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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 as mentioned in particular in its conclusions of March and June 2012, May 2013, December 2014 and October 2017.

2. A draft ECOFIN report to the European Council on tax issues was prepared and agreed within the Council High Level Working Party on Tax Questions (HLWP). As agreed, the GSC has made factual updates.

3. The Council approved the report by a written procedure on 27 November 2020 in the context of the Council conclusions[1] 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 (CM 4973/20). The report set out in the Annex to this note is being made available to the European Council.

[1] Doc. 13350/20, point 51.

ANNEX

ECOFIN REPORT TO THE EUROPEAN COUNCIL ON TAX ISSUES

1. This report provides an overview of the progress achieved in the Council during the term of the German 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 Council High Level Working Party on tax issues (HLWP) covering strategic tax policy issues.

2. The report reflects the state of play of relevant Council work and covers issues mentioned in a number of European Council conclusions (in particular of 1-2 March 2012[2], 28-29 June 2012,[3] 22 May 2013,[4] 24-25 October 2013,[5] 19-20 December 2013,[6] 20-21 March 2014,[7] 26-27 June 2014,[8] 18 December 2014,[9] 19 October 2017[10], 20 June 2019[11], 17- 21 July 2020[12] and 1-2 October 2020[13]), the Council conclusions in the VAT area of 2012[14] and of 2016[15], the Council conclusions on "Responding to the challenges of taxation of profits of the digital economy" of 2017[16] as well as Council Conclusions of 2020 on the future evolution of administrative cooperation in the field of taxation in the EU.[17]

[2] Doc. EUCO 4/3/12 REV 3 (items 9 and 21).
[3] Doc. EUCO 76/12, 28/29 June 2012.
[4] Doc. EUCO 75/1/13 REV 1, 22 May 2013.
[5] Doc. EUCO 169/13, 24/25 October 2013.
[6] Doc. EUCO 217/13, 19/20 December 2013.
[7] Doc. EUCO 7/1/14 REV 1, 20/21 March 2014.
[8] Doc. EUCO 79/14, point 2.
[9] Doc. EUCO 237/14, point 3.
[10] Doc. EUCO 14/17, point 11.
[11] Doc. EUCO 9/19, point 3, 20 June 2019.
[12] Doc. EUCO 10/20, points A29 and 147.
[13] Doc. EUCO 13/20, point 15.
[14] Doc. 9586/12.
[15] Doc. 9494/16.
[16] Doc. 15175/17.
[17] Doc. 8482/20.

3. In spite of the hindrances caused by the COVID-19 pandemic, the work during the German Presidency term continued on a number of key files, with the aim of addressing challenges arising from the digitalisation of the economy, "definitive VAT system", the future of VAT rates, update on the EU rules on structures of excise duties on alcohol and updates to the EU list of non-cooperative jurisdictions for tax purposes.

4. More specifically, the Council:

   a) approved Council conclusions on fair and effective taxation in times of recovery, on tax challenges linked to digitalisation and on tax good governance in the EU and beyond. These conclusions cover key issues under discussion in the Council at the end of the German Presidency;[18]

   b) successfully completed the negotiations concerning a proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC7);

   c) adopted the Council Directive amending Directive 2011/16/EU to address the urgent need for deferring certain time limits for the filing and exchange of information in the field of taxation due to the COVID-19 pandemic;[19]

   d) adopted legislative act deferring deadlines in relation to VAT e-commerce package, due to the COVID-19 pandemic;

   e) adopted legislative act for VAT-identification of taxable persons in Northern Ireland;

[18] Doc. 13350/20.

[19] This Directive was adopted at the very end of the Croatian Presidency term and this fact was not covered by the previous report of the ECOFIN to the European Council on Tax Issues.

f) reached agreement on the text of a legislative act regarding temporary measures in relation to value added tax for COVID-19 vaccines and in vitro diagnostic medical devices in response to the COVID-19 pandemic;

g) took stock of the OECD negotiations on solutions to the tax challenges of the digital economy and considered the possible way forward at international level and for the EU.

5. The Code of Conduct Group (business taxation) further continued its work on the various matters falling within its mandate, including on the EU list of non-cooperative jurisdictions for tax purposes, while considering the limitations due to the COVID-19 global pandemic[20], as set out in its six-monthly report.[21] The Group also started to discuss the revision of the mandate.

6. More detailed information on individual dossiers can be found below.

[20] Doc. 8892/20.
[21] Doc. 8891/20.

A. Initiatives in the area of EU tax law

Council conclusions on fair and effective taxation in times of recovery, on tax challenges linked to digitalisation and on tax good governance in the EU and beyond

7. On 15 July 2020, the European Commission presented the "Package for fair and simple taxation", which consists of three documents:

   i) Communication on an 'Action Plan for fair and simple taxation supporting the Recovery Strategy' (doc. ST 9844/20);

   ii) Communication on 'Tax good governance in the EU and beyond' (doc. ST 9845/20);

   iii) Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation (doc. ST 9753/20) ("DAC7")

8. Given the broad scope of tax policy aspects covered in the Commission Communications, Member States deemed appropriate to exchange views on the issues covered in the two Commission Communications in a number of virtual meetings.[22]

9. Following these exchanges and preparatory work, on 27 November 2020 the Council approved Conclusions on fair and effective taxation in times of recovery, on tax challenges linked to digitalisation and on tax good governance in the EU and beyond.[23]

[22] Work on the DAC7 legislative proposal progressed in parallel to these policy discussions (see points 58-62 of this report).
[23] Doc. 13350/20.

Common (Consolidated) Corporate Tax Base

10. As part of relaunching the 2011 Common Consolidated Corporate Tax Base proposal, the Commission put forward proposals for Council Directives on a Common Corporate Tax Base, (CCTB)[24], and on a Common Consolidated Corporate Tax Base (CCCTB)[25]. The CCTB proposal contained common rules for computing the tax base of multinational companies within the EU, whilst the CCCTB proposal complemented the CCTB proposal with the consolidation element.

11. The state of play on these dossiers was summarised in the previous ECOFIN reports to the European Council on tax issues.[26]

12. The German Presidency has conducted consultations with other Member States, including informal exchanges among the Members of the HLWP, which have shown that the CC(C)TB project has to a certain extent been influenced by the economic disturbances caused by the COVID-19 pandemic, as well as the ongoing global debate on the update of the rules of international corporate taxation. The discussions on this file will continue, with the objective towards a conclusion of this work in the Council, as appropriate.

[24] Doc. 13730/16.
[25] Doc. 13731/16.
[26] See, for example, doc. 8891/20, points 7-12, doc. 14863/19, points 7-20.

Tax Challenges of the Digital Economy

13. Despite the COVID-19 pandemic, work continued at G20/OECD Inclusive Framework level to find solutions to the tax challenges of the digitalised economy.

14. In particular, the G20/OECD Inclusive Framework on BEPS at its meeting on 8-9 October 2020 approved for public release two reports on the blueprints on both pillars. These reports on the blueprints indicate, among other things, that Pillar 1 is focused on nexus and profit allocation whereas Pillar 2 (also called GloBE proposal - "Global Anti-Base Erosion Proposal") is focused on a global minimum tax intended to address remaining BEPS issues.

15. The virtual G20 meeting of Finance Ministers and Central Bank Governors on 12-14 October 2020 acknowledged that the COVID-19 pandemic has impacted the work of addressing the tax challenges arising from the digitalisation of the economy and welcomed the reports on the blueprints for Pillar 1 and Pillar 2 that were approved for public release. Building on this solid basis, the G20 Ministers reiterated their commitment to further progress on both pillars and urged the G20/OECD Inclusive Framework on BEPS to address the remaining issues with a view to reaching a global and consensus-based solution by mid-2021.[27]

16. The German Presidency discussed the tax challenges of the digital economy at the informal ECOFIN meeting on 11-12 September 2020 and at the virtual meetings of HLWP on 4 September, 22 October and 20 November 2020 and WPTQ (direct taxation) on 6, 12 and 18 November 2020.

[27] https://g20.org/en/media/Documents/FMCBG%20Communiqu%C3%A9_English_14October2020_700pm.pdf

17. The Chair of the HLWP welcomed the representative of the OECD to the meeting of HLWP on 6 July 2020 for an overview of developments. As follow-up to that intervention, the Chair of HLWP sent a letter to the OECD, expressing the support of the Member States to the OECD process.[28]

18. The German Presidency took stock of the state of play of national digital taxes. The HLWP took note of a table prepared as a result of that exercise and agreed to keep it updated regularly.[29] In that context the HLWP of 6 July 2020 also exchanged views on the US trade investigations into digital taxes in the EU.

19. Following the publication of the reports on the blueprints and the G20 Ministerial communiqué, the German Presidency prepared comprehensive conclusions, which include paragraphs on the taxation of the digital economy.

20. These conclusions were approved by the Council by written procedure on 27 November 2020.[30]

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[28] Doc. WK 7902/2020.
[29] Doc. WK 8252/2020.
[30] Doc. 13350/20.

Value Added Tax (VAT) and excise duties

21. As regards VAT, in 2016, the Council adopted two sets of conclusions: in May 2016[31] the Council responded to the Commission VAT Action Plan - Towards a Single EU VAT area, of 7 April 2016, and in November 2016 the Council expressed its views on improvements to the current EU VAT rules for cross-border transactions.[32]

22. Following up on its VAT Action Plan, the Commission proposed a significant number of legislative proposals in the field of VAT. As a whole, those proposals aim at modernising the VAT system to adapt it to the digital economy and the needs of SMEs, to tackle the VAT gap and improve administrative co-operation in the area of VAT.

23. Building on the progress during the previous Presidency terms[33], the German Presidency continued work on the legislative files in the area of VAT.

24. In the area of excise duties, following the Council conclusions of 2016 regarding Directive 92/83 EEC[34] the work in the Council evolved on the basis of the legislative proposals tabled by the Commission in 2018 concerning the legislative proposal to amend the rules on the structure of excise duty on alcohol.

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[31] Doc. 9494/16.
[32] Doc. 14257/16.
[33] See, for example Doc. 15082/18, points 30 to 111; Doc. 10322/18, points 56 to 100.
[34] Doc. 15009/16.

25. In particular, during the term of the German Presidency, the legislative dossiers at varying stages of progress that were on the table of the Council and/or its preparatory bodies, as appropriate, covered the following areas of VAT and excise duties:

a) Definitive VAT System;

b) VAT rates reform;

c) Identification of taxable persons in Northern Ireland;

d) regarding temporary measures in relation to value added tax for COVID-19 vaccines and in vitro diagnostic medical devices in response to the COVID-19 pandemic;

e) Structures of excise duties on alcohol and alcoholic beverages;

26. More detailed information on individual dossiers in the area of VAT and excise duties can be found further in the text.

27. Moreover, Council conclusions on fair and effective taxation in times of recovery, on tax challenges linked to digitalisation and on tax good governance in the EU and beyond of 27 November 2020 also contain the response of the Council to the measures in the field of VAT and excise duties.

a) *Definitive VAT System*

Background

28. Following up on its VAT Action Plan - Towards a Single EU VAT area - of 7 April 2016, as regards the definitive VAT system (which is the primary policy objective in the VAT area), the Commission chose a two-step legislative approach.[35]

29. As the **first part of the first legislative step**, the October 2017 package of three legislative proposals (the so-called VAT "quick fix" dossier, which consisted of three legislative acts[36] aimed at four short-term improvements (i.e. "quick-fixes") to the current VAT system) contained a number of new provisions on the concept of the certified taxable person (CTP) and the so-called "cornerstones" of the definitive system of VAT (set out as amendments to Article 402 of the VAT Directive).

30. When concluding work on the "VAT quick-fix" legislative package, all Member States agreed in the Council that it was appropriate and necessary to advance the work on the core of the Commission proposals on the VAT "quick-fix", in order to allow for early progress and to solve important issues in the VAT area, while noting that the remaining parts of the proposals relating to the CTP and the text of amendments to Article 402 of the VAT Directive will require further discussion, in the context of other legislative proposals in the area of VAT (proposals on the technical details of the definitive system of VAT / VAT rates)[37].

[35] Doc. 12617/17.
[36] Proposal for a Council Directive amending Directive 2006/112/EC as regards harmonising and simplifying certain rules in the value added tax system and introducing the definitive system for the taxation of trade between the Member States (doc. 12882/17); Proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards certain exemptions for intra community transactions (doc. 12881/17); Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards the certified taxable person (doc. 12880/17) (which was later amended by a legislative proposal set out in doc. 14893/17, by incorporating the provisions on "certified taxable person" into that new proposal to amend Regulation No. 904/2010).
[37] Proposal for a Directive amending Directive 2006/112/EC as regards rates of value added tax.

31. As the **second part of the first legislative step**, in May 2018, the Commission tabled the legislative proposal on detailed technical measures for the operation of the definitive system of VAT (hereafter "Commission proposal"). This proposal was presented by the Commission in more detail at one of the WPTQ meetings during the term of the Bulgarian Presidency.

32. Member States appreciate the initiative taken by the Commission to reach a definitive VAT system.

33. The functioning of the future definitive VAT system, together with any accompanying measures that might be agreed, as appropriate, will highly depend on the specifics of its design.

34. Instead of an "Article by Article" analysis of the proposal, which would not have generated much progress on this dossier given the scale, complex nature and sensitivity of the proposal, the discussions have focused on six key components[38]:

    i) taxation in the Member State of destination;

    ii) change of the rules for cross-border B2B supplies of goods within the EU towards having a single B2B transaction (intra-Union supply of goods in the Member State of destination) instead of the current two transactions (exempt intra-Community supply of goods in the Member State where the dispatch or transport begins and intra-Community acquisition in the Member State of destination);

[38] Doc. 15082/18, points 57 to 88.

iii) design and functioning of the provisions relating to the notion of CTP and his certification;

iv) rules linked to the person liable to pay the VAT for supplies of goods to CTPs;

v) rules linked to the person liable to pay the VAT for supplies of goods to non-CTPs including accompanying measures; and

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

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

State of play

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

Way forward

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

37. As already indicated by the Council[39], the best way forward is to continue focusing on the key elements of the Commission proposal and the analysis of options of accompanying measures.

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

    Many Member States consider that the reporting obligations worthy to be analysed could include automated transaction based reporting for both parties of the cross-border transaction. According to a number of Member States it would be useful to explore whether this measure could form a new tool for detecting VAT fraud and whether it could be adopted irrespective of who is liable to pay the VAT.

    Member States underline the importance that any of these additional measures should not have disproportionate effect on compliance costs of businesses and tax authorities.

[39] Doc. 15082/18, points 89 to 91.

39. Member States agree that the next step could be to continue further exploring accompanying measures, also taking into consideration possible broader application of new technologies. Because these measures were not included in the Commission proposal and taking into account the complexity of these measures and the various alternatives, many Member States invited the Commission to explore these measures further and consult the Member States. The results of this analysis could contribute to the discussions at the WPTQ. However, for the time being, with a view to agreeing on a VAT system that would be better than the temporary one, it seems appropriate to consider a variety of options of which a switch to the supplier's liability is one.

40. Further work on the definitive VAT system should continue while not preventing or slowing down efforts to improve the current VAT system.

b) *VAT rates reform*

41. On 18 January 2018, the Commission issued a proposal for a Directive amending Directive 2006/112/EC as regards rates of value added tax.[40] The objective of this legislative proposal is to introduce the rules on setting of VAT rates across the EU, with effect from the entry into force of definitive arrangements for the taxation of trade between Member States.

[40] Doc. 5335/18.

42. In summary, and most essentially, with this specific legislative proposal, the Commission proposes to:

i) amend the EU rules on setting of reduced VAT rates (e.g. abolish current transitional provisions allowing to temporarily derogate from the general rules; revise Article 98 of the VAT Directive);

ii) grant Member States more freedom in their setting of rates (however Member States would have to ensure that their weighted average VAT rate exceeds 12% at any given time);

iii) introduce a "negative list" of goods and services on which application of reduced rates is not permissible (instead of the current "positive" list).

43. The Commission proposal was examined during the term of the Bulgarian, the Romanian and the Finnish Presidencies.

44. To be noted, some Member States see the need for the proposal for VAT rates reform to be discussed also in the context of the legislative proposal for a Definitive VAT system, as both legal texts, once agreed, are part of a coherent system of VAT and as the derogations relating to goods and services would cease to apply upon introduction of the definitive arrangements referred to in Article 402 of the VAT Directive. Some Member States underline that the VAT rates proposal should be given a priority and discussed and adopted independently.

45. The technical discussions continued under the Croatian Presidency exploring further the option of a positive list, the use of CN[41] codes (where possible) for goods and CPA[42] codes for services and the principles and conditions of applying VAT reduced rates. Suggestions were also made on advancing the European Green Deal by introducing a more beneficial VAT treatment for supplies with low CO_2 emissions.[43]

46. Under the German Presidency technical discussions continued. The focus of the discussion has been on the basic strategy for going forward and on possible design principles of a positive list.

c) *VAT e-commerce package*

47. On the basis of requests by a number of Member States and business associations, the Commission put forward on 8 May 2020 proposals[44] in relation to a postponement of the entry into application of the VAT e-commerce package. Following the preparatory work, the legislative acts were adopted by the Council on 20 July 2020.[45]

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

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

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

[44] Doc. 7886/20.

[45] Council Decision (EU) 2020/1109 of 20 July 2020 amending Directives (EU) 2017/2455 and (EU) 2019/1995 as regards the dates of transposition and application in response to the COVID-19 pandemic, OJ L 244, 29.7.2020, p. 3–5.
Council Regulation (EU) 2020/1108 of 20 July 2020 amending Regulation (EU) 2017/2454 as regards the dates of application in response to the COVID- 19 pandemic, OJ L 244, 29.7.2020, p. 1–2.

d) *Identification of taxable persons in Northern Ireland*

48. As from 1 January 2021, the EU VAT legislation will no longer apply to the United Kingdom. However, on the basis of the Protocol on Ireland/Northern Ireland, which is part of the Withdrawal Agreement, Northern Ireland will remain under the EU VAT legislation regarding goods. It will be essential to identify a taxable person carrying out transactions in Northern Ireland. Against this background the Commission tabled on 7 August 2020 a proposal for an amendment of the VAT Directive[46]. Following the preparatory work, the legislative act was adopted by the Council on 19 November 2020.

e) *Temporary measures in relation to value added tax for COVID-19 vaccines and in vitro diagnostic medical devices in response to the COVID-19 pandemic*

49. In order to respond to the challenges of the pandemic, a proposal for temporary benefits was discussed and agreed[47] under the German presidency. This can result in a cost reduction for the budgets concerned with regard to the beneficiaries.

[46] Doc. 10109/20.
[47] Doc. 13249/20.

f) *Structures of excise duties on alcohol and alcoholic beverages*

50. In response to Council Conclusions of 6 December 2016[48], on 25 May 2018 the Commission submitted a proposal for a Council Directive amending Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages.[49]

51. In the course of negotiations[50] it became apparent that a variety of considerations, such as health issues and efficient collection from alcohol excise should be taken into account, in order to reach a compromise that could be acceptable to all delegations.[51]

52. The political agreement on this dossier was reached by the Council on 24 June 2020 (at the end of the term of the Croatian Presidency)[52]. On 29 July 2020 the Council adopted Directive (EU) 2020/1151 amending Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages.[53]

[48] Doc. 15009/16.
[49] Doc. 9570/18 + ADD 1, ADD 2.
[50] Doc. 14863/19, points 85 to 91.
[51] Doc. 9347/19, point 5.
[52] Doc. 8946/20.
[53] OJ L 256, 5.8.2020, p. 1.

g) *Financial Transaction Tax (FTT)*

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

54. At this stage, 10 Member States continue to participate in the enhanced co-operation in the area of FTT: Austria, Belgium, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain (hereafter referred to as "participating Member States").

55. The main aspects of the ongoing negotiations on this dossier were summarized in the previous ECOFIN report to the European Council on tax issues.[54] To be noted, a large number of important considerations have to be taken into account in the discussions among the participating Member States, before any consensus is presented to all Member States for an inclusive discussion. Such an inclusive debate among all Member States has to take place following the required procedural steps recalled in the previous ECOFIN report to the European Council on tax issues.

56. To be noted, the European Council in its conclusions of 17-21 July 2020 indicated that "the Union will, in the course of the next MFF, work towards the introduction of other own resources, which may include a Financial Transaction Tax"[55].

57. In the light of the foregoing, as already indicated in the December 2016 ECOFIN report to the European Council on tax issues[56], further work of 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.

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[54] See doc. 8891/20, points 67-70, doc. 14863/19, points 104-110.
[55] Doc. EUCO 10/20, point A29.
[56] Doc. 15254/16, point 45.

B. Administrative cooperation

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

58. The Council on 29 May 2020 approved the Conclusions on the future evolution of administrative cooperation in the field of taxation in the EU.[57]

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

60. In response to these Conclusions, as well as part of the Package for fair and simple taxation supporting the recovery of the EU[58], the Commission, on 16 July 2020 tabled a proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC7)[59].

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[57] Doc. 8482/20.

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

[59] Doc. 9753/20.

61. The key objectives of this legislative proposal are twofold:

- to extend the scope of the automatic exchange of information under DAC to the information reported by digital platform operators. Expanding administrative cooperation to this new area is aimed at helping Member States to address the challenges posed by the digitalisation of the economy, given that the characteristics of the digital platform economy make the traceability and detection of taxable events by tax authorities very difficult and lead to a shortfall of tax revenues;
- to amend a number of existing provisions of DAC on exchange of information. In particular, the proposal seeks to improve the notion of foreseeable relevance of information, provisions on requests for information for a group of taxpayers, as well as the rules for using simultaneous controls and allowing the presence of officials of a Member State during an enquiry in another Member State. Moreover, the proposal seeks to insert provisions setting out the framework for the competent authorities of two or more Member States to conduct joint audits.

62. Following the preparatory work, the compromise text of the draft Directive was endorsed by the Committee of Permanent Representatives[60] and the Ministers of the Economy and Finance were informed of these developments in the informal videoconference on 1 December. The Directive is expected to be adopted by the Council at a later stage, once the opinions of the European Parliament and of the European Economic and Social Committee have been received and the legal-linguistic revision has taken place.

[60] Doc. 13130/20 REV 1.

b) **Deferral of certain provisions of DAC because of the COVID-19 pandemic ("DAC2 and DAC6 deferral")**

63. As a consequence of the outbreak of the COVID-19 pandemic, many Member States have encountered serious difficulties[61] in meeting the existing deadlines scheduled for the 2nd semester of 2020 relating to:

   a) the reporting and the automatic exchange of financial account information in accordance with Article 8(3a) and (6) (inserted into DAC by Council Directive 2014/107/EU (DAC 2)), and
   b) the reporting and information exchange requirements relating to cross-border arrangements in accordance with Article 8ab(1), (2), (7), (12) and (18) (inserted into DAC by Council Directive (EU) 2018/822 (DAC 6)).

64. In response to these circumstances, the Commission on 8 May 2020 issued a proposal for a Council Directive amending Directive 2011/16/EU to address the urgent need for deferring certain time limits for the filing and exchange of information in the field of taxation due to the COVID-19 pandemic[62].

65. Following the preparatory work, the Council on 24 June 2020 adopted the Directive (EU) 2020/876 amending Directive 2011/16/EU to address the urgent need to defer certain time limits for the filing and exchange of information in the field of taxation because of the COVID-19 pandemic.[63]

[61] Doc. 8891/20, points 73-76.
[62] Doc. 7883/20.
[63] OJ L 204, 26.6.2020, p. 46.

c) Fiscalis

66. On 8 June 2018 the Commission submitted a proposal for a Regulation of the European Parliament and of the Council establishing the "Fiscalis" programme for cooperation in the field of taxation.[64] The proposal lays down the objectives, budget, funding forms and rules for the period 2021-2027 for the Fiscalis programme for cooperation in the field of taxation.

67. The proposal was examined in the Working Party on Tax Questions (Fiscalis). On 28 November 2018 Permanent Representatives Committee agreed on a partial general approach with a view to commencing negotiations with the European Parliament in the context of the ordinary legislative procedure.[65]

68. The European Economic and Social Committee delivered its opinion on 17 October 2018.[66]

69. In the European Parliament, the Committee report was voted in the ECON Committee on 4 December 2018 and confirmed in the plenary in January 2019.

70. Two trilogues were held on 23 January and 21 March 2019 with a number of technical meetings in between those trilogues.

71. The outcome of negotiations was brought for state of play to Permanent Representatives Committee on 27 March 2019. The text includes bracketed provisions that are still under consideration and that form part of horizontal negotiations on the MFF.

[64] Doc. 9932/18.
[65] Doc. 14208/18 and doc. 14209/18.
[66] Doc. 14207/18.

72. The European Parliament voted on its position in the first reading on 17 April 2019. On issues where co-legislators do not agree (e.g. implementing and delegated acts, budget), the European Parliament has taken its own position for the first reading.

73. The German Presidency resumed informal contacts with the European Parliament in order to explore the way forward on the open issues which are not covered by horizontal discussions.

74. Negotiations are expected to resume in 2020, once open issues have been solved between the co-legislators.

C. Tax Policy Coordination

75. Important work in the area of tax policy coordination (outside of the scope of EU legislation in tax area) has been taken forward, as set out below.

a) Code of Conduct Group (business taxation)

76. The Code of Conduct Group (COCG) held informal videoconferences of the main group on 8 July 2020, 13 October and on 13 November 2020; informal videoconferences of the subgroup on internal matters on 23 October and 3 November 2020.[67] In addition, Fiscal Attachés met on 15 July, 7 September and 21 September 2020 in order to discuss EU-RESTRICTED documents related to the EU list of non-cooperative jurisdictions for tax purposes. The second annual revision of the EU list of non-cooperative jurisdictions for tax purposes was adopted by the Council by written procedure on 6 October 2020 and published in the Official Journal on 7 October 2020.[68]

77. The Chair of the Code of Conduct Group participated in the virtual meeting of the Forum on Harmful Tax Practices on 19-20 October 2020 and intervened in order to provide an overview of the COCG recent work.

78. The German Presidency in coordination with the Chair of COCG launched discussions on the revision of the mandate of COCG.

[67] Doc. 13151/2020 + ADD1-ADD5 Code of Conduct Group report.
[68] OJ C 331, 7.10.2020 p. 3-5.

b) International developments

79. The HLWP was regularly informed of relevant international developments in the area of tax policy, notably in relation to the meetings of the G20 Finance Ministers and the OECD/G20 Inclusive Framework on BEPS.

80. On 19 November 2013, the HLWP agreed that tax provisions in non-tax dossiers leading to any changes in Member States' tax laws or administrative practices or having other consequences on taxation should fall under an 'informal alert mechanism'. The systematic approach of bringing these cases to the attention of tax experts, with the support of the General Secretariat, has continued to ensure that Member States are alerted in a timely manner, including on negotiations of agreements between the EU and third countries. Issues which were monitored by HLWP were i.a.: the European Securities and Markets Authority´s report on Cum/Ex, Cum/Cum and withholding tax reclaim schemes, Communication from the Commission "A Capital Markets Union for people and businesses - new action plan", implementation of the US FATCA (exchange of letters with the US authorities), state of play on the Directive on public country-by-country reporting (pCBCR).