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NOTE

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

1. The Council (ECOFIN) was invited to report back to the European Council on various tax issues mentioned, in particular in its conclusions of March and June 2012, May 2013 and December 2014.
2. A draft ECOFIN Report to the European Council on Tax issues was prepared and agreed in the Council High Level Working Party on Tax issues (HLWP) on 3 June 2016, for submission to the Council via Coreper.
3. ECOFIN on 17 June 2016 endorsed the report as set out in the Annex, and agreed to forward it to the European Council on 28/29 June 2016.

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 2012¹ devoted to growth, as well as in the European Council Conclusions of 28/29 June 2012², 22 May 2013³, 24/25 October 2013⁴, 19/20 December 2013⁵, 20/21 March 2014⁶, 26/27 June 2014⁷ and 18 December 2014⁸ and the relevant Council Conclusions on the future of VAT and on the fight against tax fraud and tax evasion⁹. It gives an overview on the state of play of relevant Council work.
2. In line with the request from the European Council on 18 December 2014¹⁰, during the Dutch Presidency the Council has continued to focus 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 Presidency roadmap on further work related to unfair tax competition, base erosion and profit shifting in the EU context (hereinafter – EU-BEPS), updated on 19 February 2016. In carrying out this work, the Presidency has paid particular attention to consistency between EU work and OECD actions in the area of BEPS.

¹ EUCO 4/3/12 REV 3 (items 9 and 21).

² EUCO 76/12, 28/29 June 2012.

³ EUCO 75/1/13 REV 1, 22 May 2013.

⁴ EUCO 169/13, 24/25 October 2013.

⁵ EUCO 217/13, 19/20 December 2013.

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

⁷ Doc. EUCO 79/14 CO EUR 4 CONCL 2, point 2.

⁸ Doc. EUCO 237/14 CO EUR 16 CONCL 6, point 3.

⁹ Docs 9586/12 FISC 63 OC 213 and 14877/12 ECOFIN 864 FISC 136 OC 579.

¹⁰ EUCO 237/14, 18 December 2014.

3. More specifically in the area of direct taxation, the Council has swiftly reached a political agreement in March 2016 on the Commission's proposal on the automatic exchange of information on country by country reporting, which was put forward to the Council on 28 January 2016, which was finally adopted on 25 May 2016. Important work has been carried out on the proposal of Anti Tax Avoidance Directive (ATAD), on which agreement could be found following the 17 June ECOFIN. Furthermore, conclusions on external strategy (including the agreement to establish a EU list of non-cooperative non-EU jurisdictions)¹¹ and on the future of the Code of Conduct (procedural and governance aspects)¹² were adopted. Agreement on the reform of the mandate of the Code of Conduct could not yet be reached.
4. In the field of indirect taxation, the Netherlands Presidency facilitated the following work at the Council:
 - a) reaching an agreement on the legislative proposal on vouchers in the VAT area.
 - b) negotiations in a transparent way on the Financial Transaction Tax (FTT) in the framework of enhanced cooperation.
 - c) adoption of important Council conclusions in reaction to the VAT Action Plan put forward by the Commission.
 - d) adoption of Council conclusions on excise duties (concerning manufactured tobacco).
5. This report provides an overview of the progress achieved at the Council during the term of the Netherlands Presidency.

¹¹ Doc. 9452/16 FISC 85 ECOFIN 502.

¹² Doc. 6900/16 FISC 35 ECOFIN 208.

A. Legislative dossiers

Anti Tax Avoidance Package

a) *Country by country reporting between tax authorities*

6. The legislative proposal to amend the Council Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC)¹³ was presented by the Commission on 28 January 2016¹⁴, as part of the anti-tax avoidance package, and its purpose was to increase tax transparency by enlarging the scope of the Directive by providing for the mandatory automatic exchange of country-by-country reports between the tax authorities of Member States.
7. This legislative proposal has been designed on the basis of the OECD "Transfer Pricing Documentation and Country-by-Country Reporting, on Action 13 of the OECD/G20 Action Plan on Base Erosion and Profit Shifting".
8. Following the discussions at 8 March 2016 ECOFIN, which concluded with the text that could be supported by all delegations, the Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation¹⁵ was adopted on 25 May 2016 by the ECOFIN Council.
9. Under these new rules, Multi National Enterprise Groups will be obliged to file, using a template, their country by country reports to tax authorities of Member States. The tax authorities will then be under an obligation to automatically exchange these reports with the Member States concerned, using the existing framework of automatic exchange under DAC.

¹³ OJ L 64, 11.3.2011, p. 1, as last amended by Council Directive (EU) 2015/2376 of 8 December 2015 (OJ L 332, 18.12.2015, p. 1).

¹⁴ Doc. 5638/16 FISC 9 + ADD 1.

¹⁵ 7148/16 FISC 39 ECOFIN 231.

b) *Anti Tax Avoidance Directive*

10. The proposal for a Council Directive against tax avoidance practices that directly affect the functioning of the Internal Market (hereafter "ATAD") includes six concrete provisions for anti-tax avoidance rules:
 - a) Interest limitation rule (Article 4);
 - b) Exit taxation (Article 5);
 - c) Switch-over clause (Article 6);
 - d) General anti-abuse rule (Article 7);
 - e) Controlled foreign company (CFC) rule (Articles 8-9);
 - f) Rules against hybrid mismatches (Article 10).
11. The ATAD proposal responded to the ECOFIN Council conclusions of 8 December 2015 on Base Erosion and Profit Shifting (BEPS) in the EU context (doc. 15150/15). In these conclusions the ECOFIN Council considered that EU directives should, where appropriate, be the "*preferred vehicle*" for implementing OECD BEPS conclusions and invited the Commission to come forward with a legislative proposal.
12. The ECOFIN Council conclusions also stressed the need to find "*common, yet flexible, solutions at the EU level*" consistent with OECD BEPS conclusions and EU treaty freedoms, and supported an "*effective, swift and coordinated implementation*" by Member States of the anti-BEPS measures to be adopted at the EU level.
13. Eight Working Party on Tax Questions (WPTQ) meetings were held to examine the proposal at technical level. The High Level Working Party on Tax Questions (HLWP) examined the outcome of this technical work on 10 May 2016. The outcome of this work (doc. 8766/16) was discussed in Coreper on 18 and 24 May 2016.

14. The ministerial debate at ECOFIN on 25 May allowed to narrow down the number of key open issues to review before submission to ECOFIN on 17 June.
15. The Presidency expressed its determination to reach agreement on a legally binding minimum standard for preferably all six anti-BEPS provisions proposed by the Commission, in line with the timetable that was supported by most Member States during the ECOFIN of 12 February 2016 and reiterated during the Informal ECOFIN of 22 April 2016 in Amsterdam.
16. After discussion at the ECOFIN meeting on 25 May 2016, the file was submitted at the 17 June ECOFIN meeting, after the adoption of the European Parliament report (consultation) on 6 June 2016. Following a silence procedure, a political agreement was reached, on this file (doc. 10426/16). The European Economic and Social Committee had already adopted its own opinion on 27-28 April 2016.

c) Non-legislative part of the package

17. On 28 January 2016 the European Commission adopted an "Anti-Tax Avoidance Package" composed of a cover Communication ("Next steps towards delivering effective taxation and greater tax transparency in the EU"), two legislative proposals, a Communication on an External Strategy for Effective Taxation (hereafter "the Communication") and a Recommendation on the implementation of measures against tax treaty abuse (hereafter "the Recommendation").
18. The aim of the Communication is to propose a framework for a new EU external strategy for effective taxation. It identifies the key measures which, according to the Commission, could help the EU to promote tax good governance globally, tackle external base erosion threats and ensure a level playing field for all businesses. The Commission also considers how good governance on taxation can be better integrated into the EU's wider external relation policies.

19. The Communication includes therefore proposals for inserting tax good governance clauses in all relevant agreements between the EU and third countries or regions, develops a common EU approach for the assessment and listing of third countries for tax purposes, and to enhance the link between EU assistance to developing countries and higher levels of tax good governance in those third countries.
20. The Commission Recommendation on the implementation of measures against tax treaty abuse relates to the way to implement in EU Member States measures against tax treaty abuse that have been discussed in the context of OECD BEPS Action 6.
21. The Communication and the Recommendation were discussed at the High Level Working Party on Tax Questions on 23 February and 10 May 2016. Council conclusions setting out the way forward were adopted at the ECOFIN meeting on 25 May 2016¹⁶. These conclusions invite the Code of Conduct Group to start work on an EU list of non-cooperative jurisdictions by September 2016, and to determine, on the basis of a first screening by the Commission, third Countries with which dialogues should start, with a view to establishing an EU list of non-cooperative jurisdictions and exploring defensive measures at EU level to be endorsed by the Council in 2017.

Interest and Royalties Directive

22. 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.

¹⁶ 9452/16 FISC 85 ECOFIN 502.

23. Following the adoption of the amendment to the Parent Subsidiary Directive (PSD), a broad majority of Member States underlined the need to make rapid progress by splitting the proposal on the IRD and concentrating work first on the insertion of a general anti-abuse provision similar to the one in the PSD 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.
24. This file was presented by the Latvian Presidency at the ECOFIN Council on 19 June 2015 for political agreement. However, such agreement could not be reached as some Member States insisted on the inclusion of a clause by which, when the effective taxation would be lower than a minimum tax rate threshold, the right to apply withholding taxes on an interest or royalty payment would remain at the level of the source Member State (meaning a denial of granting the benefits of the directive). Following the June ECOFIN debate, the Luxembourg Presidency held political and technical discussions on the possible inclusion of such a minimum effective taxation (MET) clause.
25. The Netherlands Presidency consulted bilaterally all Member States on how the MET concept could be formulated in the IRD and whether a combination of a MET with an economic activity test could be acceptable. Following these bilateral contacts, the Netherlands Presidency devoted two WPTQ to the IRD, on 20 January and 16 February 2016 and tabled the outcome of these meetings in the HLWP of 13 April 2016.
26. The Presidency proposed technical elements which could be used to calculate the minimum effective taxation and explored several options regarding the scope of the minimum effective taxation. Possible legislation venues for both the MET as sole criterion as for a combined test of an MET and an activity test were also discussed.

27. Leaving aside the political question on the appropriateness of inserting a MET clause in the IRD directive, a large number of delegations supported from a purely technical perspective a proposal by the Presidency on a method to calculate effective taxation, while some delegation could not support this proposal. There were diverging views on proposed exemptions from the MET clause for royalty payments for modified nexus compliant regimes and/or for interest payments. Furthermore, some delegates wished to extend the current scope of the directive in order to cover interest and royalty payments to third countries, while this was not supported by other delegates.
28. During the HLWP of 13 April 2016 it was concluded that delegations are split on the principle of introducing a MET clause in the IRD. Furthermore, it was concluded that delegations have diverging views on the scope of such a clause. The Presidency concluded that at this stage further technical work seems not to be helpful.
29. In the light of the foregoing, further work will be required in this dossier.

Savings Negotiations with European third countries, the UK's Crown dependencies and overseas territories and the non European Countries within the Kingdom of the Netherlands

30. 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 third countries and to ensure that they continue to apply measures equivalent to those in the EU.
31. 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.
32. The European Council of 19/20 December 2013 called for speeding up the negotiations with the European third countries.

33. Following the adoption of the Decision on the signing of the agreement with Switzerland and the signing of the agreement on behalf of the European Union on 27 May 2015, the decision on the conclusion of the agreement was adopted on 8 December 2015. The decision on the signing of the agreement with Liechtenstein was adopted on 26 October 2015 and the decision on the conclusion of the agreement was adopted on 8 December 2015. The decision on the signing of the agreement with San Marino was adopted on 8 December 2015.
34. Under the Netherlands Presidency, the decision on the signing of the agreement with Andorra was adopted on 12 February 2016 and the decision on the conclusion of the agreement with San Marino was adopted on 21 April 2016.
35. Following the repeal of the EU Savings directive, work is still under way with a view to the suspension of the bilateral exchange agreements with the United Kingdom's Crown dependencies and overseas territories and the non European Countries within the Kingdom of the Netherlands, in line with the commitments already made by these territories and countries.

The common system of Financial Transaction Tax

36. 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.
37. Given that unanimous agreement by all Member States could not be attained, a number of Member States supported the examination of the FTT in the framework of enhanced cooperation. Adoption of a decision formally authorizing 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.

38. Following the preparatory work by the Working Party on Tax Questions (WPTQ), the state of play on this dossier has been discussed at the following meetings of ECOFIN Council:
- 6 May 2014, where the Ministers of ten participating Member States released a Joint Statement¹⁷;
 - 7 November 2014¹⁸ and 9 December 2014¹⁹, on the basis of the Presidency reports;
 - 8 December 2015²⁰, where, on the basis of a presentation by Austria, ten Member States, participating in the enhanced co-operation (without Estonia) have agreed the statement to be inserted into the minutes of that Council meeting²¹.
39. On 16 March 2016, the Republic of Estonia has completed the formalities required to leave the enhanced co-operation on FTT²².
40. Under the Netherlands Presidency, which enabled the continuation of discussions on this dossier among all Member States, during the first half of 2016, one WPTQ meeting took place, where the following issues relating to FTT have been discussed:
- a) application of "issuance" and "residence" principles and the territorial scope for the FTT;
 - b) exemption from FTT of market making activities;
 - c) the scope of transactions in derivatives contracts to be subject to the FTT.

¹⁷ See doc. 9399/14 FISC 79 ECOFIN 445 and doc. 9576/14 PV/CONS 22 ECOFIN 460.

¹⁸ See doc. 14949/14 FISC 181 ECOFIN 1001.

¹⁹ See doc. 16498/14 FISC 222 ECOFIN 1159 and doc. 16753/14 FISC 230 ECOFIN 1188 CO EUR-PREP 50, points 36 to 46.

²⁰ See doc. 14942/15 FISC 181 ECOFIN 947.

²¹ See doc. 15112/15 ADD 1.

²² See doc. 7808/16 FISC 47 LIMITE.

41. Against this background, and on the basis of a report set out in doc. 9602/16 FISC 90 ECOFIN 522, the state of play on this dossier was discussed at the ECOFIN Council meeting on 17 June 2016.
42. As indicated in the previous ECOFIN report to the European Council on Tax matters²³, in the light of the foregoing, further work at the Council and its preparatory bodies will be required, before a final agreement on this dossier can be reached among the Member States participating in the enhanced co-operation, that respects the competences, rights and obligations of the Member States not participating in the enhanced co-operation on FTT.

VAT Action Plan

43. The Commission Communication on an Action Plan on VAT "Towards a single EU VAT Area – Time to decide" (the VAT Action Plan) was published on 7 April 2016²⁴. The VAT Action Plan sets out the Commission's views on the pathway for the modernisation and rebooting of VAT, which, with a set of urgent and mid-term measures, would lead towards a Single EU VAT Area. Those measures are built around these major themes:

- i) the simplification and reduction of compliance costs for businesses (especially e-commerce and SMEs);
- ii) urgent measures to tackle VAT fraud (improvements of tax administrations and administrative cooperation);
- iii) medium term measures to tackle VAT fraud and the way forward to VAT definitive regime;
- iv) VAT rates.

²³ See doc. 15187/15 FISC 187 ECOFIN 968 Co EUR-PREP 50, point 40.

²⁴ COM (2016) 148 final. See also:
http://ec.europa.eu/taxation_customs/taxation/vat/action_plan/index_en.htm

44. The European Court of Auditors' (ECA) Special Report No. 24 "Tackling intra-Community VAT Fraud: More action needed"²⁵, published on 3 March 2016, also presents, together with the results of the audit, 14 recommendations aimed at better fighting VAT fraud. These recommendations touch upon improvement of administrative cooperation, efficiency of tax administration, exchange of information and policy issues. Many of these recommendations were also covered by the areas and measures presented in the Commission's VAT Action Plan.
45. In the VAT Action Plan, the Commission called on the Council to provide, as soon as possible, clear political guidance and confirm its willingness to support the actions set out therein. The Committee of Permanent Representatives has instructed the WPTQ to examine the ECA Special Report²⁶.
46. On this basis, the VAT Action Plan discussions in the Council also covered the ECA special report at technical level. These discussions resulted in the adoption of Council conclusions at the ECOFIN Council on 25 May 2016²⁷.
47. While these Council conclusions cover a broad range of initiatives that are to be taken in the field of VAT at EU level, there is room left for further work and debate in a number of areas, as certain aspects of the VAT Action Plan and future work could continue to be discussed further, for example:
- a) further initiatives on fighting the VAT fraud;
 - b) further work on the Transaction Network Analysis tool;
 - c) possibility for derogations to be granted by the Council permitting wider (general) use of the reverse charge mechanism;

²⁵ Available at: <http://www.eca.europa.eu/en/Pages/DocItem.aspx?did=35308>

²⁶ See docs. 6918/16 and 6919/16.

²⁷ Doc. 9494/16 FISC 86 ECOFIN 509.

- d) the definitive VAT regime (incl. the idea of the "Single EU VAT Area");
- e) "One Stop Shop" mechanism;
- f) Further work on the Customs code 42 in relation to VAT.

Fight against VAT fraud and further work

- 48. The fight against VAT fraud presents a major issue to the EU as a whole. As an illustrative example, the VAT gap²⁸ numbers in the EU remain large, and a part of these amounts are the result of fraudulent activities²⁹.
- 49. The European Council of 26-27 June 2014 has adopted the "Strategic Agenda for the Union in Times of Change", where to "guarantee fairness: by combatting tax evasion and tax fraud so that all contribute their fair share" is one of the Union priorities for the five years to come³⁰.
- 50. During the Netherlands Presidency, topics relating to measures that would enable finding efficient solutions to fight VAT fraud were prominent on the agenda of ECOFIN Council and its preparatory bodies.
- 51. One of the components of the VAT Action Plan (fight against VAT fraud by means of information exchange, with a focus on the use of information technology tools) was also discussed in the April 2016 informal ECOFIN meeting in Amsterdam.

²⁸ The VAT Gap is defined as the difference between the amount of VAT actually collected and the estimated VAT Total Tax Liability (VTTL), in absolute or percentage terms. It provides an estimate of revenue loss due to fraud and evasion, bankruptcies, financial insolvencies as well as miscalculations.

²⁹ See "Study to quantify and analyse the VAT Gap in the EU Member States. 2015 Report"; TAXUD/2013/DE/321; FWC No. TAXUD/2010/CC/104, page 7; at http://ec.europa.eu/taxation_customs/resources/documents/common/publications/studies/vat_gap2013.pdf

³⁰ See doc. EUCO 79/14 CO EUR 4 CONCL 2, page 14, point 2.

52. On 1 June 2016, the WPTQ continued exchange of views on the Commission feasibility study on the Transaction Network Analysis (TNA) tool, in accordance with point 9 of the 25 May 2016 Council conclusions on the VAT Action Plan³¹. The exchange of views covered a variety of technical aspects relating to using TNA in the EU more widely, on a voluntary basis, as well as related financing and legal aspects. Large majority of Member States indicated either that they are willing to start using the TNA tool for VAT fraud detection on a voluntary basis, or that they are reflecting positively on this option. Concerns were also reiterated, that the Commission has to consider the possibilities of an explicit legal basis. While the debate on all practical and legal aspects relating to TNA will continue, the next step is the establishment of a project group, by the Commission, to set out all relevant aspects for launching the development of the project with Member States that will be interested to do so. The Commission should regularly report to the Council (WPTQ) on the state of play of this work.
53. On 1 June 2016, at the WPTQ meeting, delegations were invited to exchange views on points 3.2 to 3.4 of the VAT Action Plan, namely:
- a) activities in the field of establishing more efficient tax administrations (point 3.2);
 - b) improving voluntary compliance (point 3.3);
 - c) improving tax collection (point 3.4).
54. That WPTQ meeting served as a platform for the first round of discussions on the non-legislative initiatives that the Commission has referred to in these points of the VAT Action Plan. This work should continue, as many Member States expressed their views that discussions and exchanges of views on best practices in the area of tax administration could provide for support to the Member States concerned. As indicated in the 25 May 2016 Council conclusions on the VAT Action Plan³², the Council will examine these non-legislative measures on the basis of the principles of sovereignty, subsidiarity and proportionality.

³¹ See doc. 9494/16 FISC 86 ECOFIN 509, point 9.

³² See doc. 9494/16 FISC 86 ECOFIN 509, point 9.

Broader use of reverse charge mechanism for domestic transactions

55. Following the debate at HLWP of 19 November 2015³³, the ECOFIN Council on 15 January 2016 held an exchange of views on VAT fraud. The debate was based on the note by the delegation of the Czech Republic (doc. 15196/15 FISC 189 ECOFIN 971 LIMITE) and the Presidency steering note (doc. 15517/15 FISC 198 ECOFIN 1002 LIMITE). As a result of the debate, the Commission was invited, in its upcoming Action Plan on the Future of VAT to, *inter alia*, analyse whether a well-designed temporary derogation for specific Member States, wishing to practically apply VAT reverse charge mechanism in a broader scale, would not disproportionately hamper the proper functioning of the internal market, taking into consideration the risks and possible implications of such a temporary derogation, including the related political, legal and economic aspects. The intention of the Commission for a thorough assessment of such requests on this issue is reflected in point 3.5 of the VAT Action Plan.
56. On 25 May 2016, where Council conclusions on the VAT Action Plan were adopted³⁴, it has been agreed that the issue of broader use of VAT reverse charge mechanism for domestic transactions will be discussed at the next ECOFIN meeting. On 17 June 2016 the ECOFIN COUNCIL held an exchange of views based on doc. 10096/16 FISC 102 ECOFIN 592 LIMITE and the presentation by the Commission on the state of play made at the ECOFIN Council.
57. Given that the political agreement on the ATAD proposal has been reached, as set out in point 16 of this report, the Commission made the following statement to the minutes of 17 June 2016 ECOFIN Council:

"The Commission commits to present, before the end of the year, a legislative proposal allowing individual Member States to derogate from the common system of value added tax so as to apply a generalised reverse charge mechanism to domestic supplies above a defined threshold and preserving the Internal Market."

³³ See doc. 15187/15 FISC 187 ECOFIN 968 Co EUR-PREP 50, point 46.

³⁴ Doc. 9494/16 FISC 86 ECOFIN 509.

VAT: Treatment of Vouchers

58. The Commission put forward a proposal in May 2012 to provide for common EU rules for the VAT treatment of vouchers. These changes were considered necessary to support businesses operating cross-border and to ensure that instances of double taxation or non-taxation do not occur.
59. During four years of negotiations this file has undergone extensive technical examination of its various aspects by the Council preparatory bodies. Member States could 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. With a view to reaching a required unanimous agreement on this dossier, a large variety of possible technical solutions have been examined in the course of these negotiations.
60. Following the preparatory work done during previous Presidency terms, the Netherlands Presidency proposed a limited number of further adjustments to the compromise text that has been discussed under Latvian and Luxembourg Presidencies, and suggested to conclude the work on this dossier (see doc. 8334/16 FISC 60 ECOFIN 327).
61. As a result, the agreement on the substance of the text of the draft Directive was confirmed at the Committee of Permanent Representatives on 4 May 2016, as set out in document 8333/16 FISC 59 ECOFIN 326. Once the process of legal-linguistic revision is complete, the text of the directive, set out in doc. 8741/16 FISC 70 ECOFIN 378 will be submitted for formal adoption at one of the forthcoming meetings of the Council.

Excise duties (Council Directives 2011/64/EU and 2008/118/EC)

62. The Commission has on 21 December 2015 presented a Report to the Council on the REFIT evaluation of Directive 2011/64/EU and on the structure and rates of excise duty applied to manufactured tobacco. According to Article 19, paragraph 1 of Directive 2011/64/EU³⁵ the Commission is required to submit a report on the rates and structure of excise duty laid down in this Directive every four years. Furthermore, the Directive has been identified for evaluation under the Commission's Regulatory Fitness and Performance Programme (REFIT)³⁶.
63. Following the examination of the report, the Council adopted the conclusions that are set out in doc. 6420/2/16 FISC 28 ECOFIN 140 REV 2³⁷. The Council, *inter alia*, requested that the European Commission, taking into account these Council Conclusions, as well as the objectives set out in Directive 2011/64/EU, undertakes all relevant studies and, after carrying out relevant technical analysis, public consultations and impact assessment, submits to the Council an appropriate legislative proposal in 2017 or, in case it chooses not to submit a proposal, informs the Council of the reasons.
64. Noteworthy, the Council also took note that some of the recommendations in the Commission Report on Directive 2011/64/EU are aimed at improving the overall system of excise duty collection in Member States and, consequently, stated that it looks forward to receiving, in due time, the Commission Report on the parallel and on-going evaluation of Council Directive 2008/118/EC.

³⁵ Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (OJ L 176, 5.7.2011).

³⁶ REFIT is a programme to review the entire stock of EU legislation – to identify burdens, inconsistencies, gaps or ineffective measures and to make the necessary proposals to follow up on the findings of the review.

³⁷ With Austria, Ireland, Finland, France and Sweden making a statement to the minutes set out in the annex of doc. 6420/2/16 FISC 28 ECOFIN 140 REV 2 + COR 1.

B. Tax Policy Coordination

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

a) Code of Conduct Group (Business taxation)

(i) Work of the Code of Conduct

66. The Code of Conduct Group met three times under the Netherlands Presidency, on 2 February, 12 April and 2 June 2016. The Group continued the work on the basis of the new Work Package adopted in November 2015.
67. The Code of Conduct Group³⁸ continued work on standstill and rollback of harmful tax regimes focusing on Patent boxes and the treatment of Gibraltar's asset holding companies.
68. Work on administrative practices continued. 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. During the Netherlands Presidency, the Code of Conduct Group discussed the progress made in the implementation of the model instruction in the Member States.
69. As foreseen in the Group's work programme under the Netherlands Presidency, the Group discussed the development of a set of guidelines on the conditions and rules for the issuance of tax rulings.
70. The Code of Conduct Group continued its efforts to promote the principles and criteria of the Code of Conduct towards third countries, concentrating at this stage on a dialogue with Liechtenstein. The Commission informed the Group on the state of play of the dialogue with Liechtenstein.

³⁸ Report to ECOFIN on 17 June 2016, doc. 9912/16 FISC 97 ECOFIN 558.

(ii) *Future of the Code of Conduct*

71. In its roadmap setting out future work in the Council during the coming months in the field of Base Erosion and Profit Shifting (BEPS) (doc. 6039/16), the Netherlands Presidency indicated that work on the future of the Code of Conduct should be carried out at short term in a two-step approach: as a first step to discuss the governance, transparency and working methods of the Group and, as a second step, to start discussions on a revision to the mandate in relation to the concept that profits are subject, as appropriate, to an effective level of tax within the EU, with the aim to decide on the issue of the mandate of the Code of Conduct before the end of the Presidency's term.
72. On 8 December 2015, the ECOFIN Council adopted conclusions on the future of the Code of Conduct (doc. 15148/15), which completed the first phase of this reform. They invited notably the HLWP to "*discuss a revision to the mandate in relation to the concept that profits are subject, as appropriate, to an effective level of tax within the EU, notwithstanding the competencies of Member States in the area of taxation*" and to "*conclude on the need to enhance the overall governance, transparency and working methods and to finalise the reform of the Group during the Dutch Presidency*". During the HLWP on 10 May 2016 the issue was addressed and the Presidency noted that at this stage no agreement could be found on extending the mandate further.

73. Under the Netherlands Presidency, the HLWP discussed the governance, transparency and working methods of the Code Group on the basis of draft Council conclusions on 1 and 23 February 2016. As a result, Council Conclusions on the future of the Code of Conduct were adopted on 8 March 2016. By adopting these Council Conclusions, the Council underlined the necessity to increase the transparency of the group on past and ongoing work, whilst stressing the importance to ensure that result-orientated cooperation within the Code of Conduct Group can continue in a confidential manner, and expressed its wish to facilitate the access to information on ongoing and past work in the Group including already public documents, e.g. through a dedicated page on the Council's website and by releasing, to the extent possible, documents related to general guidance notes and to final decisions on individual measures.

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

74. The Code of Conduct Subgroup on anti-abuse launched its work on hybrid mismatches during the Irish Presidency. Following approval by the Council (doc. 11967/09 FISC 96), the Code of Conduct Group agreed in November 2012 (doc. 16488/12 FISC 173) 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.

75. Under the Netherlands Presidency, the Subgroup met once on 27 January 2016 and discussed a guidance and explanatory notes on hybrid permanent establishment (PE) mismatches involving third countries. The latter were approved by the Code of Conduct Group at its meeting of 2 June 2016.

76. The Subgroup is expected to continue working during upcoming Presidencies on remaining cases of hybrid mismatches:
- a) hybrid financial instruments other than dividends/interest;
 - b) hybrid transfers;
 - c) dual resident companies;
 - d) imported mismatches.
77. Nevertheless the Council having agreed, in its conclusions on BEPS in the EU context of 8 December 2015 (doc. 15150/15), that "*where the implementation of an OECD BEPS conclusion is foreseen through EU legislation this process is given priority over possible parallel soft law discussions*", the Code of Conduct Group agreed on 2 June 2016 to wait for the outcome of the legislative process on the proposal for an anti-tax avoidance directive (ATAD) before deciding on possible further works.

c) Other tax coordination issues

78. The Dutch 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)

79. Paragraph 6 of the Council conclusions of 14 May 2013 relates to coordination and cooperation with the OECD and G20 on BEPS:
80. *"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."*
81. 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."*

82. 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."

83. 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). This Roadmap was updated on 8 July 2015 (doc. 10649/15 FISC 93) by the Luxembourg Presidency and on 19 February by the Netherlands Presidency (doc 6039/16 FISC 20).

84. The Netherlands Presidency subsequently brought forward, respectively concluded, the work on all related files as set out above, notably:

- a) the Interest and Royalties Directive recast;
- b) the draft Anti Tax Avoidance Directive (ATAD);
- c) Country-by-country reporting on transfer pricing agreements (DAC4);
- d) the Code of Conduct Group and Subgroup.

The HLWP was regularly updated on progress made.

ii) Tax in non-tax dossiers

85. 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, will continue to ensure that Member States are alerted in a timely manner, including on negotiations of agreements between the EU and third countries.
86. The most recent alerts covered in particular the following issues:
- draft Council Conclusions on the Single Market Strategy for Europe;
 - Proposal for a Regulation on cross-border portability of online content services;
 - Action Plan on building a Capital Markets Union (CMU);
 - Legislative proposal concerning public country by country reporting.
87. An updated overview of tax provisions in non-tax dossiers was discussed at the HLWP meeting of 13 April 2016. At this occasion, several delegations raised concerns about the tax collection impacts of the proposal for a Regulation simplifying the transfer of motor vehicles registered in another Member State within the Single Market. Other delegations suggested a joint working party meeting on the new proposal for public country by country reporting.
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