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## OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	European Council
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Subject:	Ecofin report to the European Council on tax issues

Delegations will find attached the Ecofin report to the European Council on tax issues, which was approved by the Council (Economic and Financial Affairs) on 21 June 2024.

# ECOFIN REPORT TO THE EUROPEAN COUNCIL ON TAX ISSUES

## A. INTRODUCTION

1. This Council report provides an overview of the progress achieved in the Council during the term of the Belgian Presidency, as well as an overview of the state of play of the most important dossiers under negotiations in the area of taxation. It has been prepared on the basis of discussions in the Working Party on Tax Questions (High Level) (HLWP) covering horizontal tax policy issues of strategic relevance, in line with its mandate.
2. This report reflects the state of play of relevant Council work and covers issues mentioned in various European Council conclusions since 2012<sup>1</sup>, the statement of the Members of the European Council of 25 March 2021<sup>2</sup>, the Council conclusions in the VAT area of 2012<sup>3</sup> and of 2016<sup>4</sup>, the Council conclusions on “Responding to the challenges of taxation of profits of the digital economy” of 2017<sup>5</sup>, the Council Conclusions of 2020 on the future evolution of administrative cooperation in the field of taxation in the EU<sup>6</sup>, as well as the Council conclusions of 27 November 2020 on fair and effective taxation in times of recovery, on tax challenges linked to digitalisation and on tax good governance in the EU and beyond<sup>7</sup>.

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<sup>1</sup> Doc. EUCO 4/3/12 REV 3 (points 9 and 21), EUCO 76/12, EUCO 75/1/13 REV 1, EUCO 14/17 (point 11), EUCO 10/20 (points A29 and 147) and EUCO 13/20.

<sup>2</sup> Doc. ST 18/21.

<sup>3</sup> Doc. ST 9586/12.

<sup>4</sup> Doc. ST 9494/16.

<sup>5</sup> Doc. ST 15175/17.

<sup>6</sup> Doc. ST 8482/20.

<sup>7</sup> Doc. ST 13350/20.

3. The Belgian Presidency pursued the work on key files, including the proposals comprised by the “VAT in the Digital Age” package, the proposal on faster and safer relief of excess withholding taxes (FASTER), the revision of the Energy Taxation Directive, the “Business in Europe: framework for income taxation” (BEFIT) proposal, the proposal on transfer pricing, the proposal on the Head Office Tax System, the update to the EU list of non-cooperative jurisdictions for tax purposes, as well as the proposal to prevent the misuse of shell entities for tax purposes. It also actively pursued the work with regard to the negotiations on tax cooperation in the United Nations based on discussions between Member States in the EU.
4. More specifically, the Council:
- a) made considerable progress on the VAT in the Digital Age package;
  - b) reached a general approach on the Council Directive on faster and safer relief of excess withholding taxes;
  - c) reached a common position for the first substantive session of the Ad Hoc Committee to draft terms of reference for a United Nations Framework Convention on International Tax Cooperation;
  - d) took note that Member States continued work on automatic exchange of information in the field of taxation between Member States and non-EU jurisdictions;
  - e) authorised the signing of the Agreement amending the Agreement between the EU and Norway on administrative cooperation in the field of VAT;
  - f) adopted the Council Decision authorising the opening of negotiations for the amendment of five agreements on the automatic exchange of financial account information to improve international tax compliance;
  - g) made progress on the revision of the Energy Taxation Directive.

- h) continued to discuss the proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes; and
  - i) continued the examination of the proposals for a Council Directive establishing a Head Office Tax System for micro, small and medium sized enterprises (HOT), a Council Directive on transfer pricing and a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT).
5. The Code of Conduct Group (Business Taxation) also further continued its work on the various matters falling within its current mandate, including on the EU list of non-cooperative jurisdictions for tax purposes, as set out in its six-monthly report<sup>8</sup>. The EU list was most recently updated by the Council on 20 February 2024<sup>9</sup>.
6. More detailed information on specific topics and dossiers can be found below.
- *General discussion on the priorities for the next legislative cycle*
7. The HLWP held an initial general discussion on the priorities for the next EU legislative cycle in the field of taxation. Many delegations recalled, with a reference to many of the Council conclusions cited above, the need to primarily focus on the objectives of fighting tax avoidance and tax evasion and making taxation simple and effective, thus limiting administrative burden for individuals, companies and tax administrations. In this context, some delegations would particularly welcome initiatives to declutter existing EU legislation and administrative procedures. The need to keep administrative burden as low as possible and to leave sufficient time to Member States to transpose new legislation was underlined. Member States also recalled the importance of non-legislative activities in the area of taxation. The active and constructive role of the Presidency in the UN context was welcomed.

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<sup>8</sup> Doc. ST 11151/24.

<sup>9</sup> OJ C, 2024/1804, 26.2.2024, pages 1-4.

8. On direct taxation, delegations expressed their satisfaction with the work in the Council, particularly noting the adopted EU legislation and progress in the inter-governmental work during the current legislative cycle. Many delegations pointed out the immense workload and IT adjustments that the implementation and application of the legislation concerned entails, especially for tax authorities. Delegations therefore emphasised the need to focus on the implementation of the adopted legislation. Some delegations indicated a preference to first complete work on the current tax initiatives and suggested involving Member States more prior to launching new tax directives. Also in this context, actions that would simplify tax administration and tax compliance (declutter tax rules) would be welcome.
9. On excise duties, many delegations expressed their regret that a number of expected legislative proposals have not been issued yet. For example, the announced legislative proposal to amend Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco was not issued yet, and a number of Member States reiterated the call for its issuance in the coming legislative term<sup>10</sup>. Several delegations also reiterated the need to amend Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages, and some also repeated the call for a proposal regarding Article 32 of Directive 2020/262 laying down the general arrangements for excise duty.
10. On value added taxes, many delegations expressed their general satisfaction with the ongoing work, also in the light of the Council conclusions of 2020 on fair and effective taxation in times of recovery, on tax challenges linked to digitalisation and on tax good governance in the EU and beyond. Some delegations recalled the need for amendments in the VAT rules in the tourism sector and relating to financial services, and other delegations welcomed the upcoming review of Regulation (EU) nr. 904/2010 on administrative cooperation and combating fraud in the field of value added tax.

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<sup>10</sup> See also the Council Conclusions concerning the structure and rates of excise duty applied to manufactured tobacco (doc. ST 8483/20).

## **B. EU TAX LEGISLATION**

### **1) Direct Taxation**

#### *a) FASTER*

11. On 16 June 2023 the Commission issued a proposal for a Council Directive on Faster and Safer Relief of Excess Withholding Taxes ("FASTER")<sup>11</sup>. The key objective of this legislative proposal is twofold: supporting the good functioning of the Capital Markets Union by facilitating cross-border investment, and ensuring fair taxation by preventing tax fraud and abuse in this area.
12. First, this proposal aims at introducing, across the EU, more efficient (and harmonised) procedures concerning cross-border cases of relief from withholding taxes that Member States levy on income from holding publicly traded securities (dividends on equities and interest on bonds). Currently, the procedures that allow non-resident investors to benefit from tax treaty or domestic benefits are often burdensome, costly, and lengthy as they vary considerably across Member States both in terms of documentation to be submitted by the taxpayers to obtain the relief from withholding tax and as regards their level of digitalisation.
13. Second, as an equally important aspect, the proposal aims at addressing the risk of revenue losses for Member States. Withholding tax relief procedures may carry the risk of tax fraud and abuse, as was shown by a series of revelations (for example, the schemes with the purpose to increase wrongfully the amount of refund to which an investor was actually entitled (Cum/Cum) or cases where multiple refund claims are made for the same payout (Cum/Ex)). Tax fraud may happen due to the lack of accurate information at the disposal of tax authorities, as a result of a low level of transparency within the financial chain and lack of information on the presence of financial arrangements linked to the underlying security.

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<sup>11</sup> Doc. ST 10820/23 + ADD 1-5.

14. The opinion of the European Data Protection Supervisor was issued on 8 August 2023.<sup>12</sup> The opinion of the European Economic and Social Committee on this legislative proposal was delivered on 13 December 2023.<sup>13</sup> The opinion of the European Parliament was issued on 28 February 2024.<sup>14</sup>
15. Technical analysis of this legislative proposal and discussions with Member States in the meetings of the Working Party on Tax Questions (WPTQ) revealed that the initial text proposed by the Commission had to be adjusted before it could be submitted to the Council for agreement. Therefore a number of amendments to the Commission's proposal were made during the terms of the Spanish and Belgian Presidency.
16. The new Directive would contain the following main features:
- i) two fast-track procedures enhancing the current standard withholding tax relief or refund procedures:
    - a 'relief at source procedure' whereby the applicable tax rate is applied at the payment date of dividends or interests;
    - a 'quick refund procedure' whereby initially the withholding tax is deducted at the payment date but the refund of the excess withholding tax is granted within a fast term.
  - ii) a common EU digital tax residence certificate that investors (taxpayers) would be required to use in order to benefit from these fast-track procedures;
  - iii) a register and standardised reporting obligations for financial intermediaries. Registration would ensure that only certified financial intermediaries can apply for a relief of withholding tax on behalf of their clients through the fast-track procedures. Standardised reporting would harmonise the main compliance requirements in this area across the EU and would equip tax authorities with the essential information to check the eligibility for the relief of withholding tax, to trace the relevant payments and to avoid potential tax abuse or fraud.

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<sup>12</sup> OJ C, C/2023/897, 13.11.2023; doc. ST 12427/23.

<sup>13</sup> OJ C, C/2024/1580, 5.3.2024; doc. ST 8961/24.

<sup>14</sup> P9\_TA(2024)0102.

17. As announced at the WPTQ (High Level) meeting on 7 February 2024, the Belgian Presidency has prioritised work on this file with the objective of reaching an agreement in the Council. Six meetings of the WPTQ have taken place during the Belgian Presidency term (24 and 25 January, 21 February, 15 March and 16 April and 2 May 2024 (High Level)).
18. The Council (Ecofin), at its meeting on 14 May, reached a general approach on the text of the draft Directive<sup>15</sup>, with a view to adopting the Directive, subject to re-consulting the European Parliament and legal-linguistic revision.

*b) Misuse of shell entities*

19. On 22 December 2021, the Commission submitted a proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU (the “Unshell” proposal)<sup>16</sup>.
20. The objective of the proposal is to prevent tax avoidance and evasion through actions by entities without minimal substance, and enhance the proper functioning of the internal market. The proposal aims to fight against the misuse of shell entities for improper tax purposes and to ensure that shell companies in the EU that have no or minimal economic activity are unable to benefit from tax advantages.
21. Technical analysis of the proposal started in the first semester of 2022, delegations held discussions based on the compromise texts and background notes prepared by the consecutive Presidencies<sup>17</sup>. Some of the most discussed issues have been the following: tax consequences, links with domestic anti-abuse legislation, excluded entities, minimum substance, rebuttal of the presumption and reduction of administrative burden, tax residency certificate and exchange of information. The HLWP has provided guidance for further work on outstanding issues. In principle, most delegations have supported the objectives of the proposal, but were of the view that further important technical work was necessary before an agreement could be feasible.

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<sup>15</sup> Doc. ST 9925/24.

<sup>16</sup> Doc. ST 15296/21.

<sup>17</sup> See the previous report in doc. ST 16411/23.



22. Under the Belgian Presidency, a possible way forward was presented at the HLWP on 11 June 2024. Further discussions will be needed in order to find compromise solutions on outstanding issues.

*c) Transfer Pricing Directive*

23. On 12 September 2023 the Commission tabled the proposal for a Council Directive on transfer pricing,<sup>18</sup> which essentially aims at integrating into EU law key transfer pricing principles and rules, which are agreed in the framework of the OECD.
24. This legislative proposal by the Commission “aims at simplifying tax rules through increasing tax certainty for businesses in the EU, thereby reducing the risk of litigation and double taxation and the corresponding compliance costs and thus improve competitiveness and efficiency of the Single Market”<sup>19</sup>. This proposal covers the following key aspects:
- incorporating the arm’s length principle into Union law;
  - harmonizing the key transfer pricing rules;
  - clarifying the role and status of the OECD Transfer Pricing Guidelines; and
  - creating the possibility to establish, within the Union, common binding rules on specific transfer pricing subjects within the framework of the OECD Transfer Pricing Guidelines.
25. Following the first general discussion on the Commission proposal for a Council Directive on transfer pricing under the Spanish Presidency on 20 October 2023 the Belgian Presidency convened three WPTQ meetings on this legislative proposal –12 January, 27 February and 22 April 2024.

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<sup>18</sup> Doc. ST 12954/23 + ADD1.

<sup>19</sup> See the explanatory memorandum of the Commission proposal in doc. ST 12954/23.

26. The initial discussions on the Commission proposal showed that Member States generally support the objectives of improving legal certainty as regards the application of the arm's length principle in the EU, as well as regards the status of the OECD Transfer Pricing Guidelines (hereafter "OECD TPG") and further common interpretation of those OECD TPG that the Commission aims to achieve with this proposal. However, Member States raised some general concerns about the inclusion of transfer pricing rules into a Directive, as proposed by the Commission. Member States also raised serious concerns regarding the text of the Commission proposal about the risk of possibly creating a double standard in the field of transfer pricing, as well as about the loss of flexibility that they currently have in negotiating and applying the OECD TPG.
27. The Belgian Presidency aimed to build on the key observations and comments made by delegations and invited Member States to exchange views on the following main topics:
- the status of the OECD Transfer Pricing Guidelines;
  - the question to what extent the Directive could apply to cross-border transactions in relation to non-EU entities and tax authorities;
  - further alignment of the Commission proposal with the OECD Model Tax Convention;
  - functioning of the proposed rules on transfer pricing for permanent establishments and for associated enterprises, including possible way forward as regards the definition of the associated enterprises;
  - possible scope of procedural rules on transfer-pricing that could be harmonised at the EU level, and potential merits thereof;
  - the possibility of creating a discussion and co-ordination platform between Member States for transfer pricing issues.

28. So far, the discussions in the WPTQ have shown that the Commission proposal for a Council Directive on Transfer Pricing cannot be supported by Member States in its current form. Therefore, further work will be required to prepare the basis for possible headway.
29. To be noted, a large number of Member States have indicated that it could be useful to establish an “EU Transfer Pricing Platform”- a new “soft law” forum, such as (or to a certain degree similar to) the Joint Transfer Pricing Forum. This discussion could be continued, and should Member States wish to proceed further on this matter, the key aspects for discussion and decision would eventually be the composition of the Platform (membership) and its institutional set-up, its mandate (scope, duration, competence, deliverables), its governance (chair function (elected or appointed), voting rules and secretariat services), as well as other relevant aspects of substance and/or process (such as public access to documents).

*d) Head Office Tax System Directive*

30. On 12 September 2023 the Commission tabled a proposal for a Council Directive establishing a Head Office Tax (HOT) System for micro, small and medium sized enterprises,<sup>20</sup> which aims at simplifying corporate tax compliance for micro, small and medium size companies (SMEs) that decide to operate across borders within the EU. The Commission essentially proposes that SMEs with a permanent establishment in another (“host”) Member State, would continue to apply the tax rules they are familiar with (of the “home” Member State), to calculate and report the taxable result of their permanent establishments in other (“host”) Member States to the tax authorities of the “home” Member State. This arrangement would be expected to reduce compliance costs for businesses, encourage cross-border expansion of SMEs and contribute to ensuring a level playing field for the participation of SMEs in the internal market.

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<sup>20</sup> Doc. ST 12951/23 + ADD1-ADD5.

31. Following the first general discussion on the Commission proposal under the Spanish Presidency on 1 December 2023, the Belgian Presidency initiated a more detailed examination at the WPTQ meetings on 9 April 2024 (on Articles 2 – 5 and 7 – 10 of the proposal) and 29 May 2024 (on the remaining Articles, in particular those that relate to the procedural administration of HOT System, namely, Article 6 and Articles 11 to 14). The Commission also presented to delegations a summary of the findings by the informal group of experts from several Member States that analysed potential administrative challenges for tax authorities pertaining to this proposal. These discussions were aimed at obtaining a comprehensive view of the technical issues and potential merits of the proposal.
32. It can be noted that all delegations support the general objective to facilitate cross-border activities by SMEs. While some Member States see room for further technical discussions on the basis of the Commission proposal, it is important to observe that a large number of delegations raised serious concerns as regards several aspects of the Commission proposal, such as the administrative or aggressive tax planning challenges that the Directive, as proposed by the Commission, may create for tax authorities, concerns about the potential effect on tax revenues of Member States, risks linked to competitiveness of the domestic markets (“home” SMEs that choose not to or can’t expand cross-border), as well as more general arguments linked to the burden for national tax systems and linked to tax sovereignty.
33. A number of Member States hold the view that a more general (orientation) discussion on this file should take place before any further technical progress can be made. Further work on this file could therefore continue with the objective of preparing a high-level discussion on the policy choices that would need to be made with regard to this Commission proposal.

e) BEFIT Directive

34. On 12 September 2023, the Commission tabled a proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT),<sup>21</sup> the core objective of which is to develop a common corporate tax framework for large multinationals in the EU. With BEFIT being proposed, the Commission withdrew the proposals on Common (Consolidated) Corporate Tax Base (the CCTB/CCCTB), which were on the table of the Council since 2016 and were put on hold due to the global negotiations that have started in parallel on the Two-Pillar reform (in the framework of the G20/OECD inclusive Framework on BEPS).
35. Following the ~~initial~~ presentation of this legislative proposal during the Spanish Presidency term in a WPTQ on 29 September 2023, the Belgian Presidency initiated an in-depth analysis at the WPTQ meeting on 28 May 2024, where a more detailed discussion was held on most of the first twenty Articles of the Commission proposal, primarily about potentially further aligning them with Pillar Two rules.
36. In the discussions that took place so far, the overall objectives of simplifying corporate taxation rules in the EU and reducing the administrative burden to businesses and tax authorities were supported by Member States. Nevertheless, multiple concerns were expressed on whether the Directive, as proposed by the Commission, would successfully achieve these goals. In particular, so far, concerns were raised regarding the operation of the proposed Directive with national corporate tax rules, Pillar Two rules and with existing EU acquis in the area of taxation (such as the anti-abuse measures and the Directive on minimum effective taxation), as well as concerns regarding the scope and determination of the preliminary tax result of the in-scope groups.

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<sup>21</sup> Doc. ST 12965/23 + ADD1-ADD3.

37. Given the nature of the concerns raised, with some Member States also calling for a political discussion, the technical analysis of the Commission proposal could continue with the objective of preparing a discussion on the policy choices that would need to be made with regard to this Commission proposal.
38. Against this background, further reflection and technical work will be necessary, in order to determine the next steps in these negotiations during the forthcoming Presidency term.

## 2) **Indirect Taxation**

### a) VAT in the Digital Age

39. On 8 December 2022, the Commission issued its package “VAT rules for the digital age”, containing three proposals:
- a proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age<sup>22</sup>;
  - a proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age<sup>23</sup>; and
  - a proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards information requirements for certain VAT schemes<sup>24</sup>.
40. The package has three objectives. Firstly, it sets out to modernise the VAT reporting obligations by introducing digital reporting requirements based on electronic invoicing. Secondly, it intends to address the challenges of the platform economy by updating the applicable VAT rules. And thirdly, it seeks to address administrative burden by moving towards a single VAT registration.

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<sup>22</sup> Doc. ST 15841/22.

<sup>23</sup> Doc. ST 15842/22.

<sup>24</sup> Doc. ST 15843/22.

41. The European Data Protection Supervisor has issued its opinion on the package on 3 March 2023<sup>25</sup>. The European Economic and Social Committee has issued its opinion on the package on 27 April 2023<sup>26</sup>. The European Parliament adopted its opinion at its plenary session on 22 November 2023<sup>27</sup>.
42. The Commission presented its package at a Working Party meeting under the Czech Presidency, and the Swedish Presidency started its work on the package, including compromise texts on all three aspects of the proposals, which were welcomed by the delegations as a solid basis for further work.
43. To steer the further work on this file, on 16 June 2023 the Council held a policy debate on the proposals, which was prepared by the HLWP on 1 June 2023. In the debate, Ministers generally welcomed the broad lines of the Commission proposals and the progress made under the Swedish Presidency. Many ministers also requested flexibility on domestic digital reporting frameworks and on the solution to give platforms a larger role in the collection of VAT.

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<sup>25</sup> Doc. ST 7071/23.

<sup>26</sup> Opinion of the European Economic and Social Committee, “VAT in the Digital Age”, doc. ECO/606, <https://webapi2016.eesc.europa.eu/v1/documents/EESC-2022-06315-00-00-AC-TRA-EN.docx/content>

<sup>27</sup> European Parliament legislative resolution of 22 November 2023 on the proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age, [https://www.europarl.europa.eu/doceo/document/TA-9-2023-0421\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0421_EN.pdf); European Parliament legislative resolution of 22 November 2023 on the proposal for a Council regulation amending Regulation (EU) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age, [https://www.europarl.europa.eu/doceo/document/TA-9-2023-0422\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0422_EN.pdf).

44. The Spanish Presidency and the Belgian Presidency continued the work based on the orientations from the Council:

- a) on digital reporting requirements and e-invoicing, the Commission proposal was complemented with a framework at national level ensuring the quality of the data included in electronic invoices, with flexibility for the operationalisation of that framework. Member States were also given the option to exempt customers from data reporting. The deadline for the implementation of the intra EU e-invoicing and DRR system was postponed for two and a half years (July 2030), since these will entail important IT investments. Those Member States that already have a domestic transaction-based reporting obligation in place were given extra time to comply with the provisions on domestic e-invoicing and reporting.
- b) with regard to the platform economy provisions, the definition of short-term accommodation rental was adjusted to allow Member States to address national specificities in the taxation of the accommodation sector through national law, since not all Member States experience the distortion of competition between platforms and the hotel sector. In this regard, a possibility was introduced for Member States to prevent the deemed supplier regime from applying to small and medium-sized enterprises (SMEs).
- c) on the single VAT registration, the Council did not retain all new features proposed by the Commission. The extension of the ‘deemed supplier’ provision (where platforms that facilitate transactions become responsible for collecting VAT instead of underlying suppliers) to all goods supplied via platforms as well as for transfers of own goods was not supported, and delegations did not agree to the changes in the margin scheme for works of art and antiques. Furthermore, mainly due to anticipated enforcement problems, delegations did not agree to make the import one-stop-shop mandatory. An alternative solution to incentivise the use of the import one-stop-shop is to be considered in the framework of the VAT aspects of the reform of the Union Customs Code, which is currently also under discussion in the Council.



45. Under the Belgian Presidency, five WPTQ meetings and one HLWP meeting were held in preparation of the Council (Ecofin) meeting on 14 May 2024. At this meeting, one delegation could not agree to the Presidency compromise texts submitted for agreement due to objections with regard to the parts of the proposal related to the platform economy.

46. At the 21 June Ecofin meeting, a revised compromise text on the draft amending Directive could still not gather the support of all delegations.

b) Revision of the Energy Taxation Directive (ETD)

47. On 14 July 2021, the Commission submitted a proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast)<sup>28</sup>, ('the ETD proposal').

48. The ETD proposal is part of the "Fit for 55" package<sup>29</sup>, which aims at implementing the ambitious EU targets to reduce emissions by at least 55% by 2030, as compared to 1990 levels, and to achieve climate neutrality by 2050. The package consists of a set of inter-connected proposals, which all drive towards the same goal of ensuring a fair, competitive and green transition by 2030 and beyond.

49. The ETD proposal aims at the following objectives:

- a) providing an adapted framework contributing to the EU 2030 targets and climate neutrality by 2050 in the context of the European Green Deal. This would involve aligning the taxation of energy products and electricity with EU energy, environment and climate policies, thus contributing to the EU efforts to reduce emissions;
- b) providing a framework that preserves and improves the EU internal market by updating the scope of energy products and the structure of rates and by rationalising the use of tax exemptions and reductions by Member States; and
- c) preserving the capacity to generate revenues for the budgets of the Member States.

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<sup>28</sup> Doc. ST 10872/21.

<sup>29</sup> Doc. ST 10849/21.

50. On 17 June 2022, the Council (Ecofin) took note of the Presidency progress report on the ETD proposal<sup>30</sup>. On 6 December 2022, the Council (Ecofin) held a policy debate<sup>31</sup> on the ETD proposal and gave political guidance on the way forward. In general, the Ministers supported the more flexible Presidency approach and asked to find solutions to open issues. Taking into account the political guidance, technical analysis has continued.
51. Building on the progress made by the previous Presidencies, the Belgian Presidency continued work on the revision of the ETD. The file was analysed in the WPTQ on 29 February, 13 March and 25 April. Furthermore, an exchange of views took place at the HLWP on 26 March. The Presidency prepared full compromise texts on three occasions and submitted also partial compromise texts containing possible alternative drafting for certain articles.
52. The outstanding issues were analysed, and the focus was on the following issues: taxation of energy products and electricity used in aviation and maritime sectors, indexation of minimum levels of taxation, emergency brake in case of exceptional increases of energy prices, biomass. Some issues were re-opened by delegations, such as taxation of mixed products, differentiation between commercial and non-commercial use of energy products used as propellants and taxation of waste. At the request of delegations, the Presidency compromise text contained prolonged transitional periods and the possibility for Member States to provide total or partial exemptions for certain sectors and services. With the latest compromise text, the Presidency felt that it had done its utmost to find a delicate balance between the diverging views and to address the remaining concerns. Making further modifications at the request of some delegations would have led to the reduction of support by some other delegations.

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<sup>30</sup> Doc. ST 9874/22.

<sup>31</sup> Doc. ST 14736/22.

53. The Presidency therefore invited delegations to consider the compromise text as a package and to show flexibility. The Presidency proposed that if the compromise text was favourably received by delegations, it would schedule additional meetings to fine-tune the text before raising it to the political level. However, based on the discussions at the meeting of the WPTQ in April, the Presidency noted that substantial differences between the positions of delegations remained and that the Presidency compromise text was not favourably received by delegations.
54. The Presidency managed to make major progress, but further work is needed in order to reach a compromise text which would be acceptable for all delegations.

**3) Administrative cooperation in the field of taxation**

*a) Automatic exchange of tax-relevant information with non-EU jurisdictions*

55. The Belgian Presidency advanced the work on the application of personal data protection rules (in particular – the GDPR) to the automatic exchange of information (hereafter “AEOI”) with non-EU jurisdictions. This work built on the discussions on these matters that were held during previous Presidency terms<sup>32</sup>.
56. While these issues are within Member States’ competence, it is deemed useful at this stage to continue coordinated work in this area. It is therefore expected that these issues will be regularly looked into at the WPTQ, as necessary.

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<sup>32</sup> See doc. ST 10710/23, points 31-32, doc. ST 15506/22, points 46-48; doc. ST 9970/21, points 81-82 ; doc. ST 14651/21, points 50-59.

b) EU Agreements with Andorra, Liechtenstein, Monaco, San Marino and Switzerland

57. Following the respective discussions at the WPTQ (High Level) initiated in 2023<sup>33</sup>, on 17 January 2024 the Commission submitted to the Council a Recommendation for a Council Decision to authorise the Commission to open negotiations for the amendment of the five agreements on the automatic exchange of financial account information to improve international tax compliance between the European Union and, respectively, the Swiss Confederation, the Principality of Liechtenstein, the Principality of Andorra, the Principality of Monaco and the Republic of San Marino.<sup>34</sup>
58. The aim of the envisaged negotiations for the amendment of these five agreements is the following:
- (a) to ensure that the automatic exchange of financial account information between EU Member States and the five non-EU countries under the five respective EU agreements is aligned with, and continue to take place in accordance with, the updated Common Reporting Standard (CRS) developed by the OECD from the 1 January 2026; the implementation of the updated CRS within the EU has been included in Directive 2023/2226 (DAC8);
  - (b) to update the legal references to Directive 95/46/EC by references to Regulation (EU) 2016/679 (GDPR), where appropriate.

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<sup>33</sup> Doc. ST 16411/23, p. 17-18.

<sup>34</sup> Doc. ST 5598/24 + ADD 1.

59. Following the meeting of the Working Party on Tax Questions (High Level) on 7 February 2024 and the meeting of the Working Party on Tax Questions (Direct Taxation) on 7 March 2024 as well as the ensuing consultations, all delegations could support the compromise text of the draft Council Decision and the compromise text of the negotiating directives. As the result of deliberations in the Council, both the Council Decision and the negotiating directives were modified compared to the Commission recommendation. Firstly, in the Council Decision, the following is now clearly set out: 1) substantive legal basis (Article 115 TFEU) is added, in order to be in line with the relevant case law of the Court of Justice of the EU; 2) the negotiating directives shall be revised and further developed, as appropriate, depending on the evolution of the negotiations; 3) the negotiations shall be conducted in close consultation with the Working Party on Tax Questions, which is designated as the special committee within the meaning of Article 218(4) TFEU; 4) the Commission shall report to and consult the special committee on a regular basis; whenever requested by the Council, the Commission shall report to the Council on the conduct and the outcome of the negotiations, including in writing. Secondly, in the negotiating directives, a reference is made to an amendment to the Agreement with Switzerland in relation to assistance in the collection of direct and indirect taxes.
60. On 21 May 2024 the Council adopted the Council Decision authorising the opening of negotiations for the amendment of the Agreements concerning the automatic exchange of financial account information to improve international tax compliance between the European Union and the Swiss Confederation, the Principality of Liechtenstein, the Principality of Andorra, the Principality of Monaco and the Republic of San Marino, respectively<sup>35</sup> and agreed on the negotiating directives<sup>36</sup>.

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<sup>35</sup> Doc. ST 9543/24, ST 9245/24.

<sup>36</sup> Doc. ST 9245/24 ADD 1.

c) Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of VAT

61. In October 2023, the Commission updated delegations on the negotiations with the authorities of Norway to amend the agreement on administrative cooperation, combating fraud and recovery of claims in the field of VAT, and consulted them on the draft amendments to the agreement.
62. Since a very broad majority of delegations could agree to the draft amendments, the Presidency concluded that the next step was to await the Commission proposals for the signing and conclusion of the agreement under Article 218 TFEU.
63. On 24 November 2023, the Commission issued its proposals. After a written consultation had not raised any objections from delegations, the Council Decision on the signature of the Agreement was adopted by the Council on 20 February and published in the Official Journal on 28 February 2024.
64. On 10 April 2024, the European Parliament issued its opinion on the conclusion of the Agreement, paving the way for the conclusion of the Agreement by the Council.

d) Fiscalis programme for cooperation in the field of taxation

65. The Fiscalis programme aims at supporting tax authorities to enhance the functioning of the internal market, foster competitiveness, fight tax fraud, tax evasion and tax avoidance and improve tax collection. In June 2024, the Commission informed the HLWP about the Fiscalis Programme Annual Progress Report 2023<sup>37</sup>.

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<sup>37</sup> Doc. ST 9294/24.

## C. **TAX POLICY COORDINATION (non-legislative activities)**

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

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

- 66. The Code of Conduct Group (COCG) met on 7 February and 10 June 2024, and the subgroup meetings were held on 19 January, 1 March, 24 April and 23 May 2024.
- 67. The biannual revision of the EU list of non-cooperative jurisdictions for tax purposes was approved by the Council on 20 February 2024 and published in the Official Journal on 26 February 2024<sup>38</sup>.
- 68. A more extensive report can be found in the dedicated biannual Code of Conduct Group report<sup>39</sup>.

### 2) **UN Resolution on promoting inclusive and effective international tax cooperation at the United Nations**

- 69. On 30 December 2022, the UN General Assembly formally adopted a Resolution on the promotion of inclusive and effective international tax cooperation (Resolution 77/244). With the Resolution, UN Members requested the UN Secretary General (UNSG) to prepare a report (which the General Assembly discussed at its 78<sup>th</sup> session in September 2023) to analyse all relevant international legal instruments, other documents and recommendations that address international tax cooperation, taking into full consideration existing international and multilateral arrangements. To this end, the Secretary-General launched a public consultation in February 2023.

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<sup>38</sup> OJ C, 2024/1804, 26.2.2024, pages 1-4.

<sup>39</sup> Doc. ST 11151/24.

70. On 8 March 2023, following the Fiscal Counsellors/Attachés meeting, Member States supported the submission of a contribution by the European Union and its Member States, based on a Commission proposal. Following this support, a draft contribution was circulated and approved by the HLWP through an informal silence procedure on 15 March 2023. The contribution was subsequently signed by the Chair of the HLWP and submitted to the UN Secretariat jointly by the delegations of the EU and of Sweden<sup>40</sup>.
71. During the discussion at the HLWP on 25 April 2023 delegations expressed their support for the coordination, as relevant, of positions on international tax cooperation by the EU Member States to be conveyed in the UN, while avoiding duplication of work. The HLWP was mandated to continue to oversee developments.
72. The UNSG report on the promotion of inclusive and effective international tax cooperation was published on 8 August 2023.<sup>41</sup> The report provided an analysis of the existing arrangements in international tax cooperation and explored various options for enhancing international tax cooperation, with a focus on inclusivity.
73. On 15 September 2023, Fiscal Attachés/Counsellors considered a draft position on behalf of the EU and its Member States on tax cooperation at the United Nations reflecting the conclusions of the report. The position was approved by the Council on 28 September 2023.<sup>42</sup>
74. On 22 November 2023, the UN Second Committee adopted a revised draft Resolution from the African Group, entitled “Promotion of inclusive and effective international tax cooperation at the United Nations” (A/C.2/78/L.18/Rev.1), by a majority vote. The Resolution opted for option 2 of the UNSG report, deciding inter alia to establish a Member State-led, open-ended Ad Hoc Intergovernmental Committee for the purpose of drafting Terms of Reference for a United Nations Framework Convention on International Tax Cooperation.

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<sup>40</sup> Doc. ST 7564/23.

<sup>41</sup> <https://financing.desa.un.org/document/promotion-inclusive-and-effective-international-tax-cooperation-united-nations-a78235>

<sup>42</sup> Doc. ST 12967/23



75. At the HLWP on 23 November 2023 the Presidency and the Commission reported on the progress in the negotiations at the Second Committee of the General Assembly at its seventy-eighth session. Following the recommendation of the UN Second Committee, on 22 December 2023, the UN General Assembly adopted Resolution 78/230 on "Promotion of Inclusive and Effective International Tax Cooperation at the United Nations" by a majority vote.
76. At the WPTQ on 26 January 2024, delegations held an initial exchange of views on the role of the EU and its Member States- in the work initiated by the UNGA resolution 78/230 on the "Promotion of inclusive and effective international tax cooperation at the United Nations.
77. At the meeting on 7 February, the Belgian Presidency updated the HLWP on the state of play of the work at the United Nations and delegations discussed a possible common position (of the Union and its Member States) for the upcoming work of the Ad Hoc Committee. At this meeting, delegations agreed on three common messages as general guiding principles for a constructive engagement during the first organisational session in New York from 20 to 22 February.
78. Following said session and the request from the Chair of the Ad Hoc Committee to provide written inputs on the draft Terms of Reference (ToR) by 15 March, the Presidency organised a Fiscal Attachés meeting on 11 March to discuss and establish a strategy in anticipation of the upcoming negotiations. On the basis of the feedback sent by delegations, the Presidency prepared a draft 'chapeau' text outlining principles and a toolbox with possible subject matters for guiding the inputs to be submitted to the UN Secretariat. Subsequently, several Member States used this 'chapeau' text in their written inputs, and some Member States submitted proposals on substance matters for possible inclusion in the draft ToR.

79. At the HLWP on 26 March 2024, delegations tasked the Fiscal Attachés to continue discussions on a possible common position (of the EU and its Member States) ahead of the first substantial session of the Ad Hoc Committee in New York from 26 April to 8 May 2024.
80. On 12 April 2024, the Fiscal Attachés considered a draft position on behalf of the European Union and its Member States for the first substantial session of the Ad Hoc Committee (New York, 26 April - 8 May 2024), based on a Presidency proposal.
81. On 25 April 2024, the Council approved the position on behalf of the European Union and its Member States valid for the first substantive session of the Ad Hoc Committee.<sup>43</sup>
82. The agreed position was delivered by the EU delegation to the United Nations on behalf of the EU and its Member States and by Belgium as Member State exercising the Presidency of the Council on behalf of the EU Member States during the opening of the first substantive session of the Ad Hoc Committee on 26 April 2024. The common position was supported and complemented by other Member States participating in the session. During the session, the Belgian Presidency, the EU delegation and the Commission services cooperated closely to hold regular EU information sharing and coordination meetings. Virtual participation for delegations from the capitals and for Brussels-based fiscal counsellors/attachés was also allowed. These meetings have been held alternatively with those of the UN regional group of the WEOG, following which all EU Member States were updated on the latest discussions. Outreach activities to third countries as well as meetings with relevant stakeholders such as civil society organizations also took place as discussed on the spot.
83. On 11 June 2024, the HLWP was informed about the outcome of the Ad Hoc Committee and the way forward in the UN negotiations. The Presidency informed the June Ecofin Council in this regard.

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<sup>43</sup> Doc. ST 9129/24 REV 1.

### 3) **Russia's aggression against Ukraine**

84. In the context of Russia's aggression against Ukraine with the participation of Belarus, the Council Working Party on Tax Questions examined a number of measures that Member States could pursue to support the implementation of EU restrictive measures (in relation to Russia and Belarus) and prevent their circumvention through tax cooperation instruments.
85. Firstly, Member States agreed on the need to discontinue all exchanges of information for tax purposes with the Russian Federation and Belarus. Secondly, EU Member States examined a number of measures aiming at enhancing the use of administrative cooperation and other instruments in the tax field in the context of the enforcement of the restrictive measures.
86. In this context, the Working Party on Tax Questions will continue to examine further developments concerning these measures, including the work taking place within the temporary platform created by the Commission on 3 June 2022 in the form of a Freeze and Seize Task Force subgroup on tax enforcement.
87. At the HLWP meeting on 11 June 2024, delegations took note of the update provided by the Commission on the work of this subgroup.

### 4) **International developments**

88. The HLWP was regularly informed of relevant international developments in the area of tax policy. In particular, delegations were regularly debriefed on the ongoing work and state of play in the OECD/G20 Inclusive Framework on BEPS, as well as on the tax policy aspects covered in the meetings of the G20 Finance Ministers and Central Bank Governors. The delegations were also informed about the topics discussed in the G20 International Taxation Symposium that took place in Brasilia on 21-23 May 2024.

89. Issues related to the US Foreign Account Tax Compliance Act (FATCA) have been regularly brought to the attention of delegations at the HLWP meetings. As regards the issue of the so-called accidental Americans, at the end of 2022, the US Internal Revenue Service released a notice that temporarily relaxes the rules for being determined as non-compliant because of missing TINs for the years 2022, 2023 and 2024. In January 2023, this development was brought to the attention of the HLWP. In April 2023, the members of the HLWP underlined that a permanent and wider solution is needed to prevent Financial Institutions in EU to be treated as non-compliant because of missing TINs in cases where it is not possible for the Financial Institutions to collect TINs. In July 2023, in the HLWP delegations made a suggestion to send a letter to the US, urging the US to provide a more permanent solution with a wider scope as soon as possible. Therefore, in September 2023, a letter was sent to the US on behalf of the HLWP. In March 2024, the HLWP was debriefed on the latest developments as regards FATCA. In June 2024 the HLWP was informed about the constructive meeting which took place between the Belgian Presidency and the US Treasury on 22 May 2024.

5) **Tax in non-tax areas (TINTA)**

90. 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, has continued to ensure that Member States are alerted in a timely manner, including on negotiations of agreements between the EU and third countries. The issues which were monitored by the HLWP include the Council Conclusions on the economic empowerment and financial independence of women as a pathway to substantive gender equality, the Council Conclusions on EU diplomacy promoting the green transition and supporting the implementation of global commitments, the ongoing work on a possible Joint Statement of the Council and the Commission regarding the Joint EU-UK Political Declaration on Countering Harmful Tax Regimes, and the Anti-Money-Laundering package.

6) **Other**

91. At an informal meeting of the HLWP, discussions were also held on the tax aspects of an EU single market for philanthropy, as well as on the tax issues related to cross-border teleworking and/or remote working, more specifically on the taxation of wages and salaries and the presence of permanent establishments in such situations.
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