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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 as mentioned, in particular in its conclusions of March and June 2012, May 2013, December 2014 and October 2017.
2. A draft ECOFIN report to the European Council on tax issues was prepared and agreed in the Council High Level Working Party on Tax Questions (HLWP) on 22 November 2019, for submission to the Council via Coreper.
3. ECOFIN on 5 December 2019 endorsed the report as set out in the Annex, and agreed to forward it to the European Council on 12 December 2019.

**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 Finnish Presidency, as well as an overview of the state of play of the most important dossiers under negotiations in the area of taxation.
2. The report reflects the state of play of relevant Council work and covers various issues mentioned in various European Council conclusions (1-2 March 2012<sup>1</sup> devoted to growth, as well as in the European Council conclusions of 28-29 June 2012,<sup>2</sup> 22 May 2013,<sup>3</sup> 24-25 October 2013,<sup>4</sup> 19-20 December 2013,<sup>5</sup> 20-21 March 2014,<sup>6</sup> 26-27 June 2014,<sup>7</sup> 18 December 2014,<sup>8</sup> 19 October 2017<sup>9</sup> and 20 June 2019<sup>10</sup> the Council conclusions in the VAT area of 2012<sup>11</sup> and of 2016<sup>12</sup> as well as the Council conclusions on "Responding to the challenges of taxation of profits of the digital economy" of 2017).<sup>13</sup>

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

<sup>2</sup> Doc. EUCO 76/12, 28/29 June 2012.

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

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

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

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

<sup>7</sup> Doc. EUCO 79/14, point 2.

<sup>8</sup> Doc. EUCO 237/14, point 3.

<sup>9</sup> Doc. EUCO 14/17, point 11.

<sup>10</sup> Doc. EUCO 9/19, point 3, 20 June 2019.

<sup>11</sup> Doc. 9586/12.

<sup>12</sup> Doc. 9494/16.

<sup>13</sup> Doc. 15175/17.

3. The Finnish Presidency devoted particular attention to digital taxation, rules on mandatory transmission and exchange of VAT-relevant payment information, simplification of VAT rules for small enterprises, VAT and excise duty exemption as regards EU defence effort, recast of EU general arrangements in the area of excise duties and intra-EU movements of excise goods, update on the EU rules on structures of excise duties on alcohol, updates to the EU list of non-cooperative jurisdictions for tax purposes as well as the way forward on the EU energy taxation.
4. More specifically, the Council:
  - a) reached a general approach on the legislative package on mandatory transmission and exchange of VAT-relevant payment information, which will consist of a Council Directive amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers and Council Regulation amending Regulation (EU) No. 904/2010 as regards measures to strengthen administrative co-operation in order to combat VAT fraud;
  - b) reached a general approach on the draft Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises;
  - c) reached a general approach on the proposal for a Council Directive amending Directive 2006/112 EC on the common system of VAT and Directive 2008/118/EC concerning the general arrangements for excise duty as regards defence effort within the Union framework;
  - d) adopted the VAT E-commerce implementing package;
  - e) reached a political agreement on the Directive on general arrangements for excise duty and the Regulation on administrative cooperation;

- f) held a discussion on Structure of excise duties on alcohol: Amendments to the Council Directive;
  - g) adopted Council conclusions on the EU energy taxation framework;
  - h) adopted Council conclusions on the European Court of Auditors' Special report on E-commerce;
  - i) discussed digital taxation in order to take stock of the OECD negotiations on solutions to tax challenges of digital economy and considered the way forward 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. The results of the work of the Group were submitted, in coordination with the High Level Working Party on Tax Questions (HLWP), to ECOFIN on 5 December 2019.<sup>14</sup>
6. More detailed information on individual dossiers can be found below.

**A. Initiatives in the area of EU tax law**

**Common (Consolidated) Corporate Tax Base**

7. 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, hereafter "CCTB"<sup>15</sup>, and on a Common Consolidated Corporate Tax Base, hereafter "CCCTB"<sup>16</sup>. The CCTB proposal lays down common rules for computing the tax base of multinational companies within the EU, whilst the CCCTB proposal complements the CCTB proposal with the consolidation element.

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<sup>14</sup> Doc. 14114/19 + ADD 1-10.

<sup>15</sup> Doc. 13730/16.

<sup>16</sup> Doc. 13731/16.

8. On 6 December 2016, the ECOFIN Council took the view<sup>17</sup> that work on the CCTB proposal should focus as a priority on the "*elements of a common tax base*", in particular chapters I to V, whilst the CCCTB proposal would only be examined at technical level once discussions on the CCTB proposal will have been successfully concluded.
9. The Maltese Presidency subsequently focused technical discussions on the novel elements of the CCTB proposal, i.e. its tax incentives: the super-deduction for research and development expenses to support innovation (Article 9), the new allowance for growth and investment to address the debt financing bias (Article 11), and the temporary loss relief (Article 42). The issue of the right mix between harmonisation and flexibility in the context of increased international competition being constantly resurfacing, the ECOFIN Council held a policy debate on the matter on 23 May 2017. On this occasion, several Ministers supported the objective of an as broad as possible corporate tax base to preserve national tax revenues.
10. During the Estonian and Bulgarian Presidencies, the Working Party on Tax Questions (WPTQ) concluded the article-by-article examination of all chapters of the CCTB proposal, and a debate was initiated on the extent to which the CCTB proposal could provide an appropriate policy response to the direct taxation challenges posed by the digital economy.
11. The Bulgarian Presidency also developed a first compromise text on CCTB chapter IV (depreciation rules) and initiated a joint evaluation of the impact of certain articles of the CCTB proposal on national tax revenues using a common methodology and common hypotheses, as well as discussions on horizontal issues such as the level of harmonisation, scope and flexibility for Member States.

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<sup>17</sup> Doc. 15315/16.

12. The Austrian Presidency discussed the results of the abovementioned national tax revenue assessments at HLWP level, which allowed to provide guidance to ongoing discussions at technical level in the WPTQ. On this basis, the Austrian Presidency put forward compromise texts on CCTB chapters I to V and proposed to:
- a) extend the compulsory scope of the CCTB to cover all corporate income taxpayers;
  - b) discussed the proposed tax incentives in CCTB Articles 9 (3), 11 and 42 at a later stage;
  - c) also postpone discussions on CCTB Article 5 to a later stage considering that work is also ongoing on this in the OECD.
13. The Romanian Presidency continued work on this file in the same direction as the previous Presidency and elaborated compromise texts on chapters I to V. Since discussions on the technical core of these chapters could not deliver further progress, the Presidency extended work at technical level to chapters VI to IX and initiated a debate on how to tackle the overlap between ATAD and CCTB in respect of anti tax avoidance rules.
14. The views of delegations however continued to diverge on the cornerstone issue of whether or not to extend the CCTB scope to all corporate income taxpayers, with a majority of delegations opposed to such extension, undermining further progress at technical level.
15. The Finnish Presidency, with the agreement of the HLWP in July 2019, carried on work at technical level focusing on the provisions that are not directly affected by the issue of scope, i.e. selected Articles in Chapters II-III-IV-VII-VIII-X, in particular the issues of leasing and the treatment of transparent entities. It also discussed the need for a provision on transfer pricing.

16. The Presidency facilitated the debate and analysis on the complex issue of taxation of leasing. Several delegations supported a model where the legal owner would primarily have the right for depreciations and the Presidency started discussions on the relevant Article on this basis. The Presidency also suggested exploring the tax treatment of certain situations where the economic owner could have the right to depreciate. Several delegations considered it worthwhile to continue the work in this direction, while recognizing that many details would still need to be considered further.
17. Chapter X on transparent entities was examined in depth. The Presidency elaborated the content of the proposed rules and the different approaches to tax classification under Articles 62 and 63. Given that there is no uniform approach in the domestic legislation of Member States on this matter, some delegations highlighted the need to further examine the implications of the approaches set out in the Directive.
18. As regards the issue of transfer pricing adjustments, the Presidency facilitated discussions on whether there should be specific Article on this in the CCTB or not. Several delegations expressed the view that it is preferable to have such an article or at least a reference to the arm's length principle in the Directive in line with OECD guidelines. Some delegations were of the view that national provisions would be sufficient.
19. At the HLWP of July 2019, it was agreed that it was too early to discuss how the ongoing OECD work could possibly be reflected in the CCTB proposal. The Presidency closely followed the discussions on international taxation and provided an update on the matter in the working party for CCTB.
20. The outcome of the discussions on the CCTB proposal is reflected in the last Presidency compromise text.<sup>18</sup>

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<sup>18</sup> Doc. 14291/19.

## Digital taxation package

21. Following the conclusions of the Council of 5 December 2017 on responding to the challenges of taxation of profits of the digital economy, the Commission presented its "digital taxation package" on 21 March 2018:
- i) a proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence (based on TFEU Article 115);
  - ii) a Commission recommendation relating to the corporate taxation of a significant digital presence;
  - iii) a proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services (based on TFEU Article 113);
  - iv) a Communication "Time to establish a modern, fair and efficient taxation standard for the digital economy".
22. The package was examined in the Council during the Bulgarian, Austrian and Romanian Presidencies as a matter of priority. At the outset discussions focused on the proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services (further referred to as "DSTD").
23. The Austrian Presidency brought the DSTD to the ECOFIN Council on 4 December 2018 with a view to a general approach.<sup>19</sup> The Austrian Presidency presented a compromise text which did not gain the necessary support and was not discussed in detail. Instead, it was agreed to explore a possible instrument with a narrower scope. The text was subsequently re-drafted focusing on revenues resulting only from the provision of targeted digital advertising services - the common system of a digital advertising tax (DAT).

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<sup>19</sup> Doc. 14885/18.



24. On 12 March 2019 the Romanian Presidency brought the DAT to the ECOFIN Council for political agreement. There was no agreement in the Council and the Presidency suggested for work to continue on the basis of a two-track approach:
- a) The Council and the Member States jointly continue to work towards an agreement on a global solution at OECD level by 2020 to address the tax challenges of the digitalization of the economy. The Presidency will do its utmost to facilitate discussions while examining also the proposal on the Significant Digital Presence.
  - b) In the event that by the end of 2020 it appears that the agreement at OECD level is bound to take more time, the Council could, as necessary, revert to discussing DAT/DSTD and the possible EU approach to the tax-related challenges arising from digitalisation.
25. Ministers asked the experts to assess the progress made at international level regularly, to keep the Ministers informed and, if needed, recommend any possible further EU action.

### **Developments at international level with regard to digital taxation**

26. Work is ongoing at G20/OECD level to find solutions to the challenge of taxing digitalized economy. OECD published an interim report in March 2018 and has mobilized most of its subsidiary bodies in the field of taxation to produce a final report by 2020, with an outline of the key elements at the beginning of 2020. Work is ongoing on the basis of a program of work adopted by the OECD Inclusive Framework in May 2019. It sets out the two pillars of work on which OECD will focus.
27. The ECOFIN Council on 17 May 2019 discussed digital taxation in the international context on the basis of a Presidency note. The Ministers supported discussions at EU level in order to exchange views on the issues under negotiation in the OECD, especially as regards assessing the impact of OECD policy options.

28. In line with the 17 May 2019 ECOFIN discussions, the Finnish Presidency dealt with the topic at technical level. Eight rounds of discussion were held: meetings of the Working Party on Tax Questions (digital taxation) (WPTQ) on 18 July, 11 October, 25 October and 25 November, the Fiscal Attachés meeting of 25 September and the meeting of the High Level Working Party on Taxation (HLWP) on 12 July, 28 October and 22 November 2019.
29. In the meantime, at the level of the OECD, the OECD Secretariat has come up with a proposal for a unified approach to pillar 1. A summary of the proposal was released for public consultation<sup>20</sup> on 9 October 2019 and the Secretary General has prepared a report to G20 Ministers for their 18-19 October 2019 meeting.<sup>21</sup> Public consultation meeting was held on 21-22 November 2019 on pillar 1.
30. On pillar 2 work is continuing at technical level. Pillar 2 was released for public consultation on 8 November 2019<sup>22</sup> and a public consultation meeting is scheduled for 9 December 2019 on pillar 2 to get input from stakeholders.
31. The Finnish Presidency brought the matter to ECOFIN Council on 8 November 2019. The Presidency invited the ECOFIN Council to discuss the state of play at the EU level as well as the way forward in light of the dynamic nature of the OECD work.

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<sup>20</sup> <http://www.oecd.org/tax/oecd-leading-multilateral-efforts-to-address-tax-challenges-from-digitalisation-of-the-economy.htm>

<sup>21</sup> <http://www.oecd.org/tax/oecd-secretary-general-tax-report-g20-finance-ministers-october-2019.pdf>

<sup>22</sup> <https://www.oecd.org/tax/beps/public-consultation-document-global-anti-base-erosion-proposal-pillar-two.pdf.pdf>

32. The way forward proposed by the Presidency as follows:
- before the end of the year, examine initial findings on EU law compatibility of the solutions discussed at OECD level, building on the work done by the Commission on this;
  - work on impact analyses should continue as a priority and to that end Member States should cooperate with the Commission to the extent possible;
  - certain elements discussed at OECD level should be examined at EU level in order to find commonalities for the EU Member States;
  - the relevant Council preparatory bodies should be tasked for the above-mentioned priorities to carry out the work under the lead of the Presidency.
33. At the ECOFIN Council on 8 November 2019 there was overall support for the Presidency's way forward. The HLWP and WPTQ were tasked with continuing work on this in a proactive way.

## Value Added Tax (VAT) and excise duties

34. As regards VAT, in 2016, the Council adopted two sets of conclusions: in May 2016<sup>23</sup> 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.<sup>24</sup>
35. 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. Building on the progress during the previous Presidency terms<sup>25</sup>, the Finnish Presidency continued work on the legislative files in the area of VAT.
36. In the area of excise duties, following the Council conclusions of 2016 regarding Directive 92/83 EEC<sup>26</sup> and of 2017 regarding Directive 2008/118/EC<sup>27</sup>, the work in the Council evolved on the basis of the legislative proposals tabled by the Commission in 2018 concerning the legislative package on the general arrangements on excise duty, as well as on the legislative proposal to amend the rules on the structure of excise duty on alcohol.
37. In particular, during the term of the Finnish Presidency, the legislative dossiers 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) VAT e-commerce implementing package;

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<sup>23</sup> Doc. 9494/16.

<sup>24</sup> Doc. 14257/16.

<sup>25</sup> See, for example, doc. 15082/18, points 30 to 111; doc. 10322/18, points 56 to 100.

<sup>26</sup> Doc. 15009/16.

<sup>27</sup> Doc. 14481/17.

- d) Mandatory transmission and exchange of VAT-relevant payment information;
- e) Simplification of VAT rules for small enterprises;
- f) General arrangements for excise duty;
- g) Structures of excise duties on alcohol and alcoholic beverages;
- h) Amendment of EU rules on VAT and excise duties as regards EU defence effort.

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

a) Definitive VAT System

### Background

39. 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.<sup>28</sup>

40. 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<sup>29</sup> 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 tax payer (CTP) and the so-called "cornerstones" of the definitive system of VAT (set out as amendments to Article 402 of the VAT Directive).

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<sup>28</sup> Doc. 12617/17.

<sup>29</sup> 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).

41. 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)<sup>30</sup>.
42. 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.
43. Member States appreciate the initiative taken by the Commission to reach a definitive VAT system.
44. 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.

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<sup>30</sup> Proposal for a Directive amending Directive 2006/112/EC as regards rates of value added tax.

45. 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<sup>31</sup>:
- 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);
  - 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").
46. 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**

47. 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.

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<sup>31</sup> Doc. 15082/18, points 57 to 88.

48. Member States agree that the benefits of the definitive VAT system should outbalance its costs. The new system should effectively result in reduction of risks of tax fraud, avoidance and evasion, thus having positive effects on tax revenues, and should have positive or at least proportionate effect on compliance costs of businesses and tax authorities, while observing the principle of neutrality of VAT. Supplementary administrative costs to tax authorities, if any, should effectively contribute to outweighing risks of tax fraud, avoidance, evasion or revenue loss, and be instrumental in increasing tax compliance.
49. The Council has already in its Conclusions in 2012 and 2016 stated that the principle of “taxation in the Member State of origin of the supply of goods or services”, as envisaged in Article 402 of the VAT Directive, should be replaced by the principle of “taxation in the Member State of destination” for the definitive VAT system for B2B transactions. Member States emphasise that the work on this proposal should be carried out with this political guidance in mind.
50. Member States agree, essentially, to build on the idea of having a single cross-border B2B transaction instead of two.
51. The majority of the Member States oppose the idea of introducing a concept of a certified taxable person and to apply different rules dependent on whether the customer is a CTP or not. Many Member States expressed concerns about the possible complexity and its negative effects on businesses and tax authorities, as well as potential neutrality issues. However, few Member States supported the notion of a CTP and the application of reverse charge as regards supplies to CTPs.



52. Member States strongly oppose the abolition of the recapitulative statement requirement for intra-Union supplies of goods, if there is no effective replacement of this measure. According to a number of Member States one possible replacement worthwhile to be further analysed could be an automated transaction based reporting system where the tax authorities would filter the necessary VIES data from the data it receives from the taxable persons, whereas some Member States do not want to single out any specific possibility at this stage.
53. The majority of Member States are concerned about potential negative effects of the supplier's liability, such as administrative burden and costs for businesses, burden and costs for tax authorities, revenue losses in cases of insolvency and/or negative impact due to other forms of fraud. A number of Member States have voiced concerns that they may have difficulties in ensuring collection of tax from non-established suppliers while having to refund input VAT to customers.

In the view of almost all Member States the proposed switch to supplier's liability, if agreed, should be supplemented with solid and proportionate accompanying safeguard measures to the Commission proposal.

54. Some Member States have a reservation on the proposal as regards its effect on their existing derogations.

### **Way forward**

55. Member States agree that this dossier still requires thorough technical analysis before the final policy choices are made.
56. As already indicated by the Council<sup>32</sup>, the best way forward is to continue focusing on the key elements of the Commission proposal and the analysis of options of accompanying measures.

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<sup>32</sup> Doc. 15082/18, points 89 to 91.

57. 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.

58. 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.

59. Further work on the definite VAT system should not prevent or slow down efforts to improve the current VAT system.

b) VAT rates reform

60. On 18 January 2018, the Commission issued a proposal for a Directive amending Directive 2006/112/EC as regards rates of value added tax.<sup>33</sup> 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
61. 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).
62. The technical examination of this file was started during the term of the Bulgarian Presidency. The Romanian and the Finnish Presidencies brought further technical examination of the Commission proposal.
63. To be noted, some Member States see the need that the proposal for VAT rates reform has 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.

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<sup>33</sup> Doc. 5335/18.

64. During the technical discussions, the necessity was underlined of developing a WEB portal containing all the VAT reduced rates EU wide, in order to facilitate the trade between Member States. Several Member States support a "positive list" instead a "negative list" as it is provided in the current Directive proposal.

c) *VAT e-commerce implementing package*

65. On 11 December 2018 the Commission submitted to the Council the following two legislative proposals:

- a) a proposal for a Council Directive amending Council Directive 2006/112/EC of 28 November 2006 as regards provisions relating to distance sales of goods and certain domestic supplies of goods<sup>34</sup>; and
- b) a proposal for a for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods.<sup>35</sup>

66. The aim of these two proposals is to lay down detailed rules needed to ensure the functioning of the new VAT rules for e-commerce following the amendments introduced by Council Directive (EU) 2017/2455 ("the VAT e-commerce Directive")<sup>36</sup>, which will come into force in January 2021.

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<sup>34</sup> Doc. 15471/18.

<sup>35</sup> Doc. 15472/18.

<sup>36</sup> OJ L 348, 29.12.2017, p. 7.

67. On 12 March 2019 the Council (Ecofin) reached a general approach on the Council Directive amending Council Directive 2006/112/EC of 28 November 2006 as regards provisions relating to distance sales of goods and certain domestic supplies of goods and the Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods<sup>37</sup>.

68. The Council adopted these two legislative acts on 22 November 2019.

d) Mandatory transmission and exchange of VAT-relevant payment information

69. In December 2018, the Commission tabled a legislative package consisting of two proposals:

- i) Directive amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers,<sup>38</sup>
- ii) Regulation amending Regulation (EU) No. 904/2010 as regards measures to strengthen administrative co-operation in order to combat VAT fraud.<sup>39</sup>

70. These two legislative proposals are aimed at facilitating tax fraud detection by the authorities of Member States and at complementing the current VAT regulatory framework as recently modified by the VAT E-commerce Directive. The objective of the proposals is to put in place EU rules which will enable Member States to collect in a harmonised way the records made electronically available by the payment service providers, to set up a new central electronic system for the storage of the payment information and for the further processing of this information by anti-fraud officials in the Member States within the Eurofisc framework (Eurofisc is the network for the multilateral exchange of early-warning signals to fight VAT fraud, established pursuant to Chapter X of Regulation (EU) No 904/2010).

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<sup>37</sup> Doc. 7245/19.

<sup>38</sup> Doc. 15508/18.

<sup>39</sup> Doc. 15509/18.

71. The Commission presented the proposals during the Austrian Presidency and the technical examination of this file started during the term of the Romanian Presidency.
72. The Finnish Presidency took forward the work on this dossier at several WPTQ meetings and, at the meeting of 8 November 2019, the ECOFIN Council reached a general approach on this legislative package.<sup>40</sup>

e) *Simplification of VAT rules for small enterprises*

73. In January 2018, the Commission tabled the legislative proposal for a Directive amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises.<sup>41</sup>
74. In the view of the Commission, the revision of rules applicable to SMEs was dictated by the following three main reasons:
- i) despite the fact that Member States may exempt SMEs from VAT - an option that is widely used - SMEs continue to suffer from disproportionate VAT compliance costs due to how the SME exemption is designed;
  - ii) the current system has distortive effects on competition on both domestic and EU markets;
  - iii) the review provides the opportunity to encourage voluntary compliance and therefore help reduce revenue losses due to non-compliance and VAT fraud.

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<sup>40</sup> Doc. 13519/19.

<sup>41</sup> Doc. 5334/18.

75. The Commission proposal consists of
- i) revision of the rules on VAT exemption for small enterprises and
  - ii) simplification of VAT obligations for both exempt and non-exempt small enterprises.
76. Technical examination of this file started during the term of the Bulgarian Presidency and continued under the Austrian and Romanian Presidencies.
77. During the negotiations on this dossier it became apparent that "appropriate balance will have to be obtained by providing a fair and proportionate simplification of VAT obligations for small enterprises, while ensuring that appropriate measures of administrative co-operation (including IT solutions) between tax authorities of Member States are in place, so that the modified scheme for small enterprises is applied correctly, and does not lead to weakened tax control and increase of risks of VAT fraud/evasion."<sup>42</sup> With this objective in mind, amendments to the Regulation (EU) No. 904/2010 on administrative co-operation in the field of VAT were deemed to be necessary as well.
78. The Finnish Presidency took forward the work on this dossier at several WPTQ meetings and, at the meeting of 8 November 2019, the ECOFIN Council reached a general approach on a draft Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises.<sup>43</sup> To be noted, this draft Directive also contains the relevant amendments to the Council Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax.

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<sup>42</sup> Doc. 15082/18, point 99.

<sup>43</sup> Doc. 13952/19.

f) General arrangements for excise duty

79. The proposals concerning common provisions on excise duties were tabled by the Commission on 25 May 2018.
80. Firstly, the Commission proposed to recast Directive 2008/118/EC which lays down the general arrangements that apply to all products subject to excise duties (alcohol, tobacco and energy products and electricity). The proposed recast Directive<sup>44</sup> contains improvements as suggested in the report to the Council and the European Parliament and in the conclusions of the Council on the implementation and evaluations of Directive 2008/118/EC. At the same time it aligns provisions of Directive 2008/118/EC with the evolution of customs and other relevant legislation and to procedural requirements resulting from the Treaty of Lisbon. The modifications envisaged relate, among others, to excise and customs interaction and intra-EU movements of excise goods already released for consumption. The proposal includes measures to remove barriers for SMEs. This will allow SMEs to use modern IT systems rather than an outdated paper-based system and lifts the existing obligation on distance sellers to employ tax representatives. Member States can currently insist that distance sellers of excise goods employ tax representatives, which can make legitimate trade financially unviable.
81. Secondly, the Commission tabled a proposal for a Decision of the European Parliament and of the Council on computerising the movement and surveillance of excise goods (recast).<sup>45</sup> This proposal accompanies the proposal for a Council Directive laying down the general arrangement for excise duty mentioned above and aims at integrating into the current computerised system the automation of the procedure for movements of excise goods which have been released for consumption in the territory of one Member State and that are moved to the territory of another Member State in order to be delivered for commercial purposes in that other Member State.

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<sup>44</sup> Doc. 9571/18 + ADD 1, ADD 2, ADD 3.

<sup>45</sup> Doc. 9567/18 + ADD 1.



82. Thirdly, the Commission also put forward a proposal for a Council Regulation amending Regulation (EU) No 389/2012 on administrative cooperation in the field of excise duties as regards the content of electronic register.<sup>46</sup> This proposal also accompanies the said proposal for a Directive laying down the general arrangements for excise duty.
83. The Romanian Presidency completed the technical examination of these three proposals that had started under the Bulgarian Presidency. In February 2019 the Council reached an agreement with the European Parliament on the Decision on computerized movement and surveillance of excise goods. The European Parliament voted on the proposal on 4 April 2019.
84. On 8 November 2019 the Council reached a political agreement on the Directive on general arrangements for excise duty and the Regulation on administrative cooperation. All three legislative proposal will be adopted by the Council after their legal linguistic finalization.

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

85. On 25 May 2018, the Commission also tabled 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 to reshape the rules governing excise duty on alcohol within the EU, paving the way for a better business environment and reduced costs for small alcohol-producing businesses.
86. In response to Council Conclusions of 6 December 2016<sup>47</sup>, 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.<sup>48</sup>

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<sup>46</sup> Doc. 9568/18.

<sup>47</sup> Doc. 15009/16.

<sup>48</sup> Doc. 9570/18 + ADD 1, ADD 2.

87. The objective of the proposal is to update the rules governing excise duty on alcohol within the EU, pave the way for a better business environment and reduce costs for small alcohol-producing businesses. More particularly, this legislative proposal aims at:
- i) putting in place a uniform certification system in the EU for confirming the status of independent small producers throughout the Union, recognisable in all EU countries;
  - ii) extending the special regime of small producers to cider producers across the EU in order to have access to the reduced rates as currently afforded to small beer and ethyl alcohol producers;
  - iii) clarifying the conditions for application of the exemption for denatured alcohol in the EU;
  - iv) increasing the threshold for lower strength beer that can benefit from reduced rates from 2.8% volume to 3.5% volume, to provide an incentive for brewers to be innovative and create new products. This should encourage consumers to choose low-strength alcoholic drinks over standard ones, reducing alcohol intake.
88. The discussions on this legislative proposal began during the Bulgarian and Austrian Presidency terms. The Romanian Presidency brought further technical examination of the Commission proposal, as well as negotiations on the possible compromise.
89. In the course of negotiations 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.<sup>49</sup>

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<sup>49</sup> Doc. 9347/19, point 5.

90. At the meeting of ECOFIN Council on 12 March 2019<sup>50</sup> and 17 May 2019<sup>51</sup> good progress has been made. However no agreement on a compromise text could be reached, as further work was required, in particular on the text of the draft Article 22(8) of Directive 92/83/EEC concerning exemption from excise duty or reduced rates of excise for home- distilled fruit spirits.
91. During the term of the Finnish Presidency, the updated compromise text of the draft Directive was discussed at the ECOFIN meeting on 8 November 2019, where further progress was made on the remaining open issue concerning the draft rules on the option for Member States to exempt from or apply reduced rates of excise duties to ethyl alcohol distilled by private individuals, from fruit, for their households, and for their private use.
- h) Amendment of EU rules on VAT and excise duties as regards EU defence effort*
92. On 24 April 2019 the Commission tabled the proposal for a Council Directive amending Directive 2006/112/EC on the common system of VAT and Directive 2008/118/EC concerning the general arrangements for excise duty as regards defence effort within the Union framework.<sup>52</sup>
93. The aim of this legislative proposal is to align the VAT treatment of the defence effort in the EU and NATO framework. The arrangements for exemptions from excise duties should be aligned in a similar way. The proposal follows recent developments in the framework of the Common Security and Defence Policy (CSDP).

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<sup>50</sup> Doc. 6942/19.

<sup>51</sup> Doc. 9347/19 + ADD 1.

<sup>52</sup> Doc. 8940/19.

94. This legislative proposal was presented by the Commission at the WPTQ on 16 May 2019.
95. The Finnish Presidency started the technical examination of this file and the ECOFIN Council reached a general approach on the proposal on 8 November 2019.

**B. Other issues related to tax legislation**

**a) Fiscalis**

96. 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.<sup>53</sup> 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.
97. The proposal was examined in the Working Party on Tax Questions (Fiscalis). On 28 November 2018 Coreper agreed on a partial general approach with a view to commencing negotiations with the European Parliament in the context of the ordinary legislative procedure.<sup>54</sup>
98. The European Economic and Social Committee delivered its opinion on 17 October 2018.<sup>55</sup>
99. 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.
100. Two trilogues were held on 23 January and 21 March 2019 with a number of technical meetings in between those trilogues.
101. The outcome of negotiations was brought for state of play to Coreper on 27 March 2019. The text includes bracketed provisions that are still under consideration and that are likely to form part of horizontal negotiations on the MFF.

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<sup>53</sup> Doc. 9932/18.

<sup>54</sup> Doc. 14208/18 and doc. 14209/18.

<sup>55</sup> Doc. 14207/18.

102. 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 position.
103. Negotiations will resume at the beginning of 2020, once horizontal issues have been solved between the co-legislators.

**b) The common system of Financial Transaction Tax (FTT)**

104. 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. Given that unanimous agreement by all Member States could not be attained, on the basis of the request of eleven Member States, and in accordance with the authorization of the Council of 22 January 2013<sup>56</sup>, and consent of the European Parliament of 12 December 2012, the Commission on 14 February 2013 submitted a proposal for a Council Directive implementing enhanced cooperation in the area of financial transaction tax.
105. 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").<sup>57</sup>

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<sup>56</sup> OJ L 22, 25.1.2013, p. 11.

<sup>57</sup> On 16 March 2016, Estonia left the enhanced co-operation on FTT. See doc. 7808/16.

106. Following the preparatory work by the WPTQ, and, where relevant, by the HLWP, the state of play on this dossier has been discussed at the following meetings of ECOFIN Council:

- 6 May 2014<sup>58</sup>, 7 November 2014<sup>59</sup>, 9 December 2014<sup>60</sup>, and 8 December 2015<sup>61</sup>;
- 17 June 2016<sup>62</sup>, where, as a follow-up to the statement of ten participating Member States that was inserted into the minutes of the 8 December 2015 ECOFIN<sup>63</sup>, the Council took note of the state of play on this dossier regarding a number of selected issues (application of "issuance" and "residence" principles and the territorial scope for the FTT<sup>64</sup>; exemption from FTT of market making activities<sup>65</sup>; scope of transactions in derivatives contracts to be subject to the FTT<sup>66</sup>);
- 6 December 2016<sup>67</sup>, where the Council took note of the ongoing discussion on the constitutive parts (the "building blocks")<sup>68</sup> of the FTT and the assembly of those "building blocks" into possible FTT models. The Council also took note of the discussions on issues relating to cost efficiency of possible FTT collection models.

107. At the HLWP meeting of 7 May 2019, participating Member States indicated that they are discussing about an option of an FTT based on the French model of the tax and about the possible mutualisation of the revenues among the participating Member States as a contribution to the EU budget. ECOFIN on 14 June 2019 was informed of the state of play of this file.

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<sup>58</sup> Doc. 9399/14 and doc. 9576/14.

<sup>59</sup> Doc. 14949/14.

<sup>60</sup> Doc. 16498/14 and doc. 16753/14, points 36 to 46.

<sup>61</sup> Doc. 14942/15.

<sup>62</sup> Doc. 9602/16.

<sup>63</sup> Doc. 15112/15 ADD 1.

<sup>64</sup> Doc. 9602/16, points 6 to 8, and doc. 14942/15, points 7 to 11.

<sup>65</sup> Doc. 9602/16, points 9 to 12, and doc. 14942/15, points 15 to 17.

<sup>66</sup> Doc. 9602/16, points 13 to 15, and doc. 14942/15, points 18 to 19.

<sup>67</sup> Doc. 13608/16.

<sup>68</sup> Doc. 14942/15, point 3.

108. Given these developments, and following an interest expressed by a number of delegations, an exchange of views on the state of play on this file took place at WPTQ level on 20 September 2019, in an inclusive format, among all Member States, as appropriate.
109. The negotiations on the FTT prove to be complicated and 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. It has already been clarified (also at ECOFIN level in June 2019) that should an informal agreement among Member States participating in the enhanced co-operation be reached, it would only be a preliminary step in the legislative process. If, at some point, a draft text of a Directive is tabled by the participating Member States, any decision (formal agreement) in the Council should be preceded by an inclusive and substantial debate among all Member States. Such an inclusive debate among all Member States has to take place following the required procedural steps (analysis by experts at WPTQ level, preparatory debate by Committee of Permanent Representatives, agreement in Council).
110. In the light of the foregoing, as already indicated in the December 2016 ECOFIN report to the European Council on tax issues<sup>69</sup>, 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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<sup>69</sup> Doc. 15254/16, point 45.

### **c) Energy taxation**

111. The European Council of June 2019 invited the Council and the Commission to advance work on the conditions, the incentives and the enabling framework to be put in place so as to ensure a transition to a climate-neutral EU in line with the Paris Agreement that will preserve European competitiveness, be just and socially balanced, take account of Member States' national circumstances and respect their right to decide on their own energy mix, while building on the measures already agreed to achieve the 2030 reduction target.
112. Directive 2003/96/EC (Energy Taxation Directive) identifies the energy products subject to the harmonised rules for excise duties, sets minimum levels of taxation and lays down the conditions for applying tax exemptions and reductions.
113. On 12 September 2019, the Commission services published a new report on the evaluation of the Directive. The report reveals that while the Directive initially made a positive contribution to the internal market, current rules do not contribute to the new EU regulatory framework and policy objectives in the area of climate and energy, where technology, national tax rates and energy markets have all evolved considerably over the past 15 years.
114. At the informal Ecofin on 14 September 2019 the Finnish Presidency launched a discussion on the EU energy taxation with a view to potential revision of the Energy Taxation Directive and contributing to wider EU policy objectives. On 5 December 2019 the ECOFIN Council adopted conclusions on the EU energy taxation framework.

### **d) Conclusions on the ECA report**

115. During the Finnish Presidency Member States discussed challenges of collecting VAT and customs duties on e-commerce on the basis of the European Court of Auditors (ECA) special report No 12. Although the Council had adopted a number of legislative acts improving considerably the current arrangements, Member States agreed that further practical and regulatory measures to ensure correct collection of VAT and customs duties should be explored. On 5 December 2019 the Council (ECOFIN) adopted conclusions on the report.



## **C. Tax Policy Coordination**

116. 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)**

117. The Code of Conduct Group (COCG) met four times under the Finnish Presidency, on 10 July, 13 September, 24 October and 14 November 2019, whilst its subgroups, chaired by the Finnish Presidency, met on 5 July, 4 September, 16 October and 4 November 2019.

118. The Group continued work on standstill and rollback of EU Member States' harmful preferential tax regimes, as well as on the EU list of non-cooperative jurisdictions for tax purposes (updated<sup>70</sup> at the ECOFIN Council meetings of 10 October and 8 November 2019) and the related monitoring of commitments taken by jurisdictions in this context.

119. The Finnish Presidency was notably successful in helping the Group to reach agreements on:

- a guidance on foreign source income exemption regimes;
- a guidance on notional interest deduction regimes;
- a guidance on defensive measures in the tax area towards non-cooperative jurisdictions.

120. More detailed information on the work of the Group can be found in its report to the ECOFIN Council<sup>71</sup> and accompanying Council conclusions.<sup>72</sup>

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<sup>70</sup> De-listings of Belize, Marshall Islands and the UAE.

<sup>71</sup> Doc. 14114/19 + ADD 1-10.

<sup>72</sup> Doc. 14530/19.

**b) International developments**

121. The HLWP was regularly informed of relevant international developments, notably in relation to meetings of the OECD Inclusive Framework, Global Forum and the Task Force on Digital Economy (TFDE).

**c) Exchange of information on data safety concerns**

122. The HLWP meeting of 22 November 2019 held an exchange of views on data safety concerns in a context of increased exchange of information flows between Member States' tax administration. It was agreed to follow up on these discussions during the incoming Presidency.

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

123. 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.

124. The Finnish Presidency has worked on the concerns on the implementation of the US FATCA and in particular the issues of European financial institutions and the so-called accidental Americans. In order to address these concerns a letter was sent by the Finnish Presidency on behalf of EU Member States to the US Secretary of the Treasury. The latest state of play on the Directive on public country-by-country reporting (pCBCR) was also brought to the attention of delegations. An updated overview of tax provisions in non-tax dossiers was presented at the HLWP meeting on 22 November 2019.