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Subject: Ecofin report to the European Council on tax issues

1. The Council (Ecofin) was invited to report back to the European Council on various tax issues as mentioned, in particular in its conclusions of March and June 2012, May 2013, December 2014 and October 2017.
2. A draft Ecofin report to the European Council on tax issues was prepared and agreed in the Council Working Party on Tax Questions (High Level) on 25 November 2021 for submission to the Council on 7 December 2021 via Coreper.
3. The Council (Ecofin) approved the report as an A-item on 7 December 2021. As agreed, the GSC has made factual updates in the report in the Annex to this note, which is being made available to the European Council.

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 Slovenian 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 2012¹, the statement of the Members of the European Council of 25 March 2021², the Council conclusions in the VAT area of 2012³ and of 2016⁴, the Council conclusions on "Responding to the challenges of taxation of profits of the digital economy" of 2017⁵, the Council Conclusions of 2020 on the future evolution of administrative cooperation in the field of taxation in the EU⁶, 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 beyond⁷.

¹ 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.

² Doc. 18/21.

³ Doc. 9586/12.

⁴ Doc. 9494/16.

⁵ Doc. 15175/17.

⁶ Doc. 8482/20.

⁷ Doc. 13350/20.

3. In spite of the persisting hindrances caused by the COVID-19 pandemic, the Slovenian Presidency continued the discussions on key files, including addressing challenges arising from the digitalisation of the economy, the future of VAT rates, the revision of the 1997 Code of Conduct (Business Taxation) and updates to the EU list of non-cooperative jurisdictions for tax purposes, and, in the framework of the European Green Deal, started the work on the revision of the Energy Taxation Directive (ETD).
4. More specifically, the Council:
 - a) closely followed and took stock of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (OECD/G20 IF on BEPS) negotiations on solutions to the tax challenges of the digitalisation of the economy and continued work on the way forward at international level and in the EU;
 - b) reached a general approach on the proposal for a Directive amending Directive 2006/112/EC as regards rates of value added tax;
 - c) adopted the 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; and
 - d) launched the examination of the proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast) (ETD proposal).

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, while considering the limitations due to the COVID-19 global pandemic, as set out in its six-monthly report.⁸ The EU list was last updated by the Council on 5 October 2021⁹. More detailed information on individual dossiers can be found below.

A. INITIATIVES IN THE AREA OF EU TAX LAW

a) 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",¹⁰ confirmed its continued support to the work at the OECD/G20 IF on BEPS. The Members of the European Council in their statement of 25 March 2021¹¹ 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.*'

⁸ Doc. 14230/21.

⁹ OJ C 413I, 12.10.2021, p.1.

¹⁰ Doc. 13350/20.

¹¹ Doc. 18/21.

7. 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.¹² To be noted, the ongoing global debate on the update of the rules of international corporate taxation had been taken into account in the deliberations among the Member States on the legislative proposal 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 Royalties Directive (IRD).
8. On 8 October 2021 the OECD/G20 IF on BEPS has agreed, with the support of all EU Member States, on the finalised text of the Statement that sets out a two-pillar solution to address the tax challenges arising from the digitalisation of the economy, as well as its detailed Implementation Plan.¹³ As of 4 November 2021, 137 countries and jurisdictions joined this two-pillar plan to reform international taxation rules and ensure that multinational enterprises pay a fair share of tax wherever they operate.
9. The reform of international corporate taxation will consist of Two Pillars. Pillar One will consist of rules to ensure a fairer distribution of taxing rights over profits of the largest and most profitable multinational enterprises (MNEs). A part of taxing rights will be reallocated to market jurisdictions where MNEs have business activities and earn profits, regardless of their physical presence in those jurisdictions. Pillar 2 will contain rules aimed at reducing the opportunities for tax base erosion and profit shifting, to ensure that the agreed global minimum rate of corporate tax, set at 15%, is paid. Further benefits would also arise from the stabilisation of the international tax system and the increased tax certainty for taxpayers and tax administrations.

¹² Doc. 9970/21, points 6 to 18; Doc. 13336/20, points 13 to 20; Doc. 8891/20, points 13 to 26.

¹³ To be found under the following link: <https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.htm>.

10. In accordance with the Implementation Plan, work is now ongoing in the OECD/G20 IF on BEPS to finalise the texts that will constitute the new framework of rules of the international consensus-based solution. The Two-Pillar solution will require an implementation phase, during which adjustments will be made to the current framework of international tax agreements and to the national tax laws, as appropriate. The EU intends to ensure implementation through legislation and decisions to be taken by the Council, where appropriate.

b) Future initiatives in the area of corporate taxation

11. It is expected that the new legislative proposals by the European Commission aimed at transposing the global Two Pillar solution will be presented to the Council as soon as possible, reflecting the results of the work carried out in the OECD/G20 IF on BEPS. In this context, a legislative proposal to transpose the global minimum effective tax under Pillar Two in the EU is expected to be tabled before the end of 2021.
12. It is also expected that the Commission, building on its 18 May 2021 Communication, "Business Taxation for the 21st Century", will issue a legislative proposal setting out Union rules to neutralise the misuse of shell entities for tax purposes and a legislative proposal for the publication of effective tax rates paid by large companies.

c) Value Added Tax (VAT)

13. As regards VAT, in 2016, the Council adopted two sets of conclusions: in May 2016¹⁴ 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.¹⁵

¹⁴ Doc. 9494/16.

¹⁵ Doc. 14257/16.

14. 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 cooperation in the area of VAT.
15. Building on the progress during the previous Presidency terms¹⁶, the Slovenian Presidency continued work on the legislative files in the area of VAT.
16. During the term of the Slovenian 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:
 - i. VAT definitive system;
 - ii. VAT rates reform;
 - iii. the conferral of implementing powers to the Commission to determine the meaning of the terms used in certain provisions of the VAT Directive; and
 - iv. exemptions on importations and on certain supplies, in respect of Union measures in the public interest.
17. More detailed information on individual dossiers in the area of VAT can be found further in the text.
18. 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.

¹⁶ See, for example doc. 15082/18, points 30 to 111; doc. 10322/18, points 56 to 100.

i. VAT definitive system

19. Following up on its VAT Action Plan – Towards a single EU VAT Area of 7 April 2016, the Commission chose a two-step legislative approach for the definitive VAT system¹⁷, and the file was discussed under the Romanian, the Finnish, the Croatian and the German presidencies.
20. Member States agree that this dossier still requires thorough technical analysis before the final policy choices are made. As already indicated by the Council¹⁸, the best way forward is to continue focusing on the key elements of the Commission proposal and the analysis of options of accompanying measures. Further work on the definitive VAT system should continue while not preventing or slowing down efforts to improve the current VAT system.

ii. VAT rates reform

21. On 18 January 2018, the Commission issued a proposal for a Directive amending Directive 2006/112/EC as regards rates of value added tax.¹⁹ 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.
22. In summary, and most essentially, with this specific legislative proposal, the Commission proposed 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);

¹⁷ This approach was described in a more detailed fashion in previous reports, for example doc. 9970/21, points 25-31.

¹⁸ Doc. 15082/18, points 89 to 91.

¹⁹ Doc. 5335/18.

- iii) introduce a "negative list" of goods and services on which application of reduced rates is not permissible (instead of the current "positive" list).
23. The Commission proposal was examined during the term of the Bulgarian, the Romanian, the Finnish, the Croatian, the German and the Portuguese Presidencies.
24. Under the Croatian and German presidencies, discussions were held on the option of a positive list, the use of CN²⁰ codes (where possible) for goods and CPA²¹ 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 ²².
25. Following the work previously developed, the Portuguese Presidency suggested a three-step approach based on 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 rates, super-reduced rates and derogations. On 18 June 2021, the Ecofin Council discussed two aspects of the proposed reform that could benefit from political guidance by the ministers, namely the sunset clause for environmentally harmful goods and the issue of a standstill clause making existing derogations that allow for parking rates (reduced rates higher than 12 %), super-reduced rates and exemptions with deductibility of input VAT available to all other Member States, ensuring equal treatment between them.

²⁰ 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.

²¹ 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.

²² See also the Council Conclusions of December 2019 on Energy Taxation, doc. 14861/19.

26. On the basis of the outcome of the discussions on the standstill clause, the Slovenian Presidency worked on compromise texts accommodating the different views expressed by the ministers. It sought to find a balanced approach that ensured that all Member States could have equal access to Member States' existing derogations, while also preventing a proliferation of reduced rates and exemptions with deductibility of input VAT which could erode tax bases.
27. On the sunset clause, the Slovenian Presidency aligned most sunset clauses with the European Green Deal. The sunset clause for chemical fertilizers and chemical pesticides was slightly adjusted to accommodate the concerns of some Member States with regard to small-scale farmers.
28. The Presidency also took the time to find solutions for the other technical issues in the text and the content of Annex III of the VAT Directive, i.e. the list of goods and services to which reduced rates can be applied.
29. As a result of the technical work carried out at informal videoconferences of the Working Party on Tax Questions on 15 July, 15 September, 30 September, 15 October, 25 October, 18 November and the HLWP on 25 November 2021, the Presidency submitted a compromise text to the Ecofin Council on 7 December 2021, on which a general approach was agreed.

iii. VAT Committee

30. 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 Directive²³ (“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 proposed to establish a comitology committee which would assist the Commission in the adoption of binding implementing measures by qualified majority voting. In the Commission’s view, this would make decision-making more efficient and save the European Court of Justice from having to solve interpretation questions so frequently.
31. During the discussions in the WPTQ (Indirect Taxation) over the first semester 2021, 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 qualified majority 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.

²³ Doc. 14293/20.

iv.- VAT “buy and donate”

32. 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 interest²⁴. 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.
33. 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 Portuguese Presidency presented two compromise proposals, the second of which was circulated for approval under a 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. After discussions in the HLWP, the file was submitted to the Ecofin Council via Coreper for a policy debate on a possible reduction of the scope with a view to an early adoption of the file.
34. Following the guidance of the Member States at the Ecofin Council on 18 June 2021, the Portuguese Presidency prepared a third compromise text with a reduced scope and submitted it to an informal silence procedure that ended on 26 June 2021 without comments from the Member States. After the approval by the Committee of Permanent Representatives on 30 June 2021, the text was adopted by the Ecofin Council under the Slovenian presidency on 13 July and published in the Official Journal on 15 July 2021²⁵. The Commission issued a statement for the Coreper and Council minutes²⁶.

²⁴ Doc. 7749/21.

²⁵ OJ L 250, 15.7.2021, p.1.

²⁶ Doc. 9995/21 ADD 1.

d) Excise duties

Revision of the Energy Taxation Directive (ETD)

35. 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)²⁷, ('the ETD proposal').
36. The ETD proposal aims at the following objectives:
- 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;
 - 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
 - preserving the capacity to generate revenues for the budgets of the Member States.
37. In the view of the Commission, these objectives would be achieved by switching from taxation based on volume to taxation based on energy content, by introducing a ranking of rates according to their environmental performance and by limiting incentives for fossil fuel use. According to this ranking, conventional fossil fuels, such as gas oil and petrol will be taxed at the highest rate and electricity at the lowest rate.

²⁷ Doc. 10872/21.

38. The ETD proposal is part of the “Fit for 55” package²⁸, 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 interconnected proposals, which all drive towards the same goal of ensuring a fair, competitive and green transition by 2030 and beyond. The package covers a range of policy areas and economic sectors: climate, energy and fuels, transport, buildings, land use and forestry.²⁹
39. In 2011, the Commission already proposed to revise the ETD, but after inconclusive discussions, the Commission withdrew its proposal in 2015. On 11 September 2019, the Commission published a report³⁰ on the evaluation of the ETD, pointing out that the current rules do not contribute to the new EU regulatory framework and policy objectives in the area of climate and energy. On 5 December 2019 the Council (ECOFIN) approved conclusions on the EU energy taxation framework³¹, emphasising the important role of the harmonisation of energy taxation through the ETD in ensuring the proper functioning of the internal market. The Council also supported an update of the legal framework for energy taxation contributing to wider economic and environmental EU policy objectives. The conclusions called on the Commission to ensure that the proposals were fully assessed in terms of their economic, social and environmental costs and benefits. In preparation of the ETD proposal, the Commission carried out public consultation.³²
40. On 20-21 July 2021, at the informal meeting of the Working Party on Tax Questions (High Level) (HLWP), which was dedicated to the “Future challenges in the taxation area”, delegations could already express their preliminary views on the role of taxation in green transition during the working session “Taxation aspects of the Green Deal”. On 22 July 2021 the Commission presented the ETD proposal in the Committee of Permanent Representatives (Part 2).

²⁸ Doc. 10849/21.

²⁹ The overall progress made on „Fit for 55“ package files handled by the Ecofin Council is set out in document 13850/21, which on the ETD is identical with the language in the current Ecofin report to the European Council.

³⁰ Doc. 12153/19.

³¹ Doc. 14608/19.

³² https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12227-Revision-of-the-Energy-Tax-Directive-public-consultation_en.

41. The technical discussions in the Working Party on Tax Questions (Indirect Taxation – Excise duties/Energy taxation) were launched on 9 September 2021. At this meeting the Commission presented both the proposal and the impact assessment.
42. At the HLWP on 23 September 2021, the Presidency informed delegations about the state of play, the work planned and its intention to make as much progress as possible on this file during its term of office.
43. The technical examination of the proposal in the Working Party on Tax Questions (Indirect Taxation – Excise duties / Energy taxation) continued on 6 October, 20 October, 15 November and 24 November 2021 with an article-by-article analysis. The first round of analysing all articles was completed on 24 November 2021.
44. The examination of the proposal offered delegations the opportunity to ask questions of clarification, to which the Commission provided replies. Quite a few questions were asked about a variety of aspects of the proposal, such as switching from volume to energy content based taxation, introducing a ranking of rates according to the environmental performance, taxation of new products, indexation, aviation and maritime sectors as well as the links with other files of the “Fit for 55” package.
45. At the HLWP on 25 November 2021, the Presidency informed delegations about the results of the work and the progress on the dossier, also in the context of the “Fit for 55” package.

e) Financial Transaction Tax (FTT)

46. The Commission on 14 February 2013 submitted a proposal for a Council Directive implementing enhanced cooperation in the area of financial transaction tax.
47. At this stage, 10 Member States continue to participate in the enhanced cooperation in the area of FTT: Austria, Belgium, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain (hereafter referred to as "participating Member States").

48. The main aspects of the ongoing negotiations on this dossier were summarized in the previous Ecofin report to the European Council on tax issues.³³
49. The European Council in its conclusions of 17-21 July 2020³⁴ (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 that³⁵ "*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.*"

B. ADMINISTRATIVE COOPERATION

a) International administrative cooperation on tax matters – policy considerations

50. At the HLWP meeting of 28 October 2021 delegations discussed policy considerations related to further work in the area of international administrative cooperation on tax matters, also as a follow-up on the discussions on this subject during the Portuguese Presidency term³⁶.

³³ Doc. 8891/20, points 67-70, doc. 14863/19, points 104-110.

³⁴ Doc. EUCO 10/20.

³⁵ 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.

³⁶ Doc. 9970/21, points 81-82.

51. An accurate and functioning framework of international administrative cooperation remains one of the main safeguards and tools for ensuring the timely and efficient collection of revenues and the prevention of tax fraud and aggressive tax planning. This is particularly relevant in the context of the need to recover from the crisis caused by the COVID-19 pandemic as swiftly as possible, and because the international dimension is increasingly intrinsic to the economic activities of EU citizens and businesses.
52. In this context, it is important to recall that the Council deems it essential that the EU continues to set the agenda for the most comprehensive global attempt to curb cross-border tax fraud, tax evasion and tax avoidance through administrative cooperation.³⁷
53. The framework on administrative cooperation in the area of taxation will be strengthened both at the EU level and in the global arena. It is also likely that agreements concluded between the Member States and non-EU jurisdictions will evolve over time.
54. The continuity of the flow of tax-related information has to be ensured, and any other result would jeopardise years of complicated technical and political work at the international level, which has just begun to yield the desired results in achieving this important objective of general public interest.
55. While ensuring the appropriate functioning of the system of international exchange of information for tax purposes, a proper calibration with the rights and obligations of taxpayers remains necessary: any restrictions should observe the necessity and proportionality requirements and continue respecting the essence of the fundamental rights and freedoms, including with regard to exchanges with third countries.
56. Technical work should continue on better-targeted and more efficient use of information collected through administrative cooperation.

³⁷ Council conclusions of 29 May 2020 on the future evolution of administrative cooperation in the field of taxation in the EU (doc. 8482/20, point 11).

57. In order to secure progress on performing the work and reaching the goals referred to in paragraphs 54, 55 and 56 of this report, expert-level meetings could be arranged in the Council Working Party on Tax Questions or, where appropriate, in the Commission expert groups, drawing on the necessary expertise in the relevant fields. In this way, common minimum standards could be promoted where required, both in the EU and internationally, in a balanced and efficient manner.
58. Against this background, the Member States and the Commission should remain in close contact, for the purpose of recurrent updates on these matters in the WPTQ (High Level), in view of the Council providing further guidance, as necessary.
59. It is expected that the Commission will, in 2022, table a legislative proposal on further revision of the Directive 2011/16/EU on administrative cooperation in the field of taxation, concerning exchange of information on crypto-assets and tax rulings for wealthy individuals.

b) Administrative cooperation with non-EU countries in the area of VAT

60. At the HLWP meeting of 23 September, the Commission briefed the delegations on:
- a) ongoing work in the Joint Committee, on the basis of the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax³⁸;
 - b) VAT-related aspects of the discussions with the UK in the context of the Protocol on administrative cooperation and combating fraud in the field of value added tax and on mutual assistance for the recovery of claims relating to taxes and duties;³⁹
 - c) the early stage of exploratory contacts with the authorities of Australia, Canada and Japan, as regards possibilities for further work towards administrative cooperation in the area of VAT;

³⁸ OJ L 195, 1.8.2018, p. 3.

³⁹ OJ L 149, 30.4.2021, p. 10.

d) ongoing negotiations with the authorities of the People's Republic of China, in view of the conclusion of a non-binding Memorandum of Understanding (possible future administrative cooperation framework between the EU and People's Republic of China in the area of VAT).⁴⁰

61. It is recalled that, concerning the negotiation and conclusion of non-binding instruments under EU law (such as the abovementioned Memorandum of Understanding), and in accordance with the requirements of the Treaty on the EU (Article 16(1) TEU in particular), policy-making remains 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 such discussions (negotiations) on a possible non-binding instrument. Moreover, following the Court of Justice 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.⁴¹ 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. It is understood that the Commission will continue to regularly update the Member States on the progress in these negotiations (including on any further contacts with non-EU countries in this field), and will 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.

⁴⁰ On 10 March 2021 the Council approved, with a number of observations (Doc. CM 1978/21 LIMITE, with further details set out in doc. ST 6351/21 LIMITE) 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.

⁴¹ Doc. 15367/17.

C. TAX POLICY COORDINATION

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.

a) Code of Conduct Group (business taxation)

62. The Code of Conduct Group (COCG) held informal videoconferences of the main group on 5 July, 21 September, 12 October and 22 November 2021; informal videoconferences of the subgroup on internal/external issues on 18 and 29 October, 12 and 16 November. In addition, the Fiscal Counsellors/Attachés met on 8 July, 8, 13, 16, 20 and 24 September and 17 November 2021 in order to discuss EU-RESTRICTED documents related to the EU list of non-cooperative jurisdictions for tax purposes. An additional meeting of the Fiscal Counsellors/Attachés is planned for December in order to prepare discussions for the next update of the list in February 2022.
63. The biannual revision of the EU list of non-cooperative jurisdictions for tax purposes was approved by the Ecofin Council on 5 October 2021 and published in the Official Journal on 12 October 2021.⁴²
64. Following the questionnaire on the defensive measures against countries on the EU list of non-cooperative jurisdictions for tax purposes, the Commission presented to the Group a summary of the implementation by Member States of the 2019 Guidance on defensive measures.⁴³ Delegations supported the intention to continue work in the area of defensive measures, including an assessment of the implementation of the Guidance.
65. The Slovenian 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.

⁴² OJ C 413I, 12.10.2021, p 1-4.

⁴³ Doc. 14114/19.

b) International developments

66. 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 IF on BEPS. The regular discussions at the HLWP, together with an informal discussion at the level of Ministers in September, contributed in a meaningful way to the ultimate agreement at the OECD/G20 BEPS Inclusive Framework.
67. Issues related to the US Foreign Account Tax Compliance Act (FATCA) were brought to the attention of delegations in July 2021 when the Slovenian Presidency informed the HLWP about the state of play on FATCA. Later in July, building on the progress made during the previous Presidency terms, the Slovenian Presidency held an informal videoconference with the US Treasury Department on FATCA, focusing on reciprocity in exchange of information under the FATCA IGAs and on the issues of Accidental Americans, including the issue of obtaining more guidance from the Treasury and the IRS to prevent the closure of bank accounts of Accidental Americans in the EU. In September the Slovenian Presidency debriefed the HLWP on this meeting. Contacts with the US authorities are ongoing and further informal meetings with the US counterparts are planned.
68. 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 follow-up to the 2020 ESMA report on Cum/Ex, Cum/Cum and withholding tax reclaim schemes, the Commission Communication "Tackling energy prices: a toolbox for action and support"⁴⁴, the Anti-Money-Laundering package of July 2021 and the state of play on the Directive on public country-by-country reporting (pCBCR).

⁴⁴ Doc. 12682/21.