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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 10 December 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 Hungarian 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[1], the statement of the Members of the European Council of 25 March 2021[2], the Council conclusions in the VAT area of 2012[3] and of 2016[4], the Council conclusions on "Responding to the challenges of taxation of profits of the digital economy" of 2017[5], the Council Conclusions of 2020 on the future evolution of administrative cooperation in the field of taxation in the EU[6], 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[7].

[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. ST 18/21.
[3] Doc. ST 9586/12.
[4] Doc. ST 9494/16.
[5] Doc. ST 15175/17.
[6] Doc. ST 8482/20.
[7] Doc. ST 13350/20.

3. The Hungarian Presidency pursued the work on key files, including the proposals comprised by the "VAT in the Digital Age" package, 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) reached an agreement on the VAT in the Digital Age package;

   b) reached a political agreement on the proposals as regards the electronic VAT exemption certificate;

   c) made progress on VAT rules for distance sales of imported goods and on import VAT;

   d) made significant progress on the revision of the Energy Taxation Directive towards a political agreement to be reached soon;

   e) adopted the Council Directive on faster and safer relief of excess withholding taxes (FASTER);

   f) continued preparatory work on the proposal for a Council Directive on transfer pricing, and advanced technical discussions on possible establishment of the Transfer Pricing Platform;

   g) continued to discuss the proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes;

   h) continued the examination of the proposals for a Council Directive establishing a Head Office Tax System for micro, small and medium sized enterprises (HOT) and a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT);

i) started the negotiations on the proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation ("DAC9");

j) reached a common position for the second substantive session of the Ad Hoc Committee to draft terms of reference for a UN Framework Convention on international tax cooperation (New York, 29 July - 16 August 2024) and on the promotion of international cooperation in tax matters for the 79th session of the United Nations General Assembly.

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[8]. The EU list was most recently updated by the Council on 8 October 2024[9].

6. More detailed information on specific topics and dossiers can be found below.

B. EU TAX LEGISLATION

1) Direct Taxation

a) FASTER

7. On 19 June 2023 the Commission issued a proposal for a Council Directive on Faster and Safer Relief of Excess Withholding Taxes ("FASTER")[10].

8. Following preparatory work,[11] the Council (Ecofin), at its meeting on 14 May 2024, reached a general approach on the text of the draft Directive[12], with a view to adopting the Directive, subject to re-consulting the European Parliament and legal-linguistic revision.

[8] Doc. ST 16328/24 + ADD 1-7.
[9] OJ C, 2024/1804, 26.2.2024, pages 1-4.
[10] Doc. ST 10820/23 + ADD 1-5.
[11] Doc. ST 11287/24, points 11 to 18.
[12] Doc. ST 9925/24.

9. Following the issuance by the European Parliament of its opinion and legal-linguistic revision, the Council on 10 December 2024 adopted the Council Directive on faster and safer relief of excess withholding taxes.[13]

b) *Misuse of shell entities*

10. 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)[14].

11. 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.

12. 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[15]. 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 in order to reach an agreement, further important technical work would be necessary.

[13] Doc. ST 16323/24.
[14] Doc. ST 15296/21.
[15] See the previous report in doc. ST 11287/24.

13. In June 2024, a new approach on the Unshell proposal was presented to delegations. The Hungarian Presidency turned this approach into concrete drafting suggestions on some key topics, in particular scope, hallmarks, reporting obligation and exchange of information, and administrative actions. On 26 November 2024 the Working Party on Tax Questions (WPTQ) discussed these drafting suggestions, the practical implications of the new approach in general and the areas which would need further attention. Some delegations considered it important to clarify the relationship with the Directive on administrative cooperation (DAC). It was stressed that possible next steps on this file should be taken in such a way that it would not lead to excessive administrative burden for businesses and tax authorities.

c) Transfer Pricing Directive

14. On 12 September 2023 the Commission tabled the proposal for a Council Directive on transfer pricing,[16] which essentially aims at integrating into EU law key transfer pricing principles and rules, which are agreed in the framework of the OECD.

15. This legislative proposal "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"[17]. 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.

16. Following the first general discussion on this legislative proposal under the Spanish Presidency, the Belgian Presidency launched an in-depth analysis of the Commission proposal at WPTQ level.

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[16] Doc. ST 12954/23 + ADD 1.
[17] See the explanatory memorandum of the Commission proposal in doc. ST 12954/23.

17. Against the basis of the preparatory work that took place during previous Presidency terms,[18] the Hungarian Presidency initiated a discussion on a possible way forward with the proposal for a Directive, inviting Member States to identify the aspects of this legislative proposal which might have a prospect to become part of an agreement on a Council Directive.

18. Furthermore, in parallel with the ongoing discussions on the proposal for a Council Directive, the Presidency advanced the technical discussions on a possibility to set up a Transfer Pricing Platform outside the framework of a Council Directive, taking into account the interest by delegations in exploring possibilities for a working method between Member States which would maintain rules on transfer pricing within their competence and permit to propose, design and determine consensus-based non-legally binding solutions to practical issues in the area of transfer pricing, with the aim of reducing complexity, costs and administrative burden for both taxpayers and tax authorities.

19. With regard to the Commission proposal for a Council Directive on Transfer Pricing, the Discussions at the WPTQ level continued to show that this legislative proposal is not gathering sufficient support by Member States. The majority of Member States see no possibility in making further progress on the basis of the Commission proposal in its current form. Nevertheless, only few Member States hold the view that technical discussions could continue, in order to determine if there are any procedural aspects related to transfer pricing rules, which could possibly be harmonized by a Council Directive.

20. Regarding the possible setting up of the Transfer Pricing Platform, progress has been made in the discussions on the possibilities for its institutional set-up, structure, mandate, governance, voting rules, as well as other relevant aspects. Work in this area could continue, subject to the provisions of Article 296(3) TFEU, building on progress achieved on the key parameters of a Transfer Pricing Platform, as discussed during the Hungarian Presidency term.

21. Against this background, further work will be required to prepare the basis for possible headway.

[18] Doc. ST 11287/24, points 23 to 29.

d) *Head Office Tax System Directive*

22. 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 (SMEs),[19] which aims at simplifying corporate tax compliance for 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.

23. Following an initial general discussion on the Commission proposal under the Spanish Presidency, the Belgian Presidency conducted a detailed examination of the articles of the proposal[20]. Following the first reading of the proposal, the Hungarian Presidency initiated a discussion at technical and high level on three broad matters of interest: firstly, the Hungarian Presidency facilitated a discussion on a potential way forward by presenting a possible reduction in the scope of the Commission proposal, secondly the Presidency invited Member States to examine their principle concerns with regard to this legislative proposal and thirdly, in light of the shared objective of the HOT legislative proposal, the Presidency sought the views of Member States on other possible measures that could be contemplated in support of SMEs.

[19] Doc. ST 12951/23 + ADD 1-5.
[20] Doc. ST 11287/24, points 31 to 33.

24. The suggestion to reduce the scope of the proposal was not acceptable to Member States, as such an approach would not eliminate the fundamental concerns of principle that Member States have regarding the legislative proposal. Furthermore, many Member States indicated that such reduction of the scope could increase the concerns that the proposed measures would not effectively encourage SMEs to expand cross-border and the objectives sought by this proposal would not be achieved.

25. The broader discussion on the Commission proposal demonstrates that whilst the Member States fully support the general objective to facilitate cross-border activities of SMEs, the support for the HOT legislative proposal is very limited. Following the discussions in the WPTQ (Direct Taxation and High Level) it was noted that the Commission proposal for a Council Directive establishing a Head Office Tax (HOT) System for micro, small and medium sized enterprises cannot be supported by Member States due to the fundamental concerns of principle that Member States have regarding the legislative proposal.

26. With reference to a broader discussion concerning other measures that could be contemplated in support of SMEs, it has been noted that there are ways of supporting SMEs with measures that differ to those presented by the Commission legislative proposal. In that context, a number of Member States have also indicated that there is a need for a broader analysis of factors, which could shed more light on actions that may be taken, including support beyond taxation measures, so that SMEs can "scale up and make the most of the market".[21]

[21] "Europe's choice - Political Guidelines for the next European Commission 2024–2029", https://commission.europa.eu/document/download/e6cd4328-673c-4e7a-8683-f63ffb2cf648_en?filename=Political%20Guidelines%202024-2029_EN.pdf, page 6.

e) <u>BEFIT Directive</u>

27. On 12 September 2023, the Commission tabled a proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT),[22] 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).

28. Following the presentation of this legislative proposal during the <u>Spanish Presidency</u> term, the <u>Belgian Presidency</u> initiated an in-depth analysis, 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. Results of this work were summarised in the previous report to the European Council on tax issues.[23]

29. During the term of the <u>Hungarian Presidency</u>, analysis of the Commission proposal continued, with specific focus on rules on tax depreciation (Article 19, 22-28 and 35), timing and quantification (Article 29 to 33), aggregation and allocation of the BEFIT tax base (Chapter III), the “traffic light” system (Chapter IV), as well as a number of provisions on administration and procedure (Chapter V).

30. It is noted that some Member States would welcome a political discussion on BEFIT, however, it is considered that further reflection and technical work will be necessary in advance to determine the next steps in these negotiations during the forthcoming Presidency term. In this regard, several Member States also suggested the possibility of giving priority to discussions on certain specific parts of the proposal, as a way forward. Technical analysis of the Commission proposal could therefore be continued with the objective of preparing a discussion on the policy choices.

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[22] Doc. ST 12965/23 + ADD 1-3.
[23] Doc. ST 11287/24, points 34 to 38.

2) **Indirect Taxation**

a) VAT in the Digital Age

31. 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[24];

- a proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age[25]; and

- a proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards information requirements for certain VAT schemes[26].

32. 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.

24 Doc. ST 15841/22.
25 Doc. ST 15842/22.
26 Doc. ST 15843/22.

33. The European Data Protection Supervisor has issued its opinion on the package on 3 March 2023[27]. The European Economic and Social Committee has issued its opinion on the package on 27 April 2023[28]. The European Parliament adopted its opinion at its plenary session on 22 November 2023[29].

34. 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.

35. 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.

36. Under the Spanish Presidency and the Belgian Presidency the technical work was finalized based on the orientations from the Council. Under the Belgian Presidency, the Council considered compromise proposals at the May and the June 2024 Ecofin meetings. 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.

[27] Doc. ST 7071/23.
[28] 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
[29] 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; 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.

37. In October 2024, the Hungarian Presidency presented a new compromise text which further reduced the administrative burden associated with the use of the possibility to exempt SME’s from the deemed supplier regime and provided for the possibility to delay temporarily the entry into application of the measure, and postponed a number of transposition deadlines on the single VAT registration part of the package. On November 5th, the Council (Ecofin) reached an agreement on this compromise, consisting of a general approach on the amending Directive, a political agreement on the amending Regulation, and a political agreement on the amending Implementing Regulation. The Council also decided to reconsult the European Parliament on the Directive.

b) *VAT rules for distance sales of imported goods and on import VAT*

38. On 17 May 2023, the Commission issued a package of proposals in the framework of a broad and comprehensive reform of the Customs Union, accompanied by a Communication entitled: “Customs reform: Taking the Customs Union to the next level”[30]. This package also included a proposal concerning value added tax~~es~~, namely a proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules relating to taxable persons who facilitate distance sales of imported goods and the application of the special scheme for distance sales of goods imported from third territories or third countries and special arrangements for declaration and payment of import VAT (the ‘Directive on distance sales of imported goods and import VAT’)[31].

39. One of the aims of the customs reform is to address the drastic increase in trade volumes, largely driven by the extraordinary growth of e-commerce which generates an exponential number of small packages of low-value goods. Cases of undervaluation and deliberate splitting of consignments to keep their value under EUR 150 to avoid customs duties add to the difficulties. The reform proposals therefore have the objective of removing the customs exemption for goods worth up to a threshold of EUR 150 and introducing a new tariff system for low-value consignments with 4 buckets.

[30] Doc. ST 9622/23.
[31] Doc. ST 9638/23.

40. Currently, this EUR 150 threshold also exists for the application of the deemed supplier provision in the VAT Directive, as well as for the use of the VAT import one-stop shop (IOSS): its application is limited to distance sales of imported goods not exceeding EUR 150. The VAT proposal in the package aims to remove this threshold also for the purposes of the IOSS, to align the customs and VAT rules regarding e-commerce.

41. Furthermore, because there was no support for a mandatory use of IOSS within the VAT in the Digital Age package negotiations, an alternative solution was developed under the Spanish and the Belgian Presidency to incentivise the use of the IOSS, in particular by making the supplier or deemed supplier liable for VAT on importation in the Member States of final destination of the goods (implying that (deemed) suppliers would have to register separately in every Member State where they do business if they don't use the IOSS).

42. Because of the close links between this incentivisation solution and the Union Customs Code reform, it was decided to discuss the relevant provisions in the context of the VAT proposal in the customs reform. During four WPTQ meetings, the Hungarian Presidency further refined the solution, including measures to further secure the payment of VAT on importation and a fall-back measure that would enable Member States in exceptional cases to allow the customer to pay the import VAT, and discussed the removal of the EUR 150 threshold for the IOSS.

43. During the negotiations, a suggestion was made to extend the definition of 'distance sales of goods imported from third territories or third countries' to supplies from customs warehouses, in order to level the playing field – in terms of the possibility to use the IOSS for VAT purposes – between supplies arriving in individual parcels and supplies arriving in bulk to customs warehouses to be sold onwards to consumers. In view of the possible benefits for customs control purposes, the Hungarian Presidency included this suggestion in its compromise text of the draft Directive on distance sales of imported goods and import VAT.

44. Significant progress was made on all the different aspects of the proposal, and at the HLWP on 27 November 2024 there was agreement on the incentivisation of the IOSS (the alternative solution to a mandatory IOSS) as the way forward. Moreover, while acknowledging that additional work is required, it was agreed that the provisions concerned, including the fall back-rule, were considered by all delegations as a solid base for further work on the related customs provisions.

45. On the abolition of the EUR 150 threshold, delegations were open to explore this option further. However it was emphasized that before extending the scope of the application of the IOSS, its robustness has to be enhanced and evaluated. Furthermore, additional avenues to prevent tax fraud should be explored. Some Member States highlighted the need to review the existing regulatory framework to ensure the efficient and effective functioning of the IOSS. As to the extension of the application of the IOSS to goods supplied from customs warehouses, Member States agreed that this proposal deserves further examination. In general, delegations agreed that these measures, if agreed upon, could enter into application in the light of the progress in the negotiations on the Union Customs Code reform.

c) *<u>Electronic VAT exemption certificate</u>*

46. On 8 July 2024, the Commission published two proposals with the aim of replacing the current paper VAT exemption certificate with an electronic VAT exemption certificate:

   i. a proposal for a Council Directive amending Directive 2006/112/EC as regards the electronic value added tax exemption certificate; and
   ii. a proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards the electronic value added tax exemption certificate.

47. The proposal to amend the VAT Directive creates the legal conditions for the development of the electronic certificate by the Commission through implementing measures, while the proposal to amend the Implementing Regulation provides for the alternative use of both paper and electronic certificates during a transition phase.

48. The European Economic and Social Committee has issued its opinion on the proposals on 18 September 2024[32]. The European Parliament adopted its opinion at its plenary session on 14 November 2024[33].

49. Both proposals were examined in four meetings of the WPTQ. A number of amendments to the proposal were made, in particular to limit the scope of the mandatory use of the electronic VAT exemption certificate to situations where two Member States are involved and the exemption is not granted by way of a refund and to include some key elements of the future electronic certificate. Furthermore, the start of the transition phase was delayed and the transition period shortened.

50. On this basis, the Hungarian Presidency submitted compromise texts to the Council (Ecofin) on 10 December 2024, and the Council reached a political agreement on the two proposals.

d) Revision of the Energy Taxation Directive (ETD)

51. 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)[34], ('the ETD proposal').

52. The ETD proposal is part of the "Fit for 55" package[35], 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.

[32] Opinion of the European Economic and Social Committee, "The electronic Value Added Tax exemption certificate", doc. ECO/653, **https://webapi2016.eesc.europa.eu/v1/documents/EESC-2024-03143-00-00-AC-TRA-EN.docx/content**
[33] European Parliament legislative resolution of 14 November 2024 on the proposal for a Council Directive amending Directive 2006/112/EC as regards the electronic value added tax exemption certificate, https://www.europarl.europa.eu/doceo/document/TA-10-2024-0032_EN.html.
[34] Doc. ST 10872/21.
[35] Doc. ST 10849/21.

53. 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.

54. On 17 June 2022, the Council (Ecofin) took note of the Presidency progress report on the ETD proposal[36]. On 6 December 2022, the Council (Ecofin) held a policy debate[37] 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.

55. Building on the progress made by the previous Presidencies, the Hungarian Presidency continued work on the revision of the ETD. The file was analysed in the WPTQ on 12 July, 16 September, 23 October and 14 November. Furthermore, an exchange of views took place at the HLWP on 26 September and 27 November. The Presidency prepared full compromise texts on several occasions.

[36] Doc. ST 9874/22.
[37] Doc. ST 14736/22.

56. The Presidency made significant efforts in order to reconcile the views on one of the most divisive issues - taxation of products used in aviation and waterborne navigation sectors. After several drafting suggestions by the previous Presidencies with varying levels of ambition, the Hungarian Presidency proposed a zero tax minimum rate for 20 years and then a tax exemption for these two sectors with a review in 2035. However, since there was no agreement regarding these proposals either, the Presidency proposed to maintain the text of the currently applicable ETD on aviation and waterborne navigation and to add a review clause in 2035.

57. In addition, the Presidency encouraged delegations to examine other outstanding with the focus on the following: clarification of transposition issues related to conversion table of net calorific values (Annex II) and state aid questions, involving also the Commission´s DG COMP; emergency brake in case of exceptional increase of energy prices; transitional periods in case of natural gas, LPG, combined heat and power generation and households; possibility for bilateral or multilateral agreements in case of the movement of lubricating oils in packages; component based taxation; including the issue of refunds; sufficient time for transposition.

58. With the latest compromise text, the Presidency considered that it had done its utmost to close the remaining few open issues. The Presidency admits that there are still some topics on which not all delegations agree, but it believes that the compromise text contains the solutions that are acceptable to most delegations. The Presidency is of the view that making further modifications at the request of some delegations would have led to the reduction of support by some other delegations. The Presidency believes that the compromise achieved so far represents an appropriate balance between the green goals and consideration of the specificities of the Member States.

59. The Presidency therefore suggested the following approach in order to move forward: (1) Since the issue of taxation of aviation and waterborne navigation seems to block the agreement on the entire Directive, the Presidency suggests to keep the respective provisions of the currently applicable ETD unchanged for the time being and to come back to the discussion on the feasibility of taxation of these sectors in 2035. (2) Regarding the compromise reached so far on the whole directive, the Presidency recommended to consider it as a package, which represents a delicate balance between different views and to discuss and possibly accept its content on a political level and in the future only deal with the legal scrutiny and technical issues.

60. At the attachés meeting on 14 November 2024, the majority of delegations welcomed the idea of obtaining political guidance from the Ecofin Council. On aviation and waterborne navigation sectors, in the spirit of compromise, most delegations could preliminarily support keeping the currently applicable ETD unchanged but foreseeing a revision clause in 2035. Some delegations would prefer the inclusion of the concept on aircraft~~s~~ that have 19 or less seats. Most delegations were of the view that the compromise reached so far on the directive as a whole represents a delicate balance between different views, bearing in mind several aspects, such as the green goals, specificities of Member States, competitiveness and internal market. Some delegations still drew attention to certain issues that should be further discussed.

61. The discussion of the December Ecofin Council was prepared at the HLWP on 27 November 2024.

62. On 10 December, at the Ecofin Council the Ministers had a policy debate and provided political guidance.

3) <u>Administrative cooperation in the field of taxation</u>

a) <u>Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC 9)</u>

63. On 28 October 2024, the Commission issued a proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation (“DAC9”)[38].

[38] Doc. 15004/24 + ADD 1.

64. The proposal operationalises Article 44 of Council Directive (EU) 2022/2523 (the "Pillar Two Directive"), which foresees that the first reporting on top-up tax information from multinational enterprise groups and large scale domestic groups will need to take place by 30 June 2026.

65. Following the presentation of this proposal and initial exchange of views at the WPTQ meeting on 13 November, further technical work will be required, to ensure that negotiations on this priority proposal proceed quickly.

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

66. The Hungarian Presidency regularly updated the WPTQ (High Level) on the state of play on the matter of 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[39].

67. 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.

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

68. Following the respective discussions at the WPTQ (High Level) initiated in 2023[40], 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.[41]

[39] See doc. ST 11287/24, points 55-56, 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.
[40] Doc. ST 16411/23, p. 17-18.
[41] Doc. ST 5598/24 + ADD 1.

69. 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.

70. 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[42] and agreed on the negotiating directives[43].

71. At the meetings of the HLWP on 26 September and 24 October 2024, the Commission reported on the progress made in negotiations on amending agreements with Switzerland, Liechtenstein, San Marino, Monaco and Andorra.

[42] Doc. ST 9543/24, ST 9245/24.
[43] Doc. ST 9245/24 ADD 1.

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

72. 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.

73. 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.

74. 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.

75. 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.

76. The Agreement was signed on 2 October 2024.

77. On 5 November 2024, the Council adopted the decision on the conclusion of the Agreement.

e) *Fiscalis programme for cooperation in the field of taxation*

78. 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. Since its initiation, the programme has contributed to the exchange of best practices among Member States, to the creation of tax expert networks, such as Eurofisc, to the promotion of a harmonized implementation of EU tax legislation and achieved tangible results in terms of tax recovery. These significant results have been possible thanks to the financing by the Fiscalis funds of the active participation of Member States to its general collaboration activities, such as Project Groups, Multilateral Controls and workshops, actively participated by Member States. Among multiple important activities, in October 2024, one delegation informed the HLWP about a seminar organised in the framework of the Fiscalis programme where several Member States invited the Commission to table a proposal on tobacco products.

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)

79. The Code of Conduct Group (COCG) met on 25 September and 20 November 2024, and subgroup meetings were held on 5 July, 11 September and 8 November 2024.

80. The biannual revision of the EU list of non-cooperative jurisdictions for tax purposes was approved by the Council on 8 October 2024 and published in the Official Journal on 18 October 2024[44].

81. A more extensive report can be found in the dedicated biannual Code of Conduct Group report[45].

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44 OJ C, C/2024/6322, 18.10.2024.
45 Doc. ST 16328/24 + ADD 1-7.

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

82. 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 78th 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.

83. 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[46].

84. 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.

85. The UNSG report on the promotion of inclusive and effective international tax cooperation was published on 8 August 2023.[47] 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.

[46] Doc. ST 7564/23.
[47] https://financing.desa.un.org/document/promotion-inclusive-and-effective-international-tax-cooperation-united-nations-a78235

86. 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.[48]

87. 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.

88. 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.

89. 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.

90. 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.

[48] Doc. ST 12967/23.

91. 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.

92. 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.

93. 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.

94. On 25 April 2024, the Council approved thee position on behalf of the European Union and its Member States valid for the first substantive session of the Ad Hoc Committee.[49]

95. 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.

[49] Doc. ST 9129/24 REV 1.

96. 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 Belgian Presidency informed the June Ecofin Council in this regard.

97. On 3 July 2024, the Fiscal Attachés considered a draft position of the European Union and its Member States for the second substantive session of the Ad Hoc Committee.

98. On 16 July 2024, the Council approved the position of the European Union and its Member States for the second substantive session of the Ad Hoc Committee to draft terms of reference for a UN Framework Convention on international tax cooperation (New York, 29 July - 16 August 2024).[50]

99. On 29 July, the agreed position was delivered as a general statement at the Ad Hoc Committee by the EU delegation to the United Nations on behalf of the EU and its Member States and the Hungarian delegation as Member State exercising the Presidency of the Council on behalf of the EU Member States. The common position guided the EU and its Member States during the negotiations throughout the second session of the Ad Hoc Committee. The position was further developed during the coordination meetings on the spot and reflected in subsequent written submissions that the EU Member States submitted to the Ad Hoc Committee and the engagement of EU Member States in the discussions of the session. The Hungarian Presidency played an active role throughout the process and continued the practice of close cooperation with the EU delegation and the Commission services by holding regular EU information sharing and coordination meetings, with virtual participation of delegations from the capitals and Brussels-based fiscal counsellors/attachés.

100. On 16 August, the Ad Hoc Committee adopted the draft Terms of Reference for the UN Framework Convention on International Tax Cooperation (UNFCITC), outlining its principles, objectives and content, including protocols. All EU Member States abstained from the vote and provided the explanation of their position[51].

[50] Doc. ST 11959/24.
[51] Doc. ST 12786/24.

101. Following the adoption of the draft Terms of Reference by the Ad-hoc Committee along with the report on the outcome of the Ad Hoc Committee's second substantive session, these were transmitted to the UN General Assembly for consideration during its 79th session, in the Second (Economic and Financial) Committee.

102. With the aim of ensuring the continued preparation of an effective common position for the UN process on tax cooperation, the Presidency proposed a draft common position for the 79th Session of the UN General Assembly (UNGA 79). The draft common position was discussed at the Fiscal Attachés' meeting on 19 September and the text was agreed at the HLWP on 26 September 2024.

103. On 8 October 2024, the Ecofin Council approved the position of the European Union and its Member States on promotion of international cooperation on tax matters for the 79th session of the UN General Assembly.[52]

104. On 27 November 2024, the 79th session of the UN General Assembly adopted the resolution on the "Promotion of inclusive and effective international tax cooperation at the United Nations" to begin the formal negotiations on a Framework Convention. EU Member States abstained from the vote.

3) <u>Russia's aggression against Ukraine</u>

105. 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.

106. 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.

[52] Doc. ST 13895/24.

107. 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.

108. At the HLWP meeting on 27 November 2024, delegations took note of the update provided by the Commission on the work of this subgroup.

4) <u>Taxation aspects of the Draghi report</u>

109. Competitiveness from the taxation angle was addressed at the informal meeting of the HLWP which took place in Budapest on 18-19 July 2024, where one of the topics discussed was "Competitiveness challenges of corporate taxation from a global perspective", with the participation of Mrs. Manal Corwin (Director, OECD Centre for Tax Policy and Administration). During this discussion, delegations explored possible ways to foster the competitiveness of EU companies and underlined that tax policy can play a role in competitiveness and shaping the investment environment.

110. On 9 September 2024, Mario Draghi presented the report on "The future of European competitiveness" which was discussed in several Council configurations, given that competitiveness is of one of the priority topics of the Hungarian Presidency. On 5 November 2024 at the Ecofin Council Ministers had an informal breakfast discussion on taxation aspects of this report. They elaborated on how taxation could contribute to increasing competitiveness at EU level, also in light of the recommendations contained in Draghi's report.

111. Ministers pointed out that although taxation is not the central topic of the report, it can play a certain role in increasing competitiveness at EU level. However, the impact of Draghi's taxation-related recommendations should be carefully analysed before deciding on their possible implementation. Furthermore, taxation-related measures should be addressed in conjunction with measures taken in other policy areas.

112. Decluttering and simplification emerged as the main aspects enabling taxation to contribute more to competitiveness. In particular, it was suggested that EU legislation in the area of taxation could be reviewed with the objective of reducing the administrative burden created both for businesses and tax authorities, while preserving the effectiveness of the measures to prevent tax fraud and aggressive tax planning. Some Ministers stressed that the functioning of the internal market is essential for competitiveness and noted that it would be worth to analyse further how to remove taxation related obstacles to cross-border businesses and investments.

113. Some Ministers reflected on tax incentives that could support innovation, research and development and digitalisation.

114. It was mentioned that energy prices should be brought under control. Energy taxation can play a role in it but focus should be put rather on reforms in non-tax areas. In this context, some Ministers called for a swift agreement on the revision of the Energy Taxation Directive, which would give a clear signal on the green transition.

115. Draghi’s recommendation to extend qualified majority voting to taxation area was opposed by a large number of Ministers who advocated for maintaining unanimity voting in taxation.

116. On 8 November 2024, the leaders addressed the issue of competitiveness from a horizontal perspective at the informal European Council in Budapest.

5) International developments

117. 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.

118. 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 October 2024 the Hungarian Presidency informed the HLWP about its intention to have a meeting with the US Treasury. At the end of October 2024, the US Internal Revenue Service released a notice extending the temporary relief to years 2025, 2026 and 2027. However, this is not a permanent solution and is limited in scope. In November 2024, the Presidency had an informal discussion with the US Treasury and this development was brought to the attention of the HLWP.

6) EU-UK dialogue on Countering Harmful Tax Regimes

119. The HLWP was informed on the first EU-UK dialogue on Countering Harmful Tax Regimes, which was held on 10 October 2024. The dialogue is envisaged under the Joint Political Declaration on Countering Harmful Tax Regimes in the context of the Trade and Cooperation Agreement. As confirmed by the Joint Statement of the Council and the Commission regarding the EU-UK Joint Political Declaration on Countering Harmful Tax Regimes, the dialogue is without prejudice to the competence of the Code of Conduct Group.

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

120. 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 HLWP took note of the latest information in this regard.

8) **International Tax Dispute Resolution Committee (ITDRC)**

121. At the HLWP meeting on 24 October 2024, Member States were given an update on the negotiations on a Convention on the establishment of an International Tax Dispute Resolution Committee.