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#### NOTE

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

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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 Council High Level Working Party on Tax Questions (HLWP) on 4 June 2019, for submission to the Council via Coreper.
3. ECOFIN on 14 June 2019 endorsed the report as set out in the Annex, and agreed to forward it to the European Council on 20 June 2019.

## **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 Romanian 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 Romanian Presidency devoted particular attention to digital taxation, functioning of new VAT rules for e-commerce, rules on mandatory transmission and exchange of VAT-relevant payment information, simplification of VAT rules for small enterprises, recast of EU general arrangements in the area of excise duties and intra-EU movements of excise goods, update on the EU rules on structures of excise duties on alcohol, as well as the revision of the EU list of non-cooperative jurisdictions for tax purposes.

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

<sup>2</sup> Doc. EUCO 76/12, 28/29 June 2012.

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

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

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

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

<sup>7</sup> Doc. EUCO 79/14, point 2.

<sup>8</sup> Doc. EUCO 237/14, point 3.

<sup>9</sup> Doc. EUCO 14/17, point 11.

<sup>10</sup> Doc. 9586/12.

<sup>11</sup> Doc. 9494/16.

<sup>12</sup> Doc. 15175/17.

4. More specifically, the Council:
  - a) discussed the proposal for a Digital Services Tax Directive and digital taxation in the international context;
  - b) adopted Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes on 12 March 2019<sup>13</sup>;
  - c) reached a general approach on the VAT e-commerce implementing package;
  - d) reached a partial general approach on the legislative proposal as regards the Fiscalis Programme;
  - e) adopted a Decision as regards the Joint Committee established by the EU-Norway Agreement on administrative cooperation, combating fraud and recovery of claims in the field of VAT;
  - f) exchanged views on the Commission communication "Towards a more efficient and democratic decision making in EU tax policy" where the Commission proposes transition to qualified majority voting (QMV) under the ordinary legislative procedure (OLP) in the area of EU tax policy.
5. The Code of Conduct Group (business taxation) further continued its work on the various matters falling within its mandate, including on the EU list of non-cooperative jurisdictions for tax purposes. The results of the work of the Group were submitted, in coordination with the High Level Working Party on Tax Questions (HLWP), to ECOFIN on 14 June 2019.<sup>14</sup>
6. More detailed information on individual dossiers can be found below.

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<sup>13</sup> Doc. 7441/19.

<sup>14</sup> Doc. 9652/19 + ADD 1-10.

## 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>15</sup>, and on a Common Consolidated Corporate Tax Base, hereafter "CCCTB"<sup>16</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.
8. On 6 December 2016, the ECOFIN Council took the view<sup>17</sup> that work on the CCTB proposal should focus as a priority on the "*elements of a common tax base*", in particular chapters I to V, whilst the CCCTB proposal 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, i.e. its tax incentives: the super-deduction for research and development expenses to support innovation (Article 9), the new allowance for growth and investment to address the debt financing bias (Article 11), and the temporary loss relief (Article 42). The issue of the right mix between harmonisation and flexibility in the context of increased international competition being constantly resurfacing, the ECOFIN Council held a policy debate on the matter on 23 May 2017. On this occasion, several Ministers supported the objective of an as broad as possible corporate tax base to preserve national tax revenues.

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<sup>15</sup> Doc. 13730/16.

<sup>16</sup> Doc. 13731/16.

<sup>17</sup> Doc. 15315/16.

10. During the Estonian and Bulgarian Presidencies, the Working Party on Tax Questions (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. The Bulgarian Presidency also 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. It also initiated discussions on the level of harmonisation, scope and flexibility for Member States.
11. The Austrian Presidency discussed the results of the abovementioned national tax revenue assessments at HLWP level, which allowed to provide guidance to ongoing discussions at technical level in the WPTQ. On this basis, the Austrian Presidency put forward compromise texts on CCTB chapters I to V and proposed to:
- a) extend the compulsory scope of the CCTB to cover all corporate income taxpayers and explore new specific (but principle-based) provisions in the CCTB for SMEs and specific sectors, complemented, where necessary by Council implementing acts;
  - b) discussed the proposed tax incentives in CCTB Articles 9 (3), 11 and 42 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;
  - c) also postpone discussions on CCTB Article 5 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 also ongoing on this in the OECD.
12. The Romanian Presidency continued work on this file in the same direction as the previous Presidency and elaborated compromise texts on chapters I to V. Since discussions on the technical core of these chapters could not deliver further progress, the Presidency extended work at technical level to chapters VI to IX.

13. The Romanian Presidency notably initiated a debate on how to tackle the overlap between ATAD and CCTB in respect of anti tax avoidance rules. Most delegations agreed in this respect that:
- a) CCTB Articles 13 (interest limitation) and 53-54 (switch-over clause) are directly linked to the calculation of the common tax base, though there is no consensus on the level of harmonisation to aim for in respect interest limitation and some delegations remain opposed to the insertion of a switch-over clause;
  - b) the level of harmonisation provided for in ATAD in respect of other anti-tax avoidance rules may be considered as sufficient for the time being, though there is no consensus on whether the corresponding rules should be left in ATAD or imported into CCTB.
14. The views of Member States' delegations also continued to diverge on the cornerstone issue of whether or not to extend the CCTB scope to all corporate income taxpayers, which undermines further progress at technical level. A majority of delegations continue indeed to either oppose or have reservations to such extension, whilst a number of delegations - including the French and German delegations, who presented a joint position paper on the CCTB proposal in 2018 - hold the opposite view or remain undecided.
15. The Romanian Presidency facilitated discussions on the technical implications that such scope extension would have on the CCTB proposal as a whole. In particular, the Presidency suggested to explore exemptions from CCTB rules for certain specific sectors such as shipping, mining or forestry, and/or specific rules for SMEs. However, this endeavour did not help to bridge the gap between the two groups of delegations.
16. The Romanian Presidency also followed up on the national tax revenue assessments performed in 2018 with the presentation of a Commission study on the impact of the CCTB proposal on the effective tax burden of corporations, using the results of the "Tax Analyser" model.

17. The outcome of these discussions is reflected in the last Presidency compromise text.<sup>18</sup>

### **Digital taxation package**

18. 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".
19. The package was examined in the Council during the Bulgarian and Austrian Presidencies as a matter of priority. 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").
20. The Austrian Presidency brought the DSTD to the ECOFIN Council on 4 December 2018 with a view to a general approach.<sup>19</sup> The Austrian Presidency presented a compromise text which had most support from Member States. However, the text did not gain the necessary support and was not discussed in detail.

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<sup>18</sup> Doc. 9676//19.

<sup>19</sup> Doc. 14885/18.

21. Following the discussions at ECOFIN on 4 December 2018 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, it was agreed to explore a possible instrument with a narrower scope, covering only targeted digital advertising.
22. Consequently, the text was re-drafted focusing on revenues resulting only from the provision of digital advertising services - the common system of a digital advertising tax (DAT).
23. Four rounds of talks were held under the Romanian Presidency: the Working Party on Tax Questions (WPTQ) (Digital Taxation) on 15 January and 20 February 2019, and the High Level Working Party on Tax Questions (HLWP) on 31 January and 28 February 2019.
24. On 12 March 2019 the Romanian Presidency brought the DAT to the ECOFIN Council for political agreement. In the absence of agreement within the Council, the Presidency suggested that work continues on the basis of a two-track approach:
  - a) The Council and the Member States jointly continue to work towards an agreement on a global solution at OECD level by 2020 to address the tax challenges of the digitalization of the economy. The Presidency will do its utmost to facilitate discussions while examining also the proposal on the Significant Digital Presence.
  - b) In the event that by the end of 2020 it appears that the agreement at OECD level is bound to take more time, the Council could, as necessary, revert to discussing DAT/DSTD and the possible EU approach to the tax-related challenges arising from digitalisation.
25. Ministers asked the experts to assess the progress made at international level regularly, to keep the Ministers informed and, if needed, recommend any possible further EU action.



## Developments at international level with regard to digital taxation

26. Since the adoption of the interim report on tax challenges arising from digitalisation<sup>20</sup> the OECD steering group of the Inclusive Framework has prepared a draft programme of work to develop a consensus solution to the tax challenges arising from the digitalisation of economy. This Programme of Work was approved during the 7th plenary meeting of the OECD/G20 Inclusive Framework on BEPS on 28-29 May 2019.
27. On 6 May 2019 Commissioner Moscovici sent a letter to EU Finance Ministers, proposing to continue the discussion with Member States on the current international tax reform debate at the G20 and the OECD. It was accompanied by an issues paper, which proposed that the European Union should engage with the OECD in a coordinated manner so as to impact the international discussions in a meaningful way in line with common EU interests and requirements.<sup>21</sup>
28. The ECOFIN Council on 17 May 2019 discussed digital taxation in the international context on the basis of a Presidency note, summarising discussions in the HLWP. The Ministers supported discussions at EU level in order to exchange views on the issues under negotiation in the OECD, especially as regards assessing the impact of OECD policy options.
29. It was agreed to task the HLWP to follow this up in concrete terms.
30. The Presidency will cooperate closely with the incoming Finnish Presidency to organize work in that respect and to ensure that EU views as expressed in the Council are presented at the G20/OECD level.

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<sup>20</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>21</sup> Doc. 9150/19.

## Value Added Tax (VAT) and excise duties

31. As regards VAT, 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>
32. 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. Building on the progress during the previous Presidency terms<sup>24</sup>, the Romanian Presidency continued work on the legislative files in the area of VAT.
33. In the area of excise duties, following the Council conclusions of 2016 regarding Directive 92/83 EEC<sup>25</sup> and of 2017 regarding Directive 2008/118/EC<sup>26</sup>, the work in the Council evolved on the basis of the legislative proposals tabled by the Commission in 2018 concerning the legislative package on the general arrangements on excise duty, as well as on the legislative proposal to amend the rules on the structure of excise duty on alcohol.
34. In particular, during the term of the Romanian Presidency, the legislative dossiers that were on the table of the Council and/or its preparatory bodies, as appropriate, covered the following areas of VAT and excise duties:

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

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

<sup>24</sup> See, for example, doc. 15082/18, points 30 to 111; doc. 10322/18, points 56 to 100.

<sup>25</sup> Doc. 15009/16.

<sup>26</sup> Doc. 14481/17.

- a) Definitive VAT System;
- b) VAT rates reform;
- c) VAT e-commerce implementing package;
- d) Mandatory transmission and exchange of VAT-relevant payment information;
- e) Simplification of VAT rules for small enterprises;
- f) Joint Committee established by the EU - Norway Agreement on administrative cooperation, combatting fraud and recovery of claims in the area of VAT;
- g) General arrangements for excise duty;
- h) Structures of excise duties on alcohol and alcoholic beverages;
- i) Campione d'Italia and the Italian waters of Lake Lugano;
- j) Amendment of EU rules on VAT and excise duties as regards EU defence effort.

35. More detailed information on individual dossiers in the area of VAT and excise duties can be found further in the text.

a) *Definitive VAT System*

**Background**

36. 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 the VAT area), the Commission chose a two-step legislative approach.<sup>27</sup>

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<sup>27</sup> Doc. 12617/17.

37. 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>28</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).
38. When concluding work on the "VAT quick-fix" legislative package, 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>29</sup>.
39. 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 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.

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<sup>28</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 (doc. 12882/17); Proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards certain exemptions for intra community transactions (doc. 12881/17); Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards the certified taxable person (doc. 12880/17) (which was later amended by a legislative proposal set out in doc. 14893/17, by incorporating the provisions on "certified taxable person" into that new proposal to amend Regulation No. 904/2010).

<sup>29</sup> Proposal for a Directive amending Directive 2006/112/EC as regards rates of value added tax.

40. The Commission proposal on the definitive system of VAT is granted a high priority by the Member States and 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.
41. Member States appreciate the initiative taken by the Commission to reach a definitive VAT system.
42. 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.
43. 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 during the term of the Austrian Presidency have focused on six key components<sup>30</sup>:
- 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 the 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);

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<sup>30</sup> Doc. 15082/18, points 57 to 88.

- 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”).

### **State of play**

44. During the term of the Romanian Presidency the discussion on this file covered the possibility to go forward with accompanying measures like ”split payment”. In general, many Member States had positive views with regard to further analyzing this measure, including the impact on cash-flow of businesses and the increasing of administrative burden.

### **Way forward**

45. As already indicated by the Council<sup>31</sup>, it is important to note 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.
46. 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”.

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<sup>31</sup> Doc. 15082/18, points 89 to 91.

47. Member States also 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.

b) VAT rates reform

48. 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>32</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.

49. 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).

50. The technical examination of this file was started during the term of the Bulgarian Presidency. The Romanian Presidency brought further technical examination of the Commission proposal.

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<sup>32</sup> Doc. 5335/18.

51. To be noted, some Member States see the need that the proposal for VAT rates reform has to be discussed also in the context of the legislative proposal for a Definitive VAT system, as both legal texts, once agreed, are part of a coherent system of VAT.
52. During the technical discussions, the necessity was underlined of developing a WEB portal containing all the VAT reduced rates EU wide, in order to facilitate the trade between Member States. Several Member States support a "positive list" instead a "negative list" as it is provided in the current Directive proposal. It was also outlined that the goods could be identified by CN codes and services by CPA codes, both on the list and the "Taxes in Europe" database (TEDB) portal.

c) VAT e-commerce implementing package

53. On 11 December 2018 the Commission submitted to the Council the following two legislative proposals:
- a) a proposal for a Council Directive amending Council Directive 2006/112/EC of 28 November 2006 as regards provisions relating to distance sales of goods and certain domestic supplies of goods<sup>33</sup>; and
  - b) a proposal for a for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods.<sup>34</sup>

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<sup>33</sup> Doc. 15471/18.

<sup>34</sup> Doc. 15472/18.



54. The aim of these two proposals is to lay down detailed rules needed to ensure the functioning of the new VAT rules for e-commerce following the amendments introduced by Council Directive (EU) 2017/2455 ("the VAT e-commerce Directive")<sup>35</sup>, which will come into force in January 2021.
55. On 12 March 2019 the Council (Ecofin) reached a general approach on the Council Directive amending Council Directive 2006/112/EC of 28 November 2006 as regards provisions relating to distance sales of goods and certain domestic supplies of goods and the Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods<sup>36</sup>.
56. The Council will adopt these two legislative acts at its forthcoming meeting, subject to receiving the opinion of the European Parliament and legal-linguistic revision.
- d) Mandatory transmission and exchange of VAT-relevant payment information
57. In December 2018, the Commission tabled a legislative package consisting of two proposals:
- i) Directive amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers;<sup>37</sup>
  - ii) Regulation amending Regulation (EU) No. 904/2010 as regards measures to strengthen administrative co-operation in order to combat VAT fraud.<sup>38</sup>

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<sup>35</sup> OJ L 348, 29.12.2017, p. 7.

<sup>36</sup> Doc. 7245/19.

<sup>37</sup> Doc. 15508/18.

<sup>38</sup> Doc. 15509/18.

58. These two legislative proposals are aimed at facilitating tax fraud detection by the authorities of Member States and at complementing the current VAT regulatory framework as recently modified by the VAT E-commerce Directive. The objective of the proposals is to put in place EU rules which will enable Member States to collect in a harmonised way the records made electronically available by the payment service providers, to set up a new central electronic system for the storage of the payment information and for the further processing of this information by anti-fraud officials in the Member States within the Eurofisc framework (Eurofisc is the network for the multilateral exchange of early-warning signals to fight VAT fraud, established pursuant to Chapter X of Regulation (EU) No 904/2010).
59. During the term of the Romanian Presidency, this dossier was discussed at eight WPTQ and Fiscal Attachés meetings, where Member States took note that very good progress was made in technical analysis of the Commission proposal, with a view to reaching an agreement on a compromise text.
60. 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 Member States.
- e) *Simplification of VAT rules for small enterprises*
61. 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>39</sup>
62. In the view of the Commission, the revision of rules applicable to SMEs was dictated by the following three main reasons:

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<sup>39</sup> Doc. 5334/18.

- 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.

63. The Commission 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.

64. Technical examination of this file started during the term of the Bulgarian Presidency and continued under the Austrian and Romanian Presidencies.

65. During the negotiations on this dossier it became apparent that "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."<sup>40</sup> With this objective in mind, amendments to the Regulation (EU) No. 904/2010 on administrative co-operation in the field of VAT were deemed to be necessary as well.

66. During the term of the Romanian Presidency, this dossier was discussed at five WPTQ and Fiscal Attachés meetings, as well as at the HLWP meetings of 7 May and 4 June 2019, where Member States took note that good progress has been made.

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<sup>40</sup> See doc. 15082/18 (ECOFIN report to the European Council on tax issues under the AT Presidency), point 99.

67. Exchange of views at the WPTQ, HLWP and Permanent Representatives Committee levels 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.
- f) Joint Committee established by the EU - Norway Agreement on administrative cooperation, combatting fraud and recovery of claims in the area of VAT
68. On 12 December 2018 the Commission transmitted the proposal<sup>41</sup> for a Council Decision on the position to be taken on behalf of the European Union in the Joint Committee established in accordance with Article 41(1) of the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax<sup>42</sup>.
69. The text resulting from discussions between delegations, which led to unanimous agreement at the level of the Working Party on Tax Questions, was tabled for agreement and adoption by the Council, which, on 12 March 2019 adopted Decision (EU) 2019/425 on the position to be taken on behalf of the European Union within the Joint Committee established by the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax.<sup>43</sup>
70. At the working party of 21 March 2019, the Commission updated delegations on the establishment of the Joint Committee and on the contents of the agenda of the first meeting thereof.
- g) General arrangements for excise duty
71. The proposals concerning common provisions on excise duties were tabled by the Commission on 25 May 2018.

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<sup>41</sup> Doc. 15503/18.

<sup>42</sup> OJ L 195, 1.8.2018, p. 3.

<sup>43</sup> OJ L 74, 18.3.2019, p. 67.

72. 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 products and electricity). The proposed recast Directive<sup>44</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.
73. 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>45</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.
74. 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>46</sup> This proposal also accompanies the said proposal for a Directive laying down the general arrangements for excise duty.

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<sup>44</sup> Doc. 9571/18 + ADD 1, ADD 2, ADD 3.

<sup>45</sup> Doc. 9567/18 + ADD 1.

<sup>46</sup> Doc. 9568/18.

75. The Presidency completed a technical examination of these three proposals that had started under the Bulgarian Presidency. In February 2019 the Council reached an agreement with the European Parliament on the Decision on computerized movement and surveillance of excise goods. The European Parliament voted on the proposal on 4 April 2019. The Council will adopt this legislative act, once negotiations on the first two proposals of this legislative package are completed in the Council.
76. The compromise texts of the draft recast of the Directive on general arrangements for excise duty and the Regulation on administrative cooperation of the content of electronic registers were discussed at ECOFIN meeting on 17 May 2019<sup>47</sup>. At that meeting, the ECOFIN Council was not in a position to unanimously reach a political agreement on these two legislative proposals.
- h) Structures of excise duties on alcohol and alcoholic beverages*
77. On 25 May 2018, the Commission also tabled a proposal for a Council Directive amending Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages<sup>48</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.
78. In response to Council Conclusions of 6 December 2016<sup>49</sup>, on 25 May 2018 the Commission submitted 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>50</sup>

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<sup>47</sup> Doc. 9347/19 + ADD 1.

<sup>48</sup> Doc. 9570/18 + ADD 1, ADD 2.

<sup>49</sup> Doc. 15009/16.

<sup>50</sup> Doc. 9570/18 + ADD 1, ADD 2.

79. The objective of the proposal is to update the rules governing excise duty on alcohol within the EU, pave the way for a better business environment and reduce costs for small alcohol-producing businesses. More particularly, this legislative proposal aims at:
- i) putting in place a uniform certification system in the EU for confirming the status of independent small producers throughout the Union, recognisable in all EU countries;
  - ii) extending the special regime of small producers to cider producers across the EU in order to have access to the reduced rates as currently afforded to small beer and ethyl alcohol producers;
  - iii) clarifying the conditions for application of the exemption for denatured alcohol in the EU;
  - 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.
80. The discussions on this legislative proposal began during the Bulgarian and Austrian Presidency terms. The Romanian Presidency brought further technical examination of the Commission proposal, as well as negotiations on the possible compromise.
81. In the course of negotiations it became apparent that a variety of considerations, such as health issues and efficient collection from alcohol excise should be taken into account, in order to reach a compromise that could be acceptable to all delegations.<sup>51</sup>

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<sup>51</sup> Doc. 9347/19, point 5.

82. At the ECOFIN meeting of 12 March 2019<sup>52</sup> a constructive debate took place, however no agreement on a compromise text could be reached. The Presidency continued work on this dossier with the aim of addressing the remaining concerns that were raised by the Ministers.

83. The updated compromise text of the draft Directive was discussed at the ECOFIN meeting on 17 May 2019<sup>53</sup>. However, at that meeting unanimous agreement could not be reached, as further work was required, in particular on the text of the draft Article 22(8) of Directive 92/83/EEC concerning exemption from excise duty or reduced rates of excise for home- distilled fruit spirits.

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

84. 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.

85. Italy requested that, the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano is 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>54</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.

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<sup>52</sup> Doc. 6942/19.

<sup>53</sup> Doc. 9347/19 + ADD 1.

<sup>54</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).



86. This proposal has also a link with VAT as Italy considered 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).
87. 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.
88. The Council on 18 February 2019 adopted the Directive (EU) 2019/475 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.<sup>55</sup>
- j) Amendment of EU rules on VAT and excise duties as regards EU defence effort
89. On 24 April 2019 the Commission tabled the proposal for a Council Directive amending Directive 2006/112/EC on the common system of VAT and Directive 2008/118/EC concerning the general arrangements for excise duty as regards defence effort within the Union framework.<sup>56</sup>

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<sup>55</sup> OJ L 83, 25.3.2019, p. 42.

<sup>56</sup> Doc. 8940/19.

90. The aim of this legislative proposal is to align the VAT treatment of the defence effort in the EU and NATO framework, the arrangements for exemptions from excise duties should be aligned in a similar way. The proposal follows recent developments in the framework of the Common Security and Defence Policy (CSDP).
91. This legislative proposal was presented by the Commission at the WPTQ on 16 May 2019, where Member States also indicated, subject to further scrutiny, their initial views on the text, signalling an overall support of the aim of this legislative proposal. The examination of the Commission proposal is ongoing.

## **B. Other issues related to tax legislation**

### **a) Commission communication on transition from unanimity vote in EU tax policy**

92. The Commission adopted on 15 January 2019 a Communication ‘Towards a more efficient and democratic decision-making in EU tax policy’<sup>57</sup>, advocating for a gradual transition from special legislative procedure<sup>58</sup> to ordinary legislative procedure (OLP) and qualified majority vote (QMV)<sup>59</sup> to be applied by 2025 as regards EU tax policy. The Commission suggests that the European Council decides on roadmap proposed by the Commission in the Communication.
93. In this Communication the Commission suggests that the European Council resorts to the "passerelle" clause set out in Article 48(7) of TEU. In accordance with that Article, only the European Council could unanimously adopt a decision to change the rule of unanimous vote to QMV/OLP, if no national parliament objects within 6 months of precedent notification and if the European Parliament delivers its consent.

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<sup>57</sup> Doc. 5472/19.

<sup>58</sup> Unanimity vote in the Council, EP consulted.

<sup>59</sup> Ordinary legislative procedure (EP and Council act as co-legislators) / qualified majority vote in the Council.

94. This Communication is part of a series of Commission Communications, which suggest similar transition from unanimity voting in the fields of common foreign and security policy (12 September 2018), energy and environment policy (to be noted, this communication also covered taxation matters pertinent to energy and environment) (9 April 2019) as well as social affairs policy (16 April 2019).
95. Without prejudice to any exchanges that the European Council may hold on these matters, including on any decision that the European Council may take on preparatory steps for further debate, the Communication of 15 January 2019 was discussed at the HLWP meeting on 31 January, at the Committee of Permanent Representatives (Part II) on 6 February and at the ECOFIN on 12 February 2019.
96. Many delegations indicated that their views were preliminary, and the Commission Communication is subject to further scrutiny, also by national parliaments.
97. Some delegations expressed their overall support for the principal points set out in the Commission Communication.
98. However, a large number of delegations attach great importance to the rule of unanimity in the area of taxation and deem it not appropriate to change the current voting rules as regards EU tax policy. Many delegations also referred to the speedy agreements that led to adoption of a considerable number of legislative proposals in the area of EU tax policy in recent years. The importance of taxation for the sovereignty of Member States and the central roles of national parliaments was underlined on repeated occasions.
99. Some delegations supported the idea that the debate on decision making in the area of taxation should continue, and indicated their willingness to explore further, whether there is a possibility to technically define, with a sufficient degree of legal clarity, the areas of EU tax policy where current voting rules could be changed, for example concerning measures concerning administrative cooperation or fighting tax avoidance.

## b) **Fiscalis**

100. 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>60</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.
101. The proposal was examined in the Working Party on Tax Questions (Fiscalis). On 28 November 2018 Coreper agreed on a partial general approach with a view to commencing negotiations with the European Parliament in the context of the ordinary legislative procedure.<sup>61</sup>
102. The European Economic and Social Committee delivered its opinion on 17 October 2018.<sup>62</sup>
103. In the European Parliament, the Committee report was voted in the ECON Committee on 4 December 2018 and confirmed in the plenary in January 2019.
104. Two trilogues were held on 23 January and 21 March 2019 with a number of technical meetings in between those trilogues.
105. The outcome of negotiations was brought for state of play to Coreper on 27 March 2019. The text includes bracketed provisions that are still under consideration and that are likely to form part of horizontal negotiations on the MFF.
106. The European Parliament voted on its position in the first reading on 17 April 2019. On issues where co-legislators do not agree (e.g. implementing and delegated acts, budget), the European Parliament has taken its own position for the first reading position.
107. Negotiations will resume in the second half of 2019, once horizontal issues have been solved between the co-legislators.

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<sup>60</sup> Doc. 9932/18.

<sup>61</sup> Doc. 14208/18 and doc. 14209/18.

<sup>62</sup> Doc. 14207/18.

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

108. The proposal for a Directive on a common system of financial transaction tax (FTT) was submitted by the Commission to the Council on 28 September 2011. Given that unanimous agreement by all Member States could not be attained, on the basis of the request of eleven Member States, and in accordance with the authorization of the Council of 22 January 2013<sup>63</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.
109. At this stage, 10 Member States continue to participate in the enhanced co-operation in the area of FTT: Austria, Belgium, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain (hereafter referred to as "participating Member States").<sup>64</sup>
110. Following the preparatory work by the WPTQ, and, where relevant, by the HLWP, the state of play on this dossier has been discussed at the following meetings of ECOFIN Council:
- 6 May 2014<sup>65</sup>, 7 November 2014<sup>66</sup>, 9 December 2014<sup>67</sup>, and 8 December 2015<sup>68</sup>;
  - 17 June 2016<sup>69</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>70</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>71</sup>; exemption from FTT of market making activities<sup>72</sup>; scope of transactions in derivatives contracts to be subject to the FTT<sup>73</sup>);

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<sup>63</sup> OJ L 22, 25.1.2013, p. 11.

<sup>64</sup> On 16 March 2016, Estonia left the enhanced co-operation on FTT. See doc. 7808/16.

<sup>65</sup> Doc. 9399/14 and doc. 9576/14.

<sup>66</sup> Doc. 14949/14.

<sup>67</sup> Doc. 16498/14 and doc. 16753/14, points 36 to 46.

<sup>68</sup> Doc. 14942/15.

<sup>69</sup> Doc. 9602/16.

<sup>70</sup> Doc. 15112/15 ADD 1.

<sup>71</sup> Doc. 9602/16, points 6 to 8, and doc. 14942/15, points 7 to 11.

<sup>72</sup> Doc. 9602/16, points 9 to 12, and doc. 14942/15, points 15 to 17.

<sup>73</sup> Doc. 9602/16, points 13 to 15, and doc. 14942/15, points 18 to 19.

- 6 December 2016<sup>74</sup>, where the Council took note of the ongoing discussion on the constitutive parts (the “building blocks”)<sup>75</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.

111. At the HLWP meeting of 7 May 2019, participating Member States indicated that they are discussing about an option of an FTT based on the French model of the tax and about the possible mutualisation of the revenues among the participating Member States as a contribution to the EU budget. ECOFIN on 14 June 2019 was informed of the state of play of this file.
112. In the light of the foregoing, as already indicated in the December 2016 ECOFIN report to the European Council on tax issues<sup>76</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.

### **C. Tax Policy Coordination**

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

#### **a) Code of Conduct Group (business taxation)**

114. The Code of Conduct Group (COCG) met four times under the Romanian Presidency, on 30 January, 27 February, 11 April and 20 May 2019, whilst its subgroups, chaired by the Romanian Presidency, met on 18 January, 25 January, 27 March and 6 May 2019.

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<sup>74</sup> Doc. 13608/16.

<sup>75</sup> Doc. 14942/15, point 3.

<sup>76</sup> Doc. 15254/16, point 45.

115. At its meeting of 30 January 2019, Ms. Lyudmila Petkova, Director of the Tax Policy Directorate at the Bulgarian Ministry of Finance, was appointed by common accord as COCG Chair for a period of two years. The period started on 5 February 2019, after the term of the current Chair had come to an end.
116. The Group continued work on standstill and rollback of EU Member States' harmful preferential tax regimes, as well as on the EU list of non-cooperative jurisdictions for tax purposes and the related monitoring of commitments taken by jurisdictions in this context.
117. The ECOFIN Council in particular adopted a revision of the EU list of non-cooperative jurisdictions for tax purposes at its meeting of 12 March 2019<sup>77</sup>, whilst three jurisdictions were delisted at the subsequent ECOFIN Council on 17 May 2019.
118. Furthermore, the COCG reviewed the state of play in relation to the update/revision of its December 1997 COCG mandate at its meetings of 20 May 2019 with a view to providing an input to further HLWP discussions.
119. More detailed information on the work of the Group can be found in its report to the ECOFIN Council<sup>78</sup> and accompanying Council conclusions.<sup>79</sup>

**b) International developments**

120. The HLWP was regularly informed of relevant international developments, notably in relation to meetings of the Inclusive Framework on BEPS and OECD Task Force on Digital Economy (TFDE).

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<sup>77</sup> Doc. 7441/19.

<sup>78</sup> Doc. 9652/19 + ADD 1-10.

<sup>79</sup> Doc. 10340/19.

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

121. 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.

122. Recent alerts covered in particular:

- a) the Communication from the Commission "A more efficient and democratic decision making in EU energy and climate policy;
- b) Council Conclusions on the Future of a highly digitised Europe beyond 2020: "Boosting digital and economic competitiveness across the Union and digital cohesion"<sup>80</sup>.

123. An updated overview of tax provisions in non-tax dossiers was discussed at the HLWP meetings on 7 May 2019 and 4 June 2019.

**d) Transfer Pricing**

124. At the HLWP meeting of 7 May 2019, delegations were informed of the achievements of the Joint Transfer Pricing Forum (JTPF) during the mandate which ended on 30 March 2019.

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<sup>80</sup> Doc. 10102/19.