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From: General Secretariat of the Council
To: Permanent Representatives Committee/Council
Subject: ECOFIN Report to the European Council on taxation
- Approval

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 Taxation on 1 June 2021 for submission to the Council on 18 June via Coreper. It was also agreed that the usual factual updates (parts in square brackets) would be made by the GSC after the Council meeting before the release of the final version of the report.
3. Coreper is therefore invited to recommend to the Council (ECOFIN) to approve the report as an 'A' item, as set out in the Annex, with a view to its transmission to the European Council (24-25 June 2021).

ECOFIN REPORT TO THE EUROPEAN COUNCIL ON TAX ISSUES

1. This Council report provides an overview of the progress achieved in the Council during the term of the Portuguese 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 High Level Working Party on tax issues (HLWP)¹ covering strategic tax policy issues.
2. This report reflects the state of play of relevant Council work and covers issues mentioned in various European Council conclusions since 2012², the statement of the Members of the European Council of 25 March 2021³, the Council conclusions in the VAT area of 2012⁴ and of 2016⁵, the Council conclusions on "Responding to the challenges of taxation of profits of the digital economy" of 2017⁶, the Council Conclusions of 2020 on the future evolution of administrative cooperation in the field of taxation in the EU⁷, 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 beyond⁸.

¹ Work of High Level Officials on tax policy issues will continue following the renaming of Council Working Groups as set out in the decision of 3 February 2021 of the Committee of Permanent Representatives (doc. 5754/2/21 REV 2 LIMITE), which is applicable as of 1 July 2021.

² 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.

³ Doc. 18/21.

⁴ Doc. 9586/12.

⁵ Doc. 9494/16.

⁶ Doc. 15175/17.

⁷ Doc. 8482/20.

⁸ Doc. 13350/20.

3. In spite of the hindrances caused by the COVID-19 pandemic, the work during the Portuguese Presidency term continued on a number of key files, with the aim of addressing challenges arising from the digitalisation of the economy, the future of VAT rates, and updates to the EU list of non-cooperative jurisdictions for tax purposes.
4. More specifically, the Council:
 - a) adopted the Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC7);
 - b) adopted the Regulation of the European Parliament and of the Council establishing the "Fiscalis" programme for cooperation in the field of taxation;
 - c) adopted the Council Regulation amending Council Regulation (EU) No 389/2012 on administrative cooperation in the field of excise duties as regards the content of electronic registers;
 - d) made substantial progress on the proposal for a Directive amending Directive 2006/112/EC as regards rates of value added tax.
 - e) approved the authorization that the Commission can enter into negotiations with the authorities of the People's Republic of China, in view of the conclusion of a non-binding Memorandum of Understanding as regards the possibilities on establishing a basis for possible future administrative cooperation framework between the EU and People's Republic of China in the area of VAT.
 - f) [adopted] [completed the negotiations on] [examined] the proposal for a Council Directive amending Directive 2006/112/EC as regards exemptions on importations and on certain supplies, in respect of Union measures in the public interest;
 - g) took stock of the OECD negotiations on solutions to the tax challenges of the digital economy and continued work on the way forward at international level and in the EU.

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, while considering the limitations due to the COVID-19 global pandemic, as set out in its six-monthly report.⁹ The EU list was last updated by the Council on 22 February 2021¹⁰. More detailed information on individual dossiers can be found below.

A. Initiatives in the area of EU tax law

Tax Challenges arising from the digitalisation of the economy

6. Addressing tax challenges arising from the digitalisation of the economy remains the key priority of the Council in the area of tax policy: the Council, in its 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",¹¹ inter alia, confirmed its continued support to the work at the OECD Inclusive Framework on BEPS aimed at reaching a global consensus-based solution by mid-2021, taking into account the interests of all Member States in order to ensure that all corporations pay their fair share of tax on profits generated by their activities in the EU.
7. Therefore, the Members of the European Council in their statement of 25 March 2021¹² have also reiterated their *'strong preference for and commitment to a global solution on international digital taxation'*, indicated that they *'will strive to reach a consensus-based solution by mid-2021 within the framework of the OECD'* and confirmed that *'the European Union will be ready to move forward if the prospect of a global solution is not forthcoming.'*

⁹ Doc. 9341/21.

¹⁰ Doc. 6329/21.

¹¹ Doc. 13350/20.

¹² Doc. 18/21.

8. During the Portuguese Presidency term, Member States were regularly provided with an opportunity to exchange views on the state of play and way forward as regards the latest developments in the ongoing global G20 / OECD/ IF on BEPS negotiations on 'digital taxation'.
9. In this context, the Members of the **High Level Working Party** on Taxation were also updated by the Director of the Centre for Tax Policy and Administration at the OECD (Mr. Pascal Saint-Amans), as well as the Deputy Assistant Secretary for Multilateral Negotiations in the Office of Tax Policy of the US Treasury (Mr. Itai Grinberg).
10. The Members of the HLWP and of the WPTQ have also continued to exchange views on the key building blocks of Pillars 1 and 2, e. g. the scope of amount A, the nexus rule and the allocation of profits, tax certainty, the concept of unilateral measures. These discussions will continue in the light of the ongoing international negotiations.

11. At this stage, the OECD/IF on BEPS has reached the crucial phase of the negotiations on the update of the rules on international taxation, in order to address the tax challenges resulting from the digitalization of the economy. Any international consensus-based solution on how to revise the current rules of international taxation will require an implementation phase, during which adjustments will be made to the current framework of international tax agreements and to the parties' national tax laws if needed. Any new legislative proposals by the European Commission will be followed by the negotiations in the Council of the EU. Work on these matters in the Council will continue, also taking into account 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.¹³
12. The work of the Council and its preparatory bodies carried out during the preceding Presidency terms in this area is summarised in the previous reports of the Council on tax issues.¹⁴ To be noted, the ongoing global debate on the update of the rules of international corporate taxation had influenced the deliberations among the Member States in relation to the legislative proposals for digital service tax (DST), the significant digital presence (SDP) proposal and on the CC(C)TB project, as well as the proposal for recasting the interest and royalty directive (IRD).

¹³ Doc. 13350/20.

¹⁴ Doc. 13336/20, points 13 to 20; Doc. 8891/20, points 13 to 26.

Common (Consolidated) Corporate Tax Base

13. 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, (CCTB)¹⁵, and on a Common Consolidated Corporate Tax Base (CCCTB)¹⁶. The CCTB proposal contained common rules for computing the tax base of multinational companies within the EU, whilst the CCCTB proposal complemented the CCTB proposal with the consolidation element.
14. The state of play on these dossiers was summarised in the previous ECOFIN reports to the European Council on tax issues.¹⁷
15. The CC(C)TB project has been influenced by the economic disturbances caused by the COVID-19 pandemic, as well as the ongoing global debate on the corporate tax issues. Work on these files could continue, once there is more clarity as regards the content of the expected global consensus on the update of the rules of international corporate taxation.

¹⁵ Doc. 13730/16.

¹⁶ Doc. 13731/16.

¹⁷ See, for example, doc. 8891/20, points 7-12, doc. 14863/19, points 7-20.

Future initiatives in the area of business taxation by the European Commission

16. On 18 May 2021, the Commission issued the communication "Business Taxation for the 21st Century". Among other points set out in that communication, the Commission confirms that in July 2021 it will issue proposals for a digital levy, a Carbon Border Adjustment Mechanism (CBAM), a proposal for a revised EU Emissions Trading System (ETS), and a proposal to reform the Energy Taxation Directive and that it will, in due course, propose additional new own resources, which could include a Financial Transaction Tax and an own resource linked to the corporate sector. Alongside this Communication, the Commission adopted a recommendation to Member States on the domestic treatment of losses.
17. In the Communication the Commission also sets out its plans for the coming two years in the corporate tax policy area:
 - a) a legislative proposal setting out Union rules to neutralise the misuse of shell entities for tax purposes (expected by the end of 2021);
 - b) a legislative proposal creating a Debt Equity Bias Reduction Allowance (DEBRA) (expected during the first quarter of 2022);
 - c) a legislative proposal for the publication of effective tax rates paid by large companies (expected in 2022);
 - d) a legislative proposal for BEFIT (Business in Europe: Framework for Income Taxation), moving towards a common tax rulebook and providing for fairer allocation of taxing rights between Member States (expected in 2023).
18. Delegations exchanged their views on this communication at an informal videoconference of the Members of the HLWP on 1 June 2021, taking note of the intentions of the Commission on the way forward.

Value Added Tax (VAT) and excise duties

19. As regards VAT, in 2016, the Council adopted two sets of conclusions: in May 2016¹⁸ 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.¹⁹
20. 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.
21. Building on the progress during the previous Presidency terms²⁰, the Portuguese Presidency continued work on the legislative files in the area of VAT.

¹⁸ Doc. 9494/16.

¹⁹ Doc. 14257/16.

²⁰ See, for example doc. 15082/18, points 30 to 111; doc. 10322/18, points 56 to 100.

22. In particular, during the term of the Portuguese Presidency, the legislative dossiers at varying stages of progress that were on the table of the Council and/or its preparatory bodies, as appropriate, covered the following areas of VAT and excise duties:
- a) VAT rates reform;
 - b) the definitive VAT system;
 - c) the conferral of implementing powers to the Commission to determine the meaning of the terms used in certain provisions of the VAT Directive;
 - d) exemptions on importations and on certain supplies, in respect of Union measures in the public interest;
 - e) administrative cooperation in the field of excise duties as regards the content of electronic registers.
23. More detailed information on individual dossiers in the area of VAT and excise duties can be found further in the text.
24. Moreover, the Council conclusions 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 of 27 November 2020 also contain the response of the Council to the measures in the field of VAT and excise duties.

a) Definitive VAT System

Background

25. 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.²¹
26. 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 acts²² 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 taxable person (CTP) and the so-called "cornerstones" of the definitive system of VAT (set out as amendments to Article 402 of the VAT Directive).
27. 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)²³.

²¹ Doc. 12617/17.

²² 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).

²³ Proposal for a Directive amending Directive 2006/112/EC as regards rates of value added tax.

28. 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.
29. Member States appreciate the initiative taken by the Commission to reach a definitive VAT system.
30. 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.
31. Instead of an "Article by Article" analysis of the proposal, which would not have generated much progress on this dossier given the scale, complex nature and sensitivity of the proposal, the discussions have focused on six key components²⁴:
- 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);
 - iii) design and functioning of the provisions relating to the notion of CTP and his certification;
 - iv) rules linked to the person liable to pay the VAT for supplies of goods to CTPs;
 - v) rules linked to the person liable to pay the VAT for supplies of goods to non-CTPs including accompanying measures; and

²⁴ Doc. 15082/18, points 57 to 88.

vi) extension of the One-Stop-Shop (“OSS”).

During the term of the Romanian Presidency the discussion on this file covered the possibility to go forward with accompanying measures like "split payment".

State of play

32. During the Finnish Presidency the discussion concentrated on updating the views of the Member States on the key elements of the proposal and the way forward. The German Presidency continued the discussion on accompanying measures which may be effective as well under the current VAT regime as under a future definitive regime and addressed the issue of transaction based reporting and widening of e-invoicing. Both measures are also part of the Commission Tax Action Plan.

Way forward

33. Member States agree that this dossier still requires thorough technical analysis before the final policy choices are made.

34. As already indicated by the Council²⁵, the best way forward is to continue focusing on the key elements of the Commission proposal and the analysis of options of accompanying measures.

35. Many Member States have deemed it worthy to analyse in parallel or combined possibilities of reporting obligations and measures linked to the person that gets the right to deduct input VAT. These measures could include a restriction of the right for input VAT deduction of the customer if VAT is not paid by the supplier or a joint and several liability; in order to allow the customer to escape the consequences of these measures, they would have to be combined with a split payment or other system.

²⁵ Doc. 15082/18, points 89 to 91.

36. Many Member States consider that the reporting obligations worthy to be analysed could include automated transaction based reporting for both parties of the cross-border transaction. According to a number of Member States it would be useful to explore whether this measure could form a new tool for detecting VAT fraud and whether it could be adopted irrespective of who is liable to pay the VAT.
37. Member States underline the importance that any of these additional measures should not have disproportionate effect on compliance costs of businesses and tax authorities.
38. Member States agree that the next step could be to continue further exploring accompanying measures, also taking into consideration possible broader application of new technologies. Because these measures were not included in the Commission proposal and taking into account the complexity of these measures and the various alternatives, many Member States invited the Commission to explore these measures further and consult the Member States. The results of this analysis could contribute to the discussions at the WPTQ. However, 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 of which a switch to the supplier's liability is one.
39. Further work on the definitive VAT system should continue while not preventing or slowing down efforts to improve the current VAT system.

b) VAT rates reform

40. On 18 January 2018, the Commission issued a proposal for a Directive amending Directive 2006/112/EC as regards rates of value added tax.²⁶ 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.

²⁶ Doc. 5335/18.

41. 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);
 - 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).
42. The Commission proposal was examined during the term of the Bulgarian, the Romanian, the Finnish, the Croatian and the German Presidencies.
43. To be noted, some Member States see the need for the proposal for VAT rates reform 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 and as the derogations relating to goods and services would cease to apply upon introduction of the definitive arrangements referred to in Article 402 of the VAT Directive. Some Member States underline that the VAT rates proposal should be given a priority and discussed and adopted independently.

44. The technical discussions continued under the Croatian Presidency exploring further the option of a positive list, the use of CN²⁷ codes (where possible) for goods and CPA²⁸ codes for services and the principles and conditions of applying VAT reduced rates. Suggestions were also made on advancing the European Green Deal by introducing a more beneficial VAT treatment for supplies with low CO₂ emissions ²⁹.
45. Under the German Presidency technical discussions continued. The focus of the discussion has been on the basic strategy for going forward and on possible design principles of a positive list.
46. Following the work previously developed, the Portuguese Presidency suggested a three-step approach based in the definition of the features that would guide the inclusion of goods and services in a positive list, the update and modernisation of Annex III to Directive 2006/112/EC and the scope of zero, super-reduced rates and derogations. Based on that strategy, the Presidency worked extensively on compromise texts that were discussed in meetings of the Working Party on Tax Issues – Indirect Taxation on 21 January, 18 February, 31 March, 22 April and 27 May 2021. [Outstanding issues have been brought to the political guidance of the ECOFIN Council on 18 June 2021.]

²⁷ Commission Implementing Regulation (EU) 2019/1776 of 9 October 2019 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff.

²⁸ Commission Regulation (EU) No 1209/2014 of 29 October 2014 amending Regulation (EC) No 451/2008 of the European Parliament and of the Council establishing a new statistical classification of products by activity (CPA) and repealing Council Regulation (EEC) No 3696/93.

²⁹ See also Council Conclusions of December 2019 on Energy Taxation, doc. 14861/19.

c) VAT Committee

47. On 18 December 2020, the Commission submitted a Proposal for a Council Directive amending Directive 2006/112/EC as regards conferral of implementing powers to the Commission to determine the meaning of the terms used in certain provisions of that Directive³⁰ (so-called “VAT Committee Directive”). According to the Commission, the objective of the proposal is to provide a more uniform application of the EU VAT legislation. To achieve this, the Commission proposes to establish a comitology committee which would assist the Commission in the adoption of binding implementing measures by the qualified majority voting. In Commission’s view, this would make decision-making more efficient and save the European Court of Justice from solving interpretation questions so frequently.
48. During the discussions in the WPTQ (Indirect Taxation), although in general Member States could support the overall objective of the proposal, many delegations expressed their reservations, especially as regards the shifting of power from the Council to the Commission and moving towards the QMV voting. Some delegations were of the view that the current system can be improved, namely through the presentation of more proposals for Council implementing acts based on article 397 of the VAT Directive.

d) Excise duties as regards electronic registers

49. On 26 January 2021, the Commission submitted a Proposal for a Council Regulation amending Council Regulation (EU) No 389/2012 on administrative cooperation in the field of excise duties as regards the content of electronic registers.³¹ The objective of the Regulation is to widen the scope of Article 19 of Regulation 389/2012 in order to set out the information to be introduced by the Member States in the registers of the economic operators when moving excise goods only occasionally. Following the discussion in the WPTQ (Indirect Taxation), some adjustments were made in the text of the proposal. After the receipt of the opinions of the European Parliament and of the European Economic and Social Committee, the Regulation was adopted by the Council on 10 May 2021³².

³⁰ Doc. 14293/20.

³¹ Doc. 5701/21.

³² OJ L 167, 12.5.2021, p. 1-2.

e) VAT “buy and donate”

50. On 12 April 2021, the Commission transmitted to the Council a proposal for a Council Directive amending Directive 2006/112/EC as regards exemptions on importations and on certain supplies, in respect of Union measures in the public interest³³. The aim of the proposal is to provide for an exemption from VAT for the Commission and other EU agencies when they buy goods and services to be distributed to the Member States free of charge.
51. In discussions among the Member States held in the WPTQ (Indirect Taxation) meetings on 14 April and 20 May 2021 and in written comments submitted afterwards, the Member States expressed concerns on a number of issues. The Presidency presented a second compromise proposal, which was circulated for approval under silence procedure on the 26 May 2021. The silence procedure was broken due to concerns expressed by some Member States in particular with the scope of the proposal. On this basis, the Presidency decided to request the advice of the HLWP on how to move forward.

f) Other initiatives in the VAT area - evaluation and revision of the special scheme for travel agents set out in articles 306 to 310 of Council Directive 2006/112/EC

52. This special VAT scheme is a simplification measure derogating from the normal VAT rules that is in place since the adoption of the common VAT system in 1977. It was included as one of the VAT initiatives announced by the Commission in the Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy.

³³ Doc. 7749/21.

53. On 17 February 2021, the Commission published its Evaluation Report³⁴, which was presented to the Council during the WPTQ (Indirect Taxation) meeting of 14 April 2021. Member States supported the main conclusions of the evaluation report, recognizing the need to update the rules of the special scheme, taking into account the digitalization of the economy and to tackle distortions of competition between EU established and non-EU established travel agencies.

g) Financial Transaction Tax (FTT)

54. The Commission on 14 February 2013 submitted a proposal for a Council Directive implementing enhanced cooperation in the area of financial transaction tax.

55. 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").

56. The main aspects of the ongoing negotiations on this dossier were summarized in the previous ECOFIN report to the European Council on tax issues.³⁵

³⁴ Doc. 6358/21 + ADD 1.

³⁵ See doc. 8891/20, points 67-70, doc. 14863/19, points 104-110.

57. The European Council in its conclusions of 17-21 July 2020³⁶ (point A29) indicated that "*The Union will over the coming years work towards reforming the own resources system and introduce new own resources. [...] ... the Union will, in the course of the next MFF, work towards the introduction of other own resources, which may include a Financial Transaction Tax.*" In this regard, the Commission has recently clarified that³⁷ "*should there be an agreement on this Financial Transaction Tax, the Commission will make a proposal in order to transfer revenues from this Financial Transaction Tax to the EU budget as an own resource. If there is no agreement by end of 2022, the Commission will, based on impact assessments, propose a new own resource, based on a new Financial Transaction Tax. The Commission shall endeavour to make these proposals by June 2024 in view of its introduction by 1 January 2026.*"
58. On 24 February 2021 Member States were updated on the state of play of the ongoing negotiations by the Presidency and by the other Member States participating in the enhanced co-operation and were invited to exchange views on technical aspects of a possible design of the future FTT.

³⁶ EUCO 10/20.

³⁷ See European Parliament legislative resolution of 16 December 2020 on the draft Council regulation laying down the multiannual financial framework for the years 2021 to 2027 (09970/2020 – C9-0409/2020 – 2018/0166(APP)), Commission Declaration on establishing a Financial Transaction Tax based Own Resource.

59. In the light of the foregoing, as already indicated in the December 2016 ECOFIN report to the European Council on tax issues³⁸, further work of the Council and its preparatory bodies will be required, before final policy choices are made and an agreement on a possible financial transaction tax can be reached. An inclusive debate among all Member States has to take place following the required procedural steps recalled in the previous ECOFIN reports to the European Council on tax issues. An agreement among the Member States participating in the enhanced co-operation, will have to respect the competences, rights and obligations of the Member States not participating in the enhanced co-operation on FTT.

B. Administrative cooperation

a) *Amendments to Directive 2011/16/EU as regards exchange of information reported by digital platform operators and improvement of provisions on administrative cooperation (DAC7)*

60. The Council on 29 May 2020 approved the Conclusions on the future evolution of administrative cooperation in the field of taxation in the EU.³⁹ In these Conclusions, the Council requested that the Commission, taking into account these Council Conclusions, as well as the objectives set out in Directive 2011/16/EU, undertake all the relevant studies and, after carrying out relevant technical analyses, public consultations and impact assessments, submit to the Council a legislative proposal as soon as possible. The Council also invited the Commission to address the most urgent issues as a priority, such as challenges arising from digital platform economy, and, for that purpose consider phasing in the legislative proposals in order to facilitate legislative progress.

³⁸ Doc. 15254/16, point 45.

³⁹ Doc. 8482/20.

61. In response to these Conclusions, as well as part of the Package for fair and simple taxation supporting the recovery of the EU⁴⁰, the Commission, on 16 July 2020 tabled a proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation ("DAC7")⁴¹.
62. Following the preparatory work,⁴² the compromise text of the draft Directive was endorsed by the Committee of Permanent Representatives⁴³ and the Ministers of the Economy and Finance were informed of these developments in the informal videoconference on 1 December 2020.
63. The Council on 22 March 2021 adopted Directive (EU) 2021/514 amending Directive 2011/16/EU on administrative cooperation in the field of taxation.⁴⁴

b) *Fiscalis*

64. 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.⁴⁵ 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.

⁴⁰ The Package for fair and simple taxation also includes which includes a Communication for an Action Plan presenting a number of upcoming initiatives for fair and simple taxation supporting the recovery strategy, and a Commission Communication on Tax good governance in the EU and beyond.

⁴¹ Doc. 9753/20.

⁴² See doc. 13336/20, points 58-62.

⁴³ Doc. 13130/20 REV 1.

⁴⁴ OJ L 104, 25.3.2021, p. 1.

⁴⁵ Doc. 9932/18.

65. The proposal was examined in the Working Party on Tax Questions (Fiscalis). On 28 November 2018 Permanent Representatives Committee agreed on a partial general approach with a view to commencing negotiations with the European Parliament in the context of the ordinary legislative procedure.⁴⁶
66. The European Economic and Social Committee delivered its opinion on 17 October 2018.⁴⁷
67. In the European Parliament, the Committee report was voted on in the Committee on Economic and Monetary Affairs (ECON) on 4 December 2018 and confirmed in the plenary in January 2019.
68. Two trilogues were held on 23 January and 21 March 2019 with a number of technical meetings in between those trilogues.
69. The outcome of negotiations was brought to the Committee of Permanent Representatives for a state of play on 27 March 2019. The text included bracketed provisions that were still under consideration and that formed part of the horizontal negotiations on the MFF.
70. The European Parliament voted on its position in the first reading on 17 April 2019. On issues where co-legislators did not agree (e.g. implementing and delegated acts, budget), the European Parliament took its own position for the first reading.
71. The German Presidency resumed informal contacts with the European Parliament in order to explore the way forward on the open issues which were not covered by horizontal discussions.
72. The partial mandate for negotiations was updated to take into account the conclusions of the European Council on the 2021-2027 MFF and the Recovery package adopted on 21 July 2020⁴⁸, resulting in a full mandate for negotiations endorsed by the Permanent Representatives Committee on 8 January 2021⁴⁹ under the Portuguese Presidency.

⁴⁶ Doc. 14208/18 and doc. 14209/18.

⁴⁷ Doc. 14207/18.

⁴⁸ Doc. 10/20.

⁴⁹ Doc. 14197/20.

73. By the end of the further informal inter-institutional negotiations, which took place from January to March 2021, a provisional agreement on the proposal was reached between the co-legislators.
74. The Permanent Representatives Committee confirmed the final compromise text on 31 March 2021.⁵⁰ The European Parliament's ECON Committee voted on the compromise text on 22 April 2021. The Council adopted its first reading position on 10 May 2021⁵¹ and the statement by the Council was recorded in its minutes. The European Parliament adopted its second reading position during the plenary session on 17-20 May 2021, thus concluding the file⁵².
- c) *Possible future VAT administrative cooperation framework between the EU and the People's Republic of China*
75. On 29 January 2021, the Commission informed the Council on the intention to enter, on behalf of the Union, into discussions with the authorities of the People's Republic of China as regards the possibilities on establishing a basis for possible future administrative cooperation framework between the EU and People's Republic of China in the area of value added tax. The Commission foresees the conclusion of a Memorandum of Understanding with the People's Republic of China and, later on, (if possible) the conclusion of an international agreement. The steps to be taken by the Commission concern the negotiation and conclusion of a Memorandum of Understanding which would qualify as a non-binding instrument under EU law.

⁵⁰ Doc. 7204/21.

⁵¹ Doc. 6116/1/21 REV 1 + REV1 ADD 1.

⁵² OJ L 188, 28.5.2021, p. 1-17.

76. In accordance with the requirements of the Treaty on the EU (Article 16(1) TEU in particular), policy-making is a prerogative of the Council. It is therefore for the Council to assess whether it is in the interest of the Union to enter into discussions with the authorities of the People's Republic of China on a possible non-binding Memorandum of Understanding. This principle was confirmed and further defined by the Court of Justice of the EU. Following its judgment in case C-660/13 (Swiss MoU), the Secretaries General of the Council, the Commission and the European External Action Service agreed, in 2017, on the Arrangements for non-binding instruments.⁵³ These Arrangements apply to all non-binding instruments irrespective of the policy field and of who represents the Union in the negotiations with the third party or parties and irrespective of their denomination or form.
77. The Council, by a written procedure that was completed on 10 March 2021, approved that the Commission enter into negotiations with the authorities of the People's Republic of China, in view of the conclusion of a non-binding Memorandum of Understanding and in accordance with the contents of the draft-non paper, set out in the Annex to doc. ST 6351/21 LIMITE, with a number of observations.⁵⁴
78. It is understood that the Commission will regularly update the Member States on the progress in these negotiations, as well as on any further contacts with non-EU countries in this field. It is also understood that the Commission has to revert to the Council at the end of the negotiations to seek, in accordance with Union law, the Council's authorisation of the signature of the non-binding instrument on behalf of the Union.

⁵³ Doc. 15367/17.

⁵⁴ Doc. CM 1978/21 LIMITE.

d) ECA report on exchanging tax information in the EU

79. On 26 January 2021, the European Court of Auditors published Special Report No 03/2021 entitled "Exchanging tax information in the EU: solid foundation, cracks in the implementation"⁵⁵. The Permanent Representatives Committee instructed the Working Party on Tax Questions, and, as necessary, the High Level Working Party on Taxation, to examine this report. Since the report was not presented to the Council in the context of the discharge procedure, it remained to be determined, during the examination of this report, whether it was appropriate to prepare any conclusions by the Council on the matters covered in this report.⁵⁶ Following the presentation of the report by the ECA, and given the recent adoption of the DAC7 Directive, as well as points 34-40 of 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 beyond⁵⁷, delegations agreed that it was not necessary for the Council to approve any specific conclusions on this Special Report.

e) EDPB Statement 04/21 on international agreements including transfers

80. In April 2021 the European Data Protection Board issued Statement 04/2021 on international agreements including transfers. In this statement, the EDPB – while acknowledging that under article 96 of the GDPR all international agreements concluded prior to 24 May 2016 were to remain in force until amended, replaced or revoked – invited Member States to assess and, where necessary, review their international agreements that involve international transfers of personal data, such as those relating to taxation prior to 24 May 2016, to determine whether further alignment with current Union legislation and case law on data protection as well as EDPB guidance might be needed.

⁵⁵ Doc. 5835/21.

⁵⁶ Doc. 5836/21 REV 1.

⁵⁷ Doc. 13350/20.

81. This statement was flagged under the AOB items on the HLWP agenda of 5 May 2021 and was subsequently discussed at the WPTQ (Direct Taxation) of 21 May 2021. The Member States broadly agreed that a coordinated approach would be useful, and that such an approach could involve contacts with the OECD, as well as an assessment of the existing safeguards in the CRS framework with Commission support.

f) Brexit - VAT Protocol

82. The Commission informed the Council of the state of play of the implementation of the Protocol on administrative cooperation and combating fraud in the field of VAT and on mutual assistance for the recovery of claims relating to taxes and duties (referred to as “VAT Protocol”), included in the Trade and Cooperation Agreement between the EU and the UK.

g) Eurofisc – Fight against VAT fraud

83. To strengthen the fight against tax fraud in the Union, the Commission has included in its Action Plan for Fair and Simple Taxation several actions to develop and improve Eurofisc ⁵⁸.

84. The final report of the Fiscalis Project Group (FPG 117), its recommendations and implementation action plan were presented to the Council in the WPTQ (Indirect Taxation) meeting held on 20 May 2021. Member States welcomed the report and supported the objective to improve the functioning and efficiency of Eurofisc, while maintaining its flexibility.

⁵⁸ Eurofisc is a network for a swift exchange of target information between Member States to promote and facilitate multilateral cooperation in the fight against VAT fraud, set out in Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of VAT.

C. Tax Policy Coordination

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)

85. The Code of Conduct Group (COCG) held informal videoconferences of the main group on 1 February, 23 March and on 19 May 2021; informal videoconferences of the subgroup on internal/external issues on 9 February, 9 March, 13 April 2021 and 11 May 2021.⁵⁹ In addition, Fiscal Attachés met on 26 January, 3 February, 8 February, 15 February, 20 April 2021 in order to discuss EU-RESTRICTED documents related to the EU list of non-cooperative jurisdictions for tax purposes. The annual revision of the EU list of non-cooperative jurisdictions for tax purposes was adopted by the Council on 22 February 2021 and published in the Official Journal on 26 February 2021.⁶⁰
86. Ms. Lyudmila Petkova, Director of the Tax Policy Directorate at the Ministry of Finance of Bulgaria, has been re-appointed as Chair of the COCG for a 2-year period as from 5 February 2021. The Chair of the Code of Conduct Group participated in the virtual meeting of the Forum on Harmful Tax Practices on 27-28 April 2021 and intervened in order to provide an overview of the recent COCG work. The Chair also accepted an invitation to an informal hearing at the FISC subcommittee of the European Parliament on 19 April 2021, in order to inform MEPs about the work of the COCG.
87. The Portuguese Presidency, in coordination with the Chair of the COCG, continued the discussion on the revision of the mandate of the COCG to cover also features of tax systems that have general application and that may have harmful effects, and the geographical scope of the EU listing process. Regarding the revision of the mandate, the discussion focused in particular on the clarification of the concept of features that have general application within the meaning of the Code of Conduct and its limitations. The COCG discussed the effect-based approach that could apply to the assessment of features of tax systems with general application.

⁵⁹ Doc. 9341/21.

⁶⁰ OJ C 66 26.2.2021 p. 40-45.

b) International developments

88. The HLWP was regularly informed of relevant international developments in the area of tax policy, notably in relation to the meetings of the G20 Finance Ministers and the OECD/G20 Inclusive Framework on BEPS.
89. Issues related to the US Foreign Account Tax Compliance Act (FATCA) were brought to the attention of the Ministers of Economy and Finance at their informal videoconference in February 2021 under “Any other business”. Consequently, in March the HLWP held an exchange of views on this topic and the Portuguese Presidency organised an informal experts level videoconference with the US Internal Revenue Service (IRS) in order to find solutions for practical problems that the EU citizens with double nationality experience with financial institutions. In May the Presidency debriefed the HLWP on this meeting.
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. Issues which were monitored by HLWP include: the Council conclusions on "Public Investment through Public Procurement: Sustainable Recovery and Reboosting of a Resilient EU Economy", the Capital Markets Recovery Package (including adjustments to the securitisation framework) and the state of play on the Directive on public country-by-country reporting (pCBCR).

c) Proceedings before the European Court of Human Rights

91. Upon requesting leave to intervene, on behalf of the European Union, in the case *ITALMODA MARIANO PREVITI and Others v. the Netherlands* (“*Italmoda* case”) before the European Court of Human Rights, the Commission, in line with the duty of sincere cooperation between EU institutions (and as the intervention would be submitted on behalf of the European Union) consulted the Council on the envisaged line to take.
92. At a later stage, delegations have also received the written observations by the European Commission submitted pursuant to Article 36(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms (the “Convention”) and Rule 44 § 3 of the Rules of Court, on behalf of the European Union in the case *Italmoda Mariano Previti and others v the Netherlands* (Application n° 16395/18).⁶¹
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⁶¹ Doc. 7621/21 LIMITE.