It is against this background that, in his State of the Union Speeches of 2017 and 2018<sup>4</sup>, President Juncker suggested moving to qualified majority voting on certain tax matters:**

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<sup>3</sup> The Single European Act of 1986 entered in force on 1 July 1987 and replaced unanimity by qualified majority voting as the general rule for harmonising Single Market rules. This was followed by further steps qualified majority voting being extended to a wide range of policies including judicial cooperation in civil matters, harmonisation in the area of criminal law and police cooperation.

<sup>4</sup> [https://ec.europa.eu/commission/priorities/state-union-speeches\\_en](https://ec.europa.eu/commission/priorities/state-union-speeches_en)

*“When it comes to important single market questions, I want decisions in the Council to be taken more often and more easily by qualified majority – with the equal involvement of the European Parliament. We do not need to change the Treaties for this. There are so-called “passerelle clauses” in the current Treaties which allow us to move from unanimity to qualified majority voting in certain cases – provided the European Council decides unanimously to do so.*

*I am also strongly in favour of moving to qualified majority voting for decisions on the common consolidated corporate tax base, on VAT, on fair taxes for the digital industry and on the financial transaction tax.”*

Accordingly, the present Communication does not intend to propose any change to the attribution of EU competences in the field of taxation. Nor does it aim to shift towards a system of harmonised personal and corporate tax rates across the EU. The current Communication is only proposing to modify the way the EU exercises its competences in the area of taxation. In particular, the Communication sets out a Roadmap to achieve this goal. It should trigger a broad policy debate and serve as a contribution to EU leaders, ahead of the next European elections. In the light of those discussions, and based on the priorities for the years ahead, the Commission will decide which concrete proposals should be made.

## **2. Why is there a need for change?**

### **2.1 Better tax policy for a stronger and more competitive Single Market**

**Taxation cannot deliver its full potential to help preserve and deepen the Single Market and to support inclusive growth across countries because of unanimity.** Taxation is central to building a strong and dynamic Single Market, which supports businesses, attracts investors and can compete with the strongest global markets. It is critical for growth and jobs, given its influence on companies’ decisions to expand, invest and employ. In addition, taxation is a key element in ensuring social justice for citizens and a level playing field for businesses in the EU. Indeed, in a recent Eurobarometer survey<sup>5</sup>, three quarters of the respondents cited the fight against tax abuse as a priority area for EU action.

Yet, in spite of the positive impact it can have, EU tax policy is failing to deliver its full potential. Within the Single Market, companies and consumers enjoy a common set of rules and standards, without any border. Within the European Monetary Union economic activity is facilitated by a single currency. However, direct and, although to a less extent, also indirect taxation, remains fragmented into 28 different national legislations. By leaving such fragmentation unaddressed, Member States impose huge compliance costs on EU businesses especially on SMEs and make the Single Market a less attractive place to invest in globally.

**Over the years, unanimity has hampered progress on important tax initiatives, needed to strengthen the Single Market and boost EU competitiveness.**

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<sup>5</sup> <http://www.europarl.europa.eu/news/en/headlines/economy/20160707STO36204/tax-fraud-75-of-europeans-want-eu-to-do-more-to-fight-it>

The Common Consolidated Corporate Tax Base (CCCTB), for example, was first proposed in 2011, as a modern, business-friendly and fair corporate tax system for the entire EU. The CCCTB<sup>6</sup>, relaunched in 2016, would deliver unprecedented simplicity, ease of business and legal certainty for companies, while also ensuring that multinationals paid a fair share of tax proportionate to where they generate their profits. However, the CCCTB remains on the negotiating table in the Council, as Member States continue to try to unanimously agree on the future of corporate taxation.

The Standard VAT Return is another proposal that would have radically improved the business environment in the Single Market. Through a simple and harmonised system for filing VAT declarations, this proposal offered to reduce the administrative burden for cross-border companies by EUR 15 billion per year. However, in their struggle to reach unanimity, Member States veered towards an outcome that completely undermined the goal of simplification. In the end, the Commission had to withdraw the proposal in 2016, leaving EU companies to deal with 28 different VAT return forms.

### **The Cost of Non-Action in EU Tax Policy**

**The VAT Definitive Regime** could help close the EUR 147 billion annual VAT gap<sup>7</sup> due to tax evasion and tax avoidance, as well as reduce VAT fraud, which currently costs public budgets around EUR 50 billion per year<sup>8</sup>.

**The Common Consolidated Corporate Tax Base** would in the long-run increase investment in the EU by up to 3.4% and lead to an increase in growth by up to 1.2% (corresponding to about EUR 180 billion<sup>9</sup>).

**The Financial Transactions Tax (FTT)**, as proposed<sup>10</sup> by the Commission in 2011, would create EUR 57 billion in new revenues a year.

**The Digital Services Tax**, as proposed<sup>11</sup> in 2018 as a short-term solution, would raise around EUR 5 billion of annual revenues within the Union and help prevent the fragmentation of the Single Market<sup>12</sup>.

<sup>6</sup> COM(2016) 685 final of 25.10.2016.

[https://ec.europa.eu/taxation\\_customs/sites/taxation/files/com\\_2016\\_685\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_685_en.pdf)

<sup>7</sup> Study and Reports on the VAT Gap in the EU-28 Member States 2018 Final Report: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/2018\\_vat\\_gap\\_report\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/2018_vat_gap_report_en.pdf)

<sup>8</sup> The global amount of the VAT gap for years 2011 to 2016 is more than EUR 960 billion.

<sup>9</sup> Considering the size of the EU economy in 2017.

<sup>10</sup> COM(2011) 594 final. After it became clear that this initial proposal for a harmonised FTT for the entire EU would not receive unanimous support within the Council, the Commission, at the request of 11 Member States, tabled a proposal for authorising enhanced cooperation in that area (COM(2013)71final).

<sup>11</sup> COM(2018) 148 final.

<sup>12</sup> COM(2018) 146 final. The Commission's Communication "*Time to establish a modern, fair and efficient taxation standard for the digital economy*" indicates that companies with digital business models pay less than half the tax rate of businesses with traditional business models, with an effective average tax rate of 9.5% compared to 23.2%.

**Unanimity in taxation has also had a detrimental effect on the EU's wider policy priorities.** Taxation is also essential for many of the EU's most ambitious projects, including the Economic and Monetary Union, the Capital Markets Union, the Digital Single Market, the 2030 Climate and Energy Framework or the Circular Economy. The Commission's proposal to revise the Energy Tax Directive<sup>13</sup>, for example, aimed to support the EU's environmental, climate and energy objectives, by factoring CO2 emissions into the tax rate for fuel. It would have maximised the potential of energy taxation to deliver on climate change commitments and to support sustainable growth. It would also have reversed the paradoxical situation whereby the most polluting fuels are sometimes the least taxed in Europe. However, Member States failed to reach unanimity and the proposal was eventually withdrawn to avoid a text running against the objectives pursued. As a result, the EU's legal framework for energy taxation today still contradicts the Union's environmental and climate change goals and the Treaties' principle of "polluter pays" is not fully implemented. Harmonised and targeted taxation on negative social and environmental externalities in the EU Single Market – such as in transport and energy – based on the "user pays" and "polluter pays" principle would also enable the EU to shift towards a more efficient and sustainable economy. This highlights the self-defeating nature of unanimity in taxation and is further evidence of the need for change.

**Despite unanimity, there has been some important progress in EU tax policy in recent years, but largely in response to public pressure.** Since 2015, a raft of new legislation has been agreed on to boost tax transparency<sup>14</sup>, tackle tax abuse<sup>15</sup>, fight VAT fraud<sup>16</sup> and reform the VAT rules applied to electronic commerce<sup>17</sup>. Within the Council, Member States have also worked together to produce a common blacklist of non-cooperative tax jurisdictions. This proves that Member States do recognise the value of EU action in taxation and, with the right political will, are capable of reaching a consensus.

However, the recent momentum in taxation has been largely driven by public pressure and external influences. In the wake of the financial crisis and media tax scandals<sup>18</sup>, citizens

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<sup>13</sup> COM(2011) 169 final.

<sup>14</sup> [https://ec.europa.eu/taxation\\_customs/business/company-tax/tax-transparency-package\\_en](https://ec.europa.eu/taxation_customs/business/company-tax/tax-transparency-package_en)

<sup>15</sup> Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the Internal Market (ATAD1) OJ L 193, 19.7.2016, p. 1–14 and Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries (ATAD2) OJ L 144, 7.6.2017, p. 1–11.

<sup>16</sup> Council Regulation (EU) 2017/2454 of 5 December 2017 amending Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax, OJ L 348, 29.12.2017, p. 1–6; Council Regulation (EU) 2018/1541 of 2 October 2018 amending Regulations (EU) No 904/2010 and (EU) 2017/2454 as regards measures to strengthen administrative cooperation in the field of value added tax, OJ L 259, 16.10.2018, p. 1–11; Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax, OJ L 195, 1.8.2018, p. 3–22.

<sup>17</sup> Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods, OJ L 348, 29.12.2017, p. 7–22.

<sup>18</sup> Offshore leaks (April 2013), Lux leaks (November 2014), Swiss Leaks (February 2015), Panama Papers (April 2015), Bahamas Leaks (September 2016), Football Leaks I (November 2016), Paradise Papers



demanded fairer and more effective taxation, and put pressure on Member States to deliver much needed reforms. Developments in the international tax arena, such as the G20/OECD Base Erosion and Profit Shifting (BEPS) project, also encouraged Member States to respond with EU action. However, EU tax policy should not be reliant on public outrage or external partners' agendas in order to effectively address shortcomings and make progress towards common objectives. Some very important tax proposals aiming to boost the efficiency of the Single Market are still not adopted. The pace of EU tax policy should match the ambition of the goals it is supporting. Member States should be able to deliver the right measures at the right time, to shape a forward-looking tax framework and to respond successfully to new challenges. To facilitate this, a more effective decision-making process is needed.

## **2.2 Pooled sovereignty to protect national tax sovereignties**

**Taxation is strongly related to national sovereignty.** Together with budgets, taxes are perceived by Member States as directly attached to eminently political choices requiring accountability in relation to national constituencies. The Member States' authorities have also full responsibility for tax collection and control on their territory in order to ensure budgetary needs. In addition, Member States can perceive taxation as a national security issue in a number of critical areas such as energy supply. In that sense, some Member States consider that the unanimity rule guarantees the respect of national sovereignty on taxation against any undesired change decided at EU level. Some also fear that without the unanimity rule the EU would go beyond its competences and interfere with corporate tax rates, personal income taxes or other taxes that have no bearing on the Single Market. These fears are unjustified.

**In order for EU tax policy to deliver to its full potential, it is time to adapt the decision-making process so as to allow the Council to adopt in a timely manner fiscal measures which correspond to a Single Market with highly integrated economies.** In a world of mobile businesses, digitalised activities and intangible assets, tax policy can no longer be managed solely within national borders. Modern threats to Member States' tax bases, including harmful tax competition and aggressive tax planning, cannot be averted unilaterally. Increasingly, the only way that Member States can achieve their policy goals and fend off threats to their tax bases is by working together.

**The coordination of tax policies at EU level can actually protect Member States' ability to act and deliver, and thereby their sovereign rights.** As a result of Treaty freedoms, Member States have pooled part of their sovereignty on taxation. Moving to qualified majority decision-making would not in any manner reduce the competences of the Member States on taxation or change the competence of the EU in this matter. It would however provide for more efficient decision-making to exercise pooled sovereignty at EU level, offering Member States the strength to address shared challenges, protect their revenues, pursue growth-friendly tax policies and counteract external threats to their tax bases. For example, joint EU action is the only way to combat the cross-border problems of VAT fraud,

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(November 2017), Dubai Papers (September 2018), Football Leaks II (November 2018), Cum-Ex Files (November 2018).



which costs public revenues EUR 50 billion a year, and tax evasion and avoidance, estimated to cost EUR 50-70 billion a year. As such, Member States' sovereignty to act at EU level on key tax issues is often more useful than their individual national sovereignty in this area in the new international context.

**However, Member States have used sovereignty and unanimity as the basis for their arguments to protect specific national interests to the detriment of the Single Market.** It allows Member States to build their economic models around the concept of a tax system designed to attract certain activities or consumers, such as very low excise rates for tobacco and alcohol or attractive tax regimes for corporates or wealthy individuals. In order to protect their interests in specific areas, Member States have sometimes blocked progress on certain tax files, whereas a collective approach would go further and protect the wider EU interests. For example, the Savings Tax Directive<sup>19</sup> took more than fourteen years to be adopted and two additional years to be implemented. An amendment proposed in 2008<sup>20</sup> to make this Directive fully effective in tackling tax evasion was blocked for a further 6 years. It is fair to ask whether a situation where one Member State alone can block initiatives wanted by the 27 other ones is beneficial to national sovereignty of all the 27 other ones.

**Tax competition is not in itself a bad thing. However, in some cases, it may also reduce the policy choices of all Member States.** For example, tax measures in one Member State aiming to attract mobile tax bases such as capital income tend to reduce the level of taxation on this kind of income in all Member States. In order to compensate for this reduction, these member States often have to increase the taxation of less mobile tax bases, such as labour income or consumption. As a result, a heavier burden falls on workers, consumers and domestic businesses. This undermines the fairness of Member States' tax systems and the growth-friendly agenda of the EU as a whole. Qualified majority voting would therefore help in mitigating the cross border effects of tax competition.

**EU tax policy should not be dependent on a unanimity rule that can be misused for purely national interests, at the expense of the Single Market and other Member States' needs.** A move to qualified majority voting in taxation would enable Member States to control more effectively the part of their sovereignty that they have pooled together in the interests of the Union as a whole and for greater collective and individual results.

### **2.3 Better decision-making for better decisions and stronger democratic legitimacy**

**A move to qualified majority voting would improve the quality of the Council's decisions in taxation.** Unanimity tends to create a quadruple obstacle to efficient decision-making.

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<sup>19</sup> Council Directive 2003/48 of 3 June 2003 on taxation of savings income in the form of interest payments, OJ L 157/38, 26.6.2003, p. 38-48.

<sup>20</sup> Proposal for a Council Directive amending Directive 2003/48/EC on taxation of savings income in the form of interest payments, 13.11.2008, COM(2008) 727 final.  
[https://ec.europa.eu/taxation\\_customs/individuals/personal-taxation\\_en](https://ec.europa.eu/taxation_customs/individuals/personal-taxation_en)

**Firstly, it makes it very difficult to reach any compromise at all, as only one Member State is required to prevent agreement.** In that sense, Member States often hold back from seriously negotiating solutions in the Council, as they know that they can simply veto any result that they do not like. This “unanimity culture” sometimes encourages Member States, Ministers and national administrations to focus on the preservation of their domestic systems, instead of seeking to reach a necessary compromise to safeguard the EU’s general interests. This explains why many taxation proposals require years for Member States to agree, or are simply blocked in the Council without any discussion taking place.

**Secondly, even when agreement is reached with unanimity in the field of taxation, it tends to be at the level of the lowest common denominator,** limiting the positive impact for businesses and consumers, or making the implementation more cumbersome. For example, the VAT Invoicing Directive<sup>21</sup> was adopted at the cost of disparities between invoicing requirements stemming from options left to the Member States.

**Thirdly, unanimity in the field of taxation has brought some undesired effects in the decision-making process,** as some Member States can use important tax proposals as a bargaining chip against other demands they may have on completely separate files, or to put pressure on the Commission to make legislative proposals. This was the case, for example, when agreement on the Anti-Tax Avoidance Directive was held up by certain Member States seeking permission for a VAT reverse charge.

**Finally, unanimity in the field of taxation is self-defeating.** Decisions taken by unanimity can only be undone by unanimity. This often makes Member States overly cautious, dampening ambitions and weakening the final outcome. Member States fear a situation where they would agree on a directive that would prevent them from collecting taxes properly or that would then grant an unwanted advantage to another Member State, as in such situation they would not be able to rectify the legislation without the agreement of such Member State.

**Involving the European Parliament would also enhance decision-making in taxation.** In recent years, as tax scandals made press headlines every six months, the European Parliament has had a significant impact on EU tax policy. It has used its political weight to push an ambitious agenda for fair taxation, through many ad hoc committees. However, the European Parliament has no voting rights under the current special legislative procedure in taxation. Therefore, political pressure is the only tool it has to influence EU tax decisions. A move towards qualified majority, under ordinary legislative procedure, would allow the European Parliament to make a full contribution to shaping EU tax policy. Unbound by national pressures and interests, the European Parliament could provide fresh input into tax negotiations, which could better reflect the needs of the Union as a whole. If the European Parliament had equal weight in deciding the final shape of EU tax policy initiatives, it would help create an environment for Member States to negotiate in earnest. Ultimately, a move to qualified majority voting under the ordinary legislative procedure could lead to more effective, relevant and ambitious outcomes for EU tax policy.

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<sup>21</sup> Council Directive 2010/45/EU of 13 July 2010 amending Directive 2006/112/EC on the common system of value added tax as regards the rules on invoicing, OJ L 189, 22.7.2010, p. 1–8.

### **3. What options exist in the EU Treaties to move from unanimity to qualified majority voting?**

**This is not the first time that unanimity in taxation has been called into question.** The Commission – backed by the European Parliament – has proposed several times to move to qualified majority voting in EU tax policy, in the context of Treaty changes. Some Member States made this a “red-line issue”, however, and the matter was left unresolved. It is time now to open the discussion again, given the growing need for more effective decision-making in taxation, for all the reasons outlined above.

**The EU Treaties are clear when it comes to how decisions must be taken on proposals in the field of taxation.** The general rule is that the Council must unanimously agree on tax proposals, under the special legislative procedure (**Articles 113 and 115 of the Treaty on the Functioning of the European Union (TFEU)**<sup>22</sup>). However, the Treaties also contain other provisions, which give flexibility to use procedures other than unanimity, without having to revise the Treaties themselves.

For a start, the **enhanced cooperation procedure**<sup>23</sup> allows a group of at least nine Member States to move ahead with a proposed initiative together when it proves impossible to achieve unanimous agreement in the Council. In 2013, enhanced cooperation was proposed for the Financial Transaction Tax (FTT), which had been discussed by all Member States since 2011. This proposal continues to be negotiated by the ten Member States involved, in order to find a unanimous compromise. Enhanced cooperation can be a good option to advance certain EU initiatives with a smaller group of countries, but it is not an optimal solution to overcome the broader problems with unanimity in EU tax policy, or to ensure progress and consistency for the Single Market as a whole.

**The Treaties also contain two targeted articles that allow for qualified majority voting under specific circumstances.** With **Article 116 TFEU**, qualified majority voting under the ordinary legislative procedure is possible in order to eliminate distortions of competition due to different tax rules if the distortion could not be removed in concertation with Member States. This provision is subject to the strict conditions above however, and cannot address all the shortcomings that arise from unanimity today. Article 116 TFEU has not been used so far, although the Commission is ready to employ it should the specific necessity arise. Qualified majority voting can also be used for measures to tackle fraud affecting the financial interests of the Union (**Article 325 TFEU**). This could be used for certain measures to combat VAT fraud, given that VAT is an EU Own Resource, but the scope of the initiative would need to be well targeted.

**The most practical way to move from unanimity to qualified majority voting in taxation would be to use the “passerelle” clauses in the Treaties.** These would allow for a more structured way of moving away from unanimity than the options outlined above.

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<sup>22</sup> Article 192(2), first subparagraph, and Article 194(3) TFEU also provide that provisions/measures “primarily of a fiscal nature” in the areas of environment and energy are to be adopted unanimously by the Council in accordance with a special legislative procedure.

<sup>23</sup> Article 20 TEU and Articles 326 to 334 TFEU.

## Passerelle Clauses

**Article 48(7) of the Treaty on European Union (TEU) provides for a general passerelle clause.** This allows measures in the area concerned, subject until then to unanimity, to be adopted henceforth by the Council by a qualified majority voting or through the ordinary legislative procedure.

To activate this clause, the European Council has to take the initiative, indicating the scope of the envisaged change in the decision-making procedure, and to notify it to the national Parliaments. If there is no opposition from any national Parliament within six months, the European Council can adopt, by unanimity, that decision, after obtaining the consent of the European Parliament.

The general passerelle clause gives the option of introducing qualified majority voting but remaining under the special legislative procedure – where the European Parliament is only consulted. It also gives the option of qualified majority voting under ordinary legislative procedure – with co-decision by the European Parliament.

**Article 192(2) TFEU contains a specific passerelle clause** for measures in the environmental field currently subject to unanimous voting, including provisions “primarily of a fiscal nature”. This possibility is relevant, in particular, for the fight against climate change and for the achievement of the environmental policy goals.

In order to switch to ordinary legislative procedure for tax measures in this domain, the Council must unanimously agree to do so, based on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions.

**As previously mentioned in relation to the question of sovereignty, moving to qualified majority voting would not affect the current competences of Member States in the field of taxation.** Indeed, the Treaty of Lisbon includes a Protocol<sup>24</sup> which states that nothing in that Treaty makes any change to the extent or operation of EU competence in relation to taxation. The progressive transition from unanimity to qualified majority voting in some areas of taxation would be consistent with this principle. The respective competences of the Member States and of the Union remain unchanged. There would simply be a change in the decision-making procedure for the future, unanimously agreed to by the Member States in the exercise of their sovereignty.

**Moving to qualified majority voting would in any case be a democratic decision entirely under the control of Member States.** It was their unanimous decision to include the passerelle clause in the Lisbon Treaty. It will take another unanimous decision of the European Council to activate the passerelle. In addition, any national Parliament may object to this change and the European Parliament would have to validate it.

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<sup>24</sup> Protocol on the concerns of the Irish people on the Treaty of Lisbon, OJ L 60, 2.3.2013, p. 131–139, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22013A0302\(01\)&rid=4](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22013A0302(01)&rid=4)

#### 4. The way forward: a roadmap for a progressive and targeted transition

**For the Commission, the question is no longer whether there is a need to move away from unanimity in taxation, but rather how and when to do it.** The European Parliament, many Member States and stakeholders have expressed the same view<sup>25</sup>. Qualified majority voting would allow reaching the full potential of EU tax policy and allow Member States to reach quicker, more effective and more democratic compromises. A switch to ordinary legislative procedure would also ensure that taxation decisions benefit from concrete input from the European Parliament, representing citizens' views and increasing accountability.

**The best way to move towards this goal would be through a progressive and targeted approach, with clear milestones.** This would allow Member States to adapt and feed into the process collectively and avoid any shocks and conflicts that an immediate change could create. The Commission therefore proposes a step-by-step transition towards qualified majority voting under the ordinary legislative procedure for EU tax policy.

**In the first step, qualified majority voting should be employed for measures that have no direct impact on Member States' taxing rights, bases or rates, but are critical for combatting tax fraud, evasion and avoidance and in facilitating tax compliance for businesses in the Single Market.** This would include measures to improve the administrative cooperation and mutual assistance between Member States in fighting tax fraud, tax evasion and tax avoidance. It should also cover the conclusion of international agreements between the EU and third countries in this area. Initiatives to combat tax abuse, which Member States have already agreed to at international level, such as those discussed in the context of the OECD Base Erosion and Profit Shifting (BEPS) Actions<sup>26</sup>, would also fall into this category. In addition, the first step should cover initiatives primarily designed to facilitate tax compliance for businesses in the Single Market, such as harmonised reporting obligations. These tax issues tend to be less contentious for Member States and there is clear recognition of the need for EU action. They have usually only been blocked by unanimity when they have been held hostage by other interests or files. Moving to qualified majority voting in these areas would therefore allow for a speedier and more efficient process to agreeing largely consensual matters.

**In the second step, qualified majority voting should cover measures primarily of a fiscal nature designed to support other policy goals.** This may include in particular the fight against climate change, protecting the environment or improving public health or transport policy. More efficient tax-related decisions in these areas would make it possible to implement an environmentally friendly energy policy, for example, to support ambitious EU goals on climate change. The specific passerelle clause in the Treaties<sup>27</sup> in the environment field, which in particular covers provisions of a primarily fiscal nature, offers an obvious route to move from unanimity in this area. Although never used so far, the Commission is

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<sup>25</sup> EP recommendation of 13 December 2017 to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion (2016/3044(RSP)), §205. See also EP resolution of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty (2014/2249(INI)), §27.

<sup>26</sup> <http://www.oecd.org/tax/beps/beps-actions.htm>

<sup>27</sup> Article 192 (2) TFEU.



ready to activate this passerelle clause, should the necessity arise. The general passerelle clause would be needed for all other policy areas.

**The third step would be to focus on areas of taxation that are already largely harmonised, and which must evolve and adapt to new circumstances.** This would, in particular, cover VAT and excise duties. Faster EU decision-making in these areas would allow Member States' tax administrations and tax systems to keep up with the latest technological developments and market changes. For example, 25 years after the introduction of the Single Market, the EU still has a VAT system designed over 40 years, which is overly cumbersome for businesses and administrations and prone to fraud. This will not change until Member States agree on the definitive regime to create a sustainable, fraud-proof and business-friendly VAT system in the future. Innovation in the tobacco and alcohol markets also requires a swift response to ensure that the new products are properly regulated from a tax perspective. Qualified majority voting would ensure that the modernisation of harmonised EU rules is not stalled by a few blocking Member States. The fact that VAT is an EU Own Resource reinforces the need for more effective decision making in this area.

**The fourth step would be to introduce qualified majority voting on other initiatives in the taxation area, which are necessary for the Single Market and for fair and competitive taxation in Europe.** Some major tax projects are needed to complete the Single Market from a tax perspective. As mentioned above, the CCCTB is still progressing very slowly as a result of unanimity, despite the fact that it would provide the future-proof, competitive and fair corporate tax system that the EU needs to compete globally. Qualified majority voting could help end this impasse, and provide certainty and stability for businesses across the EU. The need for a comprehensive solution for the taxation of the Digital Economy is also a pressing issue. Solid EU legislation is required to ensure that companies engaged in digital activities are taxed fairly and effectively. The Union cannot afford delays in this area as Member States struggle to reach a unanimous agreement. A move towards qualified majority voting on a comprehensive solution for digital taxation would help to enhance the fairness and sustainability of tax systems, while also contributing to a stable Digital Single Market.

## 5. Next steps

**The case for the need for more efficient law making in EU tax policy is clear.** The Single Market and the Economic and Monetary Union require a tax policy that enables everyone to benefit from the EU's growing economic and financial integration. The fast-paced changes in the international tax environment, as well as in business and consumer behaviours, call for an EU tax system that is capable of keeping up and competing on the global stage. The wider European goals to fight climate change, promote sustainable growth, jobs and investment, harness the benefits of digitalisation and secure a fair and sustainable social model, need swift and effective tax measures to support them.

**The special legislative procedure with unanimity rule and only a consultation of the European Parliament for taxation is out of line with the realities confronting this policy today.** Through this Communication, the Commission calls on the European Council, the



European Parliament, the Council and all stakeholders to launch an open debate on qualified majority voting in EU tax policy with an increased involvement of the European Parliament, and to define a timely and pragmatic approach for its implementation.

The Commission invites EU leaders:

- **To endorse the Roadmap** set out in this Communication.
- **To decide swiftly on the use of the general passerelle clause** (Article 48(7) TEU) for step 1 on issues that have no direct impact on Member States taxing rights, tax bases or rates and step 2 where taxation supports other policy goals, in order to move to qualified majority voting and the ordinary legislative procedure. To this end, the European Council is invited to notify the national Parliaments of its initiative and seek the consent of the European Parliament.
- **To consider the use of the general passerelle clause** (Article 48(7) TEU) for step 3, areas where taxation is already largely harmonised and step 4, other initiatives that are necessary for the single market and fair taxation, by the end of 2025, in order to move to qualified majority voting and the ordinary legislative procedure in these domains.