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**NOTE**

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

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1. The Council (ECOFIN) was invited to report back to the European Council on various tax issues mentioned, in particular in its conclusions of March and June 2012 and of 22 May 2013.
2. A draft ECOFIN Report to the European Council on Tax issues was prepared in the Council High Level Working Party on Tax issues (HLWP) on 4 June 2015, for submission to the Council via Coreper.
3. ECOFIN on 19 June 2015 endorsed the report as set out in the Annex, and agreed to forward it to the European Council on 25/26 June 2015.

## ECOFIN REPORT TO THE EUROPEAN COUNCIL ON TAX ISSUES

1. This report covers various issues mentioned in the European Council Conclusions of 1/2 March 2012<sup>1</sup> devoted to growth, as well as in the European Council Conclusions of 28/29 June 2012 and the relevant Council Conclusions on the future of VAT and on the fight against tax fraud and tax evasion<sup>2</sup>. It gives an overview on the state of play of Council work regarding some key legislative proposals, which were specifically mentioned in the aforementioned conclusions, such as the Common Consolidated Corporate Tax Base, the Financial Transaction Tax and the negotiations for Savings agreements with third countries.
2. More recently, the European Council on 22 May 2013<sup>3</sup>, 24/25 October 2013<sup>4</sup>, 19/20 December 2013<sup>5</sup> and 20/21 March 2014<sup>6</sup> identified tax dossiers where quick progress needed to be made. These dossiers, which respond to the increasing need to ensure the fairness and effectiveness of tax systems, are covered by the current report.

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

<sup>2</sup> Docs 9586/12 FISC 63 OC 213 and 14877/12 ECOFIN 864 FISC 136 OC 579.

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

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

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

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

3. In line with the more recent request from the European Council on 18 December 2014<sup>7</sup>, during the Latvian Presidency the Council has focused its work on the fight against tax avoidance and aggressive tax planning, both at the global and EU levels. This has been done, in particular, on the basis of a roadmap on further work related to unfair tax competition, base erosion and profit shifting in the EU context (hereinafter - EU-BEPS)<sup>8</sup>. In carrying out this work, the Presidency has paid particular attention to consistency between EU work and OECD actions in the area of BEPS. The Council has also swiftly started to work on the Commission's proposal on the automatic exchange of information on tax rulings in the EU put forward to the Council in March 2015. Some Member States have also expressed the wish to intensify the discussion on VAT fraud in the EU and to look for efficient and timely solutions.
4. In the field of indirect taxation, the work of the Council during the Latvian Presidency has continued with the aim to: improve the VAT system to make it more resilient and simpler for economic operators; and seeking progress on the Financial Transaction Tax (FTT) in the framework of enhanced cooperation.
5. This report provides an overview of the considerable progress achieved during the Latvian Presidency across a range of files while on others the Latvian Presidency has clearly set out the path to be followed by future Presidencies.

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<sup>7</sup> EUCO 237/14, 18 December 2014.

<sup>8</sup> See Annex to the ANNEX.

## **A. Legislative dossiers**

### **Amendment to the Parent-Subsidiaries Directive**

1. On 25 November 2013, the Commission submitted a proposal to amend Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (“Parent-Subsidiaries Directive” - PSD). The proposal aimed at tackling double non taxation deriving from hybrid loans and introducing a general anti-abuse rule in order to prevent abuses of the Directive.
2. In its conclusions on 19/20 December 2013, the European Council stated that "progress should also be made quickly towards agreement on amending the Parent-Subsidiary Directive".
3. During the Hellenic Presidency the Council agreed to split the proposal and to adopt first the part dealing with hybrid loan mismatches. This part of the proposal was adopted on 8 July 2014. In accordance with the statement to the Council minutes which underlined "the need to continue to work on the remaining part of the amending proposal", the Italian Presidency brought forward work on the general anti-abuse provision, and a political agreement on that second part was reached at the Council (ECOFIN) of 9 December 2014.
4. The amendment supplementing the PSD with a “common minimum anti abuse rule” was subsequently adopted at the Council (ECOFIN) of 27 January 2015. This rule will provide a common minimum level of protection against abuse of benefits granted by the PSD and will elevate the EU standard aimed at tackling abusive practices. This new rule will have to be transposed into national law, where the Member State concerned does not have an anti-abuse provision of at least an equal "minimum standard".

## Interest and Royalties Directive

5. In November 2011, the Commission tabled a proposal to recast Council Directive 2003/49/EC on the common system of taxation applicable to interest and royalty payments made between associated companies of different Member States ("Interest and Royalties Directive" – IRD). Since the Interest and Royalties Directive has been amended several times, this proposal aims in the first place at recasting it for the sake of clarity. Moreover, the proposal would introduce some substantial changes to the existing Directive, notably: extending the list of companies to which the Directive applies; reducing (from 25% to 10%) the shareholding thresholds to be met for companies to qualify as associated; adding a "subject to tax" requirement for the tax exemption.
6. Following the adoption of the abovementioned amendment to the PSD, a broad majority of Member States underlined the need to make rapid progress by splitting the proposal and concentrating work first on the insertion of a similar general anti-abuse provision in the IRD and then to discuss later the remaining provisions. Some Member States were however of the opinion that the discussion should be held on the proposal as a whole.
7. Taking into account these positions, the Latvian Presidency has launched a comprehensive discussion on the proposal at the Working Party on Tax Questions (WPTQ) meetings of 4 March and 8 April 2015, based on the Danish Presidency compromise of March 2012 and the outcome of the discussion under the Italian Presidency. In the Presidency's view, this discussion nevertheless showed that no agreement could be foreseen in the reasonable future on the whole proposal. Several Member States indeed insisted on the inclusion of a provision setting a minimum effective level of taxation, which would require substantial technical work and was not considered as a priority by a certain number of other Member States.

8. In line with the EU-BEPS roadmap, the Latvian Presidency has subsequently proposed to the HLWP meeting of 16 April 2015 to focus the work in Council on the anti-abuse clause and some other technical matters, such as the update of the annex on eligible companies. A Presidency compromise, including two statements (one on the work to be continued and one on notification) to be added to the Council minutes, was subsequently examined, as one of the agenda items, at the WPTQ meetings of 6 May and 9 June 2015. This compromise was supported by a large majority of Member States. Some Member States expressed the view that the Directive should include a provision on minimum effective level of taxation.
9. The file was submitted to Coreper on 12 June 2015, with a view to reaching political agreement on the first part of the IRD recast at ECOFIN on 19 June 2015. Work on this file will continue during the incoming Presidency.

## **Increasing Tax Transparency**

### ***a) Cross-border tax rulings***

10. The Commission proposal for a Council Directive amending Directive 2011/16/EU (DAC) as regards mandatory automatic exchange of information in the field of taxation was presented to the Council in March of 2015. It has been submitted together with a proposal to repeal the Savings Directive, as well as a Commission communication outlining a number of other initiatives to advance tax transparency.

11. The DAC, as currently in force, provides for spontaneous exchange of information on tax rulings, but only in certain circumstances. The purpose of the new legislative proposal is to build into the existing DAC new rules on mandatory automatic exchange between tax administrations of all EU Member States of information regarding advance cross-border tax rulings and advance pricing arrangements (a particular type of advance tax ruling used in the area of transfer pricing). *Inter alia*, the proposal also foresees creating a secure central directory at the Commission concerning information communicated in the framework of this proposal.
12. Under the Latvian Presidency, four working party meetings took place during which the main objective was to complete the technical analysis of the Commission proposal and advance the negotiations on this file as far as possible. While a number of technical issues have been addressed already, the Commission proposal will have to be examined further, in order to reach agreement among all Member States. In doing so, the EU will continue to work closely with the OECD, in a coordinated manner.
13. The file was submitted to Coreper on 12 June, with a view to submitting the state of play to the Council on 19 June 2015. Formal adoption of this legislative proposal is envisaged for the second semester of 2015, in the light of progress made at experts' level.

***b) Repeal of the Savings Taxation Directive***

14. On 18 March 2015 the Commission also tabled a proposal for a Council Directive that is aimed at repealing the Savings Taxation Directive (Council Directive 2003/48/EC). The Savings Taxation Directive now overlaps with the provisions of the Directive on Administrative Cooperation in the field of taxation (DAC), which was amended in December 2014 and will be applied from 1 January 2016. The proposal also provides a number of transitional measures, notably with regard to the derogation granted to Austria.

15. At the WPTQ meeting of 31 March 2015, Member States agreed to the draft Council Directive without any changes. Formal adoption of this legislative proposal could be envisaged later this year.
16. The issue of the implications of the repeal of the Savings Directive for the bilateral savings agreement with the United Kingdom's and The Netherlands' dependent and associated territories was discussed at the Working Party on Tax Questions on 31 March 2015 and at the HLWP meeting on 16 April 2015. The UK and The Netherlands have been keeping Member States informed of the progress achieved so far and will continue their work on this issue in line with the commitments already made by the dependent and associated territories.

### **Common Consolidated Corporate Tax Base**

17. The Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) was tabled by the European Commission on 16 March 2011, as a contribution to more growth-friendly taxation advocated by the Europe 2020 strategy. Since then, intensive technical discussions on the proposal have been taking place in the Council preparatory bodies.
18. In line with the EU-BEPS roadmap, the Presidency took stock of the state of play in connection with the various fields of the proposal and considered Member States' positions at the WPTQ meeting of 12 March 2015. The state of play and way forward on the international aspects of the CCCTB proposal were also discussed, taking into account the work already done on these aspects under previous Presidencies as well as preparatory and draft documents circulated by the OECD and the EU legal framework. In addition, a preliminary discussion was held on the issue of effective level of taxation with different possible options to consider for relevant Articles of the CCCTB proposal.



19. Further technical progress on most international aspects (definition of permanent establishment, CFC rules, switch-over clause, and interest limitation) is pending on the availability of the final OECD reports on these issues, expected in September, but Member States agreed that discussion at expert level could be pursued on exit taxation, the general anti-abuse rule and hybrid mismatches.

### **Savings Negotiations with European third countries**

20. On 17 June 2011, the Commission adopted a recommendation for a mandate to initiate negotiations with Switzerland, Liechtenstein, Andorra, Monaco and San Marino, in order to upgrade the EU's Savings Taxation agreements with those countries and to ensure that they continue to apply measures equivalent to those in the EU.
21. At the Council on 14 May 2013 agreement was reached on the Negotiating Mandate, in line with the recent developments at global level, where it was agreed to promote automatic exchange of information as an international standard.
22. The European Council of 19/20 December 2013 called for speeding up the negotiations with the European third countries and asked the Commission to present a progress report to its March 2014 meeting.
23. During the Latvian Presidency, the Council has followed closely the progress of the negotiations with the five European third countries. The Commission provided an update on the state of play of these negotiations at the HLWP meeting of 5 February 2015. The Commission subsequently initialled the draft agreement with Switzerland on 19 March 2015.

24. On 7 April 2015, the Commission tabled proposals for Council Decisions on the signing of the agreement with Switzerland and its subsequent conclusion. The Latvian Presidency gave high priority to this file, which was examined at technical level at the WPTQ meetings of 23 April and 6 May 2015. The Decision on the signing of the agreement was subsequently adopted by the Council (CODEV) on 26 May 2015 and the agreement was signed by the Presidency on behalf of the European Union on 27 May 2015.
25. The Commission informed Member States at the HLWP meeting of 4 June 2015 that negotiations aiming at revising the existing EU savings agreements with the four remaining European third countries (Andorra, Liechtenstein, Monaco and San Marino) to bring them into line with the OECD global standard should be finalised shortly.

### **The common system of Financial Transaction Tax**

26. The proposal for a Directive on a common system of financial transaction tax (FTT) was submitted by the Commission to the Council on 28 September 2011. The proposal had as objectives a fair contribution of the financial sector to the costs of the crisis, avoiding fragmentation of the single market, and creating appropriate disincentives for transactions that do not enhance the efficiency of financial markets.
27. Unanimous agreement by all Member States could not be attained within a reasonable period. A number of Member States supported the examination of the FTT in the framework of enhanced cooperation. Adoption of a decision formally authorising enhanced cooperation among eleven Member States took place at the ECOFIN meeting on 22 January 2013. A formal Commission proposal for a Directive implementing enhanced cooperation in the area of financial transaction tax was put forward to the Council on 14 February 2013.

28. Building on the work done by previous Presidencies, the Latvian Presidency has been bringing forward the proposal at the level of the Council WPTQ, keeping in mind the objectives set out in the Commission proposal.
29. During two WPTQ meetings on FTT, a number of issues were discussed, and in particular:
- principles of FTT collection method;
  - further analysis of the counterparty principle, flagging and the "look-through-approach";
  - the constitutive parts of the FTT design (the "building blocks" of the FTT);
  - the assembly of the "building blocks" into possible FTT models.
30. This work will permit a more focused approach in the coming months, in order to narrow down the possible variations of models of the FTT, and will facilitate a political debate with a view to a political compromise on the future of the FTT. Work on FTT should take into account specificities of the financial markets, while respecting the rights, competences and obligations of the non-participating Member States.
31. In the light of the foregoing, the Latvian Presidency intends to continue work at technical level with all Member States as necessary before the end of its term and in view of this work being continued through 2015.

### **VAT: Treatment of Vouchers**

32. The Commission put forward a proposal in May 2012 to provide for common EU rules for the VAT treatment of vouchers. These changes are considered necessary to support businesses operating cross-border and to ensure that instances of double taxation or non-taxation do not occur.

33. Following extensive technical examination of various aspects of this file during the last three years, Member States converge on the view that specific rules applying to the VAT treatment of vouchers are needed, in order to ensure certain and uniform treatment thereof and to avoid inconsistencies, distortion of competition, double or non-taxation and to reduce the risk of tax avoidance.
34. Building on the work done by the previous Presidencies, specifically on the progress made under Italian Presidency, the Latvian Presidency has continued working on the following aspects:
- a clear distinction between Single-Purpose Vouchers (“SPV”) and Multi-Purpose Vouchers (“MPV”);
  - special rules on VAT chargeability in cases of transactions involving SPVs and MPVs;
  - special rules on taxable amount in case of transactions involving MPVs.
35. Most of the delegations could support the Presidency approach.
36. The file was submitted to Coreper on 12 June 2015, with a view to further work on this file.

#### **VAT: Standard VAT Return**

37. In October 2013 the Commission tabled a proposal for a standard VAT return (SVR). The proposal foresees a uniform set of requirements that would replace the diverse national VAT return standards. The aim of the proposal is to reduce administrative burden for businesses, particularly SMEs, and remove divergences which are an obstacle to EU trade, while promoting at the same time voluntary compliance.

38. Following thorough technical examination of the proposal, the Italian Presidency drafted a compromise text that was discussed at the WPTQ meeting on 27 October 2014 and subsequently presented for an orientation debate at the November 2014 ECOFIN meeting. The discussion showed remaining divergent views among Member States on key outstanding issues, such as the level of standardisation and the thresholds to allow micro-enterprises to submit the SVR on a quarterly basis (or longer). The Presidency highlighted the importance of the file in terms of administrative burdens reduction for businesses and concluded that further reflection was needed on how to strike the right balance between standardisation and flexibility requested by Member States.
39. Taking into account the above, the Latvian Presidency discussed with Member States possible ways forward on this file at the WPTQ meetings of 15 January and 27 February 2015. The outcome of the discussion was that most Member States leaned towards solutions that would lead to greater flexibility. As a result, the Presidency proposed a new approach based notably on the following principles:
- a) Minimum harmonisation of the content of VAT returns according to the existing Directive;
  - b) Option for Member States to further harmonise by requiring taxable persons to submit a SVR, set out in a new annex to the VAT Directive;
  - c) Shortening of the list of optional SVR boxes compared to the last Compromise with a view to achieve simplification for businesses;
  - d) Minimum standardisation of the SVR in the form of common explanatory notes and a common numbering of the boxes, without resorting to comitology;
  - e) Inclusion of the explanatory notes in the annex to the VAT Directive rather than in a separate document;
  - f) Flexibility for Member States with regard to the submission frequency of the SVR for micro-enterprises (i.e. the current rules of the VAT Directive would apply).

40. The revised and shortened list of boxes and corresponding explanatory notes was subject to a thorough technical examination in particular at the WPTQ meeting of 9 April 2015.
41. On the basis of the above, the Presidency tabled a full new compromise at the WPTQ meeting of 27 May 2015, including a revised version of the relevant amendments of the VAT Directive. Some Member States requested that the standard VAT return should become mandatory after a transitional period (sunset clause), whereas most Member States argued that this could have an impact on the prospects of reaching agreement on this file. Some Member States expressed the view that, due to the optionality, the expected advantages of the Directive would be weakened.
42. A revised compromise was submitted to the Working Party on 8 June, but divergent views still remain.

#### **VAT fraud detection through IT systems at EU level**

43. At the HLWP of 4 June 2015, Member States have held an exchange of views on the way forward, with regard to risk analysis and early VAT fraud detection at EU level, through information technology systems. The delegations exchanged their insights on practice in this field. The majority of Member States confirmed the interest of having a feasibility study that would explore available alternatives for enhancing Eurofisc capacities for early VAT fraud detection with non-mandatory framework for risk analysis, with particular attention to the existing data protection and processing requirements and in full compliance with the current EU legal framework, in particular the requirements of Article 35 of the Council Regulation (EU) No 904/2010, which inter alia states that the Commission shall provide Eurofisc with technical and logistical support and that the Commission shall not have access to the information referred to in Article 1 of that Regulation, which may be exchanged over Eurofisc.

## **Tax treatment of novel tobacco products**

44. At the initiative of the Latvian Presidency, Member States exchanged views on the prospects of work relating to tax treatment of novel tobacco products (such as e-cigarettes and heated tobacco products). While in most of the Member States such products are not subject to an excise duty or any other tax specifically designed for such products, Member States have agreed that the situation in the market should continue to be monitored. Should the market share of such products show a tendency to increase, the ongoing efforts to develop an efficient taxation method for such products would have to be intensified. Overall, Member States have concluded that this preliminary exchange of views proved to be useful, should any adjustments of the EU legal framework be foreseen in that respect, subject to the Commission putting forward a relevant legislative proposal (e. g. in case of a possible revision of provisions of Directive 2011/64/EU).

## **B. Tax Policy Coordination**

45. Important work in the area of Tax Policy coordination (outside of EU tax legislation) has been taken forward during the Latvian Presidency, as set out below.

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

46. On the basis of the Work Programme approved in 2011, the Code of Conduct Group met three times under the Latvian Presidency. On 4 February 2015, Dr. Wolfgang Nolz was reappointed as chair of the Code of Conduct group for a period of two years.

47. The Code of Conduct Group<sup>9</sup> continued work on standstill and rollback of harmful tax regimes. Concerning standstill, the Italian Patent box was discussed. The Code of Conduct Group noted that the Italian regime has not yet been implemented through a decree. The Group agreed that this regime, if it were to enter into force, as it is set out in the agreed description, would not be compatible with the compromise on modified nexus approach for IP regimes, as set out in Annex 1 of doc. 16553/1/14 REV 1. Italy has a reservation on the statement by the Group on its patent box regime.
48. Regarding rollback, the Group concluded in November 2014 that the treatment of Gibraltar's asset holding shell companies fell within the scope of the Code of Conduct. Following discussions between the UK, Spain and the European Commission on the tax treatment of these companies, the Code of Conduct Group decided to request the Commission to prepare an agreed description of that regime.
49. The Code of Conduct Group agreed in its working programme during the Latvian Presidency to contribute to the debate on the future of the Code of Conduct. The discussion was held on both issues, the scope and the governance of the Group, on the basis of various proposals from Member States. The Council HLWP discussed the future of the Code following a briefing by the Chairman of the Code Group. The HLWP welcomed that the Code Group will continue work on this issue in July 2015, focusing on: making better use of the existing mandate of the Code; examining the possibilities to extend the mandate and to update the criteria; the need to adjust the governance of the Code accordingly. The HLWP will monitor this work under the Luxembourg Presidency during the second half of 2015.

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<sup>9</sup> Report to ECOFIN on 19 June 2015, doc. 9620/15.



50. The Code Group continued its efforts to promote the principles and criteria of the Code of Conduct towards third countries, concentrating on a dialogue with Liechtenstein and Switzerland. The dialogue with Switzerland was successfully closed in October 2014 and discussions with Liechtenstein have recently been restarted. The Commission informed the Group on the state of play of the dialogue with Liechtenstein.

51. In June 2014, the Code of Conduct Group agreed on a "Model Instruction" on spontaneous exchange of information in relation to specific cross border rulings and exchanges in the area of transfer pricing that could be used as a reference by Member States. The Code of Conduct Group discussed the progress made in the implementation of the model instruction in the Member States and the way to improve effective exchange of information.

**b) Code of Conduct Group – anti-abuse: Subgroup on hybrid mismatches**

52. The Code of Conduct Subgroup on anti-abuse launched its work on hybrid mismatches during the Irish Presidency. The Code of Conduct Group agreed in November 2012 to have detailed technical discussions in the Subgroup on anti-abuse issues related to inbound and outbound profit transfers and mismatches between tax systems, specifically on hybrid entities and hybrid permanent establishments. The guidance and explanatory notes on hybrid entity mismatches were finalised under the Italian Presidency.

53. Under the Latvian Presidency, the Subgroup met once on 8 April 2015 and finalised a guidance and explanatory notes on mismatches deriving from hybrid permanent establishments.

54. The last work item of the Subgroup having been completed, the mandate of the Subgroup was extended to further cases of hybrid mismatches (hybrid entities and hybrid permanent establishments in situations involving third countries, hybrid financial instruments other than dividends/interest; hybrid transfers; dual resident companies and imported mismatches) at the Code of Conduct Group meeting of 2 June 2015.

**c) Other tax coordination issues**

55. The Latvian Presidency has continued work on new areas already identified by previous Presidencies for possible tax policy coordination in the HLWP.

**i) EU/OECD: Base Erosion and Profit Shifting (BEPS)**

56. Paragraph 6 of the Council conclusions of 14 May 2013 relates to coordination and cooperation with the OECD and G20 on BEPS:

*"6. SUPPORTS further efforts at OECD level on Base Erosion and Profit Shifting (BEPS) and RECALLS the European Council Conclusions of 13 and 14 March 2013 on the need for close cooperation with the OECD and the G20 to develop internationally agreed standards for the prevention of base erosion and profit shifting and in particular NOTES the European Council call for the European Union to coordinate its positions. NOTES that this coordination will take place through the appropriate Council bodies including the High Level Working Party and WELCOMES that progress at international level in this area is being monitored. To this end, the EU should closely monitor its legal framework and identify where common solutions would best ensure effectiveness and efficiency."*

57. In Paragraph 27 of its conclusions of 19/20 December 2013, the European Council states the following:

*"27. Recalling its conclusions of May 2013, the European Council calls for further progress at the global and EU levels in the fight against tax fraud and evasion, aggressive tax planning, base erosion and profit shifting (BEPS) and money laundering. The European Council welcomes work undertaken in the OECD and other international fora to respond to the challenge of taxation and ensure fairness and effectiveness of tax systems, in particular the development of a global standard for automatic exchange of information, so as to ensure a level playing-field."*

58. In Paragraph 3 of its conclusions of 18 December 2014, the European Council states the following:

*"3. There is an urgent need to advance efforts in the fight against tax avoidance and aggressive tax planning, both at the global and EU levels. Stressing the importance of transparency, the European Council looks forward to the Commission's proposal on the automatic exchange of information on tax rulings in the EU. The Council will discuss how to make progress on all these issues and report back to the June 2015 European Council."*

59. Following discussions on this issue held during previous Presidencies, the Latvian Presidency promoted and carried forward a concrete EU-BEPS Roadmap setting out a number of priorities for its term and highlighting other issues on which work could be foreseen in the middle or longer term (i.e. beyond June 2015).

60. The Latvian Presidency subsequently brought forward the work on all related files, notably:

- a) the Interest and Royalties Directive recast;
- b) the Tax Rulings Transparency proposal;
- c) the CCCTB proposal;
- d) the Code of Conduct Group and Subgroup;

and regularly updated the HLWP on progress made.

61. A discussion was held on further work in the Council related to EU-BEPS issues at the 24-25 April 2015 Informal ECOFIN Council meeting on the basis of the Presidency Roadmap. Ministers had a comprehensive discussion on the BEPS in general, and various challenges stemming from it, for all Member States economies and budgets. It was agreed that this issue will remain of high importance. Ministers also commented on further handling of some individual BEPS-related files already under discussion (such as the IRD and the future of the Code of Conduct on business taxation). Work will continue during the Luxembourg Presidency including on the Action Plan put forward by the Commission.

**ii) International developments: G7**

62. Member States were briefed on the latest developments in the context of the G7 as far as taxation is concerned. Germany informed about the upcoming Summit in Elmau on 7/8 June 2015, for which a Declaration covering, *inter alia*, taxation was issued.

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

63. 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'.

64. On that basis, the Latvian Presidency informed Member States about the latest tax provisions included in non-tax dossiers at the meeting of the HLWP meeting on 16 April 2015. The systematic approach of bringing these cases to the attention of tax experts, with the support of the General Secretariat, will continue to ensure that Member States are alerted in a timely manner. The HLWP agreed that a coordinated tax clause that should be included in free trade agreements the EU concludes with third countries, should take into account discussions in relevant Council preparatory bodies.
65. The most recent alerts covered in particular the following issues:
- First reading trilogue negotiations on the Proposal for a Directive on the fight against fraud to the Union's financial interests by means of criminal law;
  - EU-Japan Strategic Partnership Agreement;
  - European Semester: Annual Growth Survey 2015 and Country-specific recommendations;
  - Proposal for a Directive of the EP and Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement;
  - Draft Council conclusions on a Global Partnership for Poverty Eradication and Sustainable Development after 2015 ('Financing for Development').

**EU-BEPS PRESIDENCY ROADMAP**

**(Council doc. 5968/15 FISC 15)**

1. On 25 November 2014, at the High Level Working Party on Taxation, a discussion was held on further work related to unfair tax competition, base erosion and profit shifting in the EU context (hereinafter – EU BEPS). It was noted that this work should be brought forward on the basis of a concrete roadmap, which would include actions and clear timelines, taking account of the OECD work in this area.
2. Against this background, a draft roadmap was examined by the Working Party on Tax Questions on 5 December 2014 during the Italian Presidency.
3. At the 9 December ECOFIN the Commission informed the Member States about the joint letter sent by the Finance Ministers of France, Germany and Italy to the Commissioner on the pressing need of actions against corporate tax avoidance and aggressive tax planning developing within the EU, identifying specific key areas of intervention and suggesting, inter alia, a comprehensive legislative proposal against corporate tax base erosion and profit shifting ('anti-BEPS directive'). The Commission referred to the Commissioner's response to this initiative as well as to a letter from Austria on the same topic.
4. On 16 December 2014, the Commission announced in its 2015 Work Programme a legislative proposal providing for compulsory exchange of information between tax authorities in respect of cross-border tax rulings, expected to be released during the term of the Latvian Presidency, and a non-legislative initiative comprising an Action Plan on efforts to combat tax evasion and tax fraud and a Communication on a renewed approach for corporate taxation in the Single Market in the light of global developments, expected to be released by mid 2015.
5. Furthermore, the above discussion on the need for EU anti-BEPS initiatives was reflected in the ECOFIN report to the European Council, which adopted conclusions on this matter on 18 December 2014 stressing that:

*"There is an urgent need to advance efforts in the fight against tax avoidance and aggressive tax planning, both at the global and EU levels. Stressing the importance of transparency, the European Council looks forward to the Commission's proposal on the automatic exchange of information on tax rulings in the EU. The Council will discuss how to make progress on all these issues and report back to the June 2015 European Council".*

6. The Latvian Presidency undertook to continue the work on the basis of the draft roadmap discussed by the Working Party on Tax Questions on 5 December 2014, especially with a view to identify the most efficient and practical solutions to achieve the planned results. The Presidency submitted a new discussion paper, which was examined by the Working Party on Tax Questions on 21 January 2015.
7. Based on the comments received at the meeting of the High Level Working Party (HLWP), the Presidency intends to set out a number of priorities for its term and highlight other issues on which work could be foreseen for the middle or longer term (i.e. beyond June 2015), as reflected in this document.
8. The Presidency will pay particular attention to consistency between EU work and OECD actions in the area of BEPS. The HLWP will serve as a focal point to monitor work in this field. It will ensure transparency among all EU Member States concerning OECD work, which may be relevant for the EU. The Presidency's aim is to facilitate solutions to be found within the OECD, which are compatible with EU law and to discuss any constructive input the EU could make, in line with views taken Member States in Council. Specific areas, in which consistency between EU and OECD will be of importance can be found below.
9. The paper intends to set out how the Latvian Presidency will conduct works in the Council, while aiming for any efficient and timely response to the challenges of BEPS. The paper is also intended to be a useful contribution to the preparation of the Commission anti-BEPS Action Plan, to be presented later this year.

## **I. Short term work**

10. In the light of the written comments received by the Presidency and the discussion held at the Working Party on 21 January 2015, the Presidency will strive to reach progress during the next months on the following EU-BEPS work items:

### **A. Interest and Royalties Directive (IRD)**

11. A broad majority of Member States underlined the need to make progress on this file by concentrating work first on a *de minimis* anti-abuse clause, similar to the one recently adopted for the Parent-Subsidiary Directive, and to discuss later the remaining provisions, notably the 'subject to tax' criterion, the revision of the list of entities and the revision of the shareholding threshold contained in the 2011 recast proposal. Some Member States were however of the opinion that the discussion should be held on the proposal as a whole.
12. Taking into account these positions, the Presidency will launch a comprehensive discussion of the proposal at the Working Party on Tax Questions (WPTQ), based on the Danish Presidency compromise tabled in 2012 and the outcome of the discussion of the room document on the IRD which was tabled for the WPTQ meeting of 29 September 2014. In case the outcome of this discussion would show that no agreement can be foreseen in the reasonable future on the whole proposal, the Presidency could focus the work in Council on the anti-abuse clause and some other technical matters (such as the update of the annex on eligible companies) with a view to reach a swift agreement on this part of the proposal. In that event, the commitment to continue discussion on the remaining parts of the proposal would be clearly stated.

### **B. Transparency of tax rulings**

13. Member States underlined the need to start discussions on this topic as soon as the legislative proposal is presented by the Commission. Thus, high priority will be given to the examination of the proposal as soon as it becomes available, while paying particular attention to the OECD work in this field.



### C. CCCTB proposal

14. Many Member States underlined the need to focus discussions on the international anti-BEPS aspects (in particular definition of permanent establishment, CFC rules, switch-over clause, general anti-abuse rule, exit taxation, interest limitation, and, possibly, hybrid mismatches), taking into account the work done at the OECD, as appropriate. At the same time several Member States expressed the opinion that further steps on the proposal can be taken only after the outcome of the OECD work will have become available. Also several opinions were expressed on a possible continuation of the work on selected matters of the proposal.
15. Taking into account the different opinions expressed, and in order to possibly give a useful input to the work of the OECD on these issues, as well as on the proposal as such, the Presidency intends:
  - a) to continue work at the WPTQ on the international anti-BEPS aspects taking into account the work already done on these aspects under previous Presidencies as well as preparatory and draft documents circulated by the OECD and the EU legal framework. The aim is to feed the OECD discussion and pave the way for a smooth implementation of the future OECD recommendations on these aspects, given the EU specificities;
  - b) to take stock of the state of play in connection with the various fields of the proposal and consider Member States' positions on the basis of the Compromise tabled by the Italian Presidency. The aim is to prepare an updated starting position for further activities on the proposal by taking into account the outcome of the discussions under the previous Presidencies.

#### **D. Hybrid mismatches**

16. Member States expect the draft guidance on Hybrid Permanent Establishments to be finalised by the Code of Conduct Subgroup as soon as possible, taking into account the OECD work in this area.
17. The extension of the mandate of the Subgroup to further cases of hybrid mismatches (hybrid entities and hybrid permanent establishments in situations involving third countries; hybrid financial instruments other than dividends/interest; hybrid transfers; dual resident companies and imported mismatches) could be considered by the Code of Conduct group as appropriate.

#### **E. Patent boxes**

18. The Presidency notes that the Code of Conduct Group will start monitoring the legislative process necessary to change existing patent box regimes following the agreement reached on the interpretation of the third criterion of the Code of Conduct. In this context, some Member States stressed the importance of addressing transitory timing and windfall effects regarding new entrants. The Presidency will pay particular attention to the ongoing work at the OECD in this field.

#### **F. Code of Conduct Group (business taxation)**

19. Member States commented on the governance of the Code of Conduct Group and the scope of its mandate.
20. Concerning the governance aspects, their possible strengthening will be examined by the Code of Conduct Group.

21. Regarding the scope of the mandate of the Code of Conduct Group, some Member States expressed interest in strengthening its role in order to better fight against harmful taxation and BEPS, whilst others would prefer to focus on its existing tasks.
22. The Presidency will discuss the future of the Code of Conduct in the HLWP, on the basis of the contribution from the Code Group itself with the aim of bringing the decision on this matter to the ECOFIN by the end of the Latvian Presidency. This work will concern the governance and the scope of the mandate of the Group.

## **II. Medium term work**

23. The Presidency also notes willingness from Member States to undertake work in the medium term on the following items:

### **A. Country-by-country reporting (CBCR) on transfer pricing agreements**

24. Following the opinion of numerous Member States, the possibility of an early adoption of OECD work in this field by the EU will be explored.

### **B. Beneficial ownership of non-transparent entities**

25. Some Member States expressed strong interest in a possible extension of the access to the register foreseen in the 4th Anti-Money Laundering proposal (articles 29-30) to tax authorities in order to exchange information for tax purposes.
26. The outcome of the negotiations on the 4th Anti-Money Laundering proposal will be therefore discussed with a view to explore this possibility.

### **C. Outbound payments**

27. The discussions showed an interest in work to be undertaken on this issue, even though the suggested possible solutions differ among the Member States (some consider the topic strictly connected with the discussion on the Interest and Royalties directive, while others believe it is more of a transfer pricing issue). A possible forum could be the Code of Conduct Group, given the previous discussion of this topic in connection with dividend payments.

### **D. Transfer Pricing**

28. Several Member States stressed the need to ensure coordination between EU work in the area of Transfer Pricing and the OECD's work in the context of its BEPS project (Working Party N°6), against the background of BEPS priorities defined within the Council and its preparatory bodies.

### **III. Long term work**

29. The discussion showed that the following issues would not need to be addressed as a matter of priority, but could be dealt with on the long term.

#### **A. Conditions and rules for the issuance of tax rulings**

30. It was noted that any work going beyond mere transparency aspects would require more time. Some exploratory talks could nevertheless be conducted in the middle term in the context of the Code of Conduct Group. In addition, the Commission has organized a technical WPIV meeting on 6 February to open a discussion on this topic.

## **B. Definition of an effective level of taxation**

31. The determination of a minimum effective rate of taxation in the context of the IRD, PSD and CCCTB, as proposed by some Member States, is not considered as a priority by a certain number of other Member States. Nevertheless it is recognised that low effective taxation could be an issue for consideration in the EU context to the extent that it is the result of aggressive tax planning or relates to, potentially harmful tax regimes within the meaning of the Code of Conduct on business taxation. Some Member States were however of the opinion that this topic requires a preliminary examination of the feasibility of a common approach for defining an effective level of taxation.

## **C. Residency rules**

32. This matter is considered important by some Member States and could be explored, taking into account the wider work being done by the OECD on BEPS. Issues arise notably with regard to residency rules that allow the business to shift their tax residency outside the EU, tax structures making use of "double residency" or "double non-residency" effects within the EU, and broader tax provisions and mismatches that may be associated with aggressive tax planning and double non-taxation.