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### 'I/A' ITEM NOTE

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From: General Secretariat of the Council  
To: Permanent Representatives Committee/Council

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Subject: Draft Ecofin Report to the European Council on tax issues  
- Approval

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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 Taxation on 23 November 2022 for submission to the Council on 6 December 2022 via Coreper. It was also agreed that the usual factual updates (parts in square brackets) would be made by the GSC after the Council meeting before the release of the final version of the report.
3. The Committee of Permanent Representatives is therefore invited to recommend to the Council (Ecofin) to approve the report as set out in the annex to this note as an A-item with a view to its transmission to the European Council (15-16 December 2022).

**DRAFT ECOFIN REPORT TO THE EUROPEAN COUNCIL ON TAX ISSUES**

**A. INTRODUCTION**

1. This Council report provides an overview of the progress achieved in the Council during the term of the Czech Presidency, as well as an overview of the state of play of the most important dossiers under negotiations in the area of taxation. It has been prepared on the basis of discussions in the Working Party on Tax Questions (High Level) (HLWP) covering horizontal tax policy issues of strategic relevance, in line with its mandate.
2. This report reflects the state of play of relevant Council work and covers issues mentioned in various European Council conclusions since 2012<sup>1</sup>, the statement of the Members of the European Council of 25 March 2021<sup>2</sup>, the Council conclusions in the VAT area of 2012<sup>3</sup> and of 2016<sup>4</sup>, the Council conclusions on “Responding to the challenges of taxation of profits of the digital economy” of 2017<sup>5</sup>, the Council Conclusions of 2020 on the future evolution of administrative cooperation in the field of taxation in the EU<sup>6</sup>, as well as the Council conclusions of 27 November 2020 on fair and effective taxation in times of recovery, on tax challenges linked to digitalisation and on tax good governance in the EU and beyond<sup>7</sup>.

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<sup>1</sup> Doc. EUCO 4/3/12 REV 3 (points 9 and 21), EUCO 76/12, EUCO 75/1/13 REV 1, EUCO 14/17 (point 11), EUCO 10/20 (points A29 and 147) and EUCO 13/20.

<sup>2</sup> Doc. 18/21.

<sup>3</sup> Doc. 9586/12.

<sup>4</sup> Doc. 9494/16.

<sup>5</sup> Doc. 15175/17.

<sup>6</sup> Doc. 8482/20.

<sup>7</sup> Doc. 13350/20.

3. The Czech Presidency pursued the work on key files, including the transposition of the second pillar of the OECD Inclusive Framework statement on a two-pillar solution to address the tax challenges arising from the digitalisation of the economy, the revision of the Energy Taxation Directive, the Eurovignette Directive as regards vehicle taxation, the revision of the Code of Conduct (Business Taxation) and updates to the EU list of non-cooperative jurisdictions for tax purposes, the DEBRA proposal, as well as the proposal for a Directive to prevent the misuse of shell entities for tax purposes.
4. More specifically, the Council:
- a) [adopted][made further progress on] the proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union;
  - b) [reached a political agreement on] the proposal for a Directive amending the Eurovignette Directive as regards vehicle taxation;
  - c) agreed on a revision of the Code of Conduct (Business Taxation);
  - d) made significant progress on the proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast); and
  - e) advanced the negotiations on the proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes.
5. The Code of Conduct Group (Business Taxation) also further continued its work on the various matters falling within its current mandate, including on the EU list of non-cooperative jurisdictions for tax purposes, as set out in its six-monthly report.<sup>8</sup> The EU list was last updated by the Council on 4 October 2022<sup>9</sup>. More detailed information on individual dossiers can be found below.

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<sup>8</sup> Doc. 14674/22 + ADD 1-10.

<sup>9</sup> OJ C 391, 12.10.2022, p 2-5.

## **B. EU TAX LEGISLATION**

### **1) Direct Taxation, including corporate taxation**

- a) Global minimum level of taxation for multinational groups in the EU (“Pillar 2”)
6. On 8 October 2021, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (‘the Inclusive Framework’) reached agreement on a reform of the international rules on the taxation of the profits of multinational enterprises. All EU Member States expressed their support for the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy. In its conclusions of 27 November 2020, the Council expressed its continued support for the work of the Inclusive Framework.
7. On 22 December 2021 the European Commission issued a proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the EU.<sup>10</sup> This proposal broadly reflects, with certain adaptations required by EU law, the model rules adopted by the Inclusive Framework on 14 December 2021.
8. Preparatory work in the Council on this dossier is summarised in the previous Ecofin report to the European Council on tax matters.<sup>11</sup> In the Ecofin Council of April and June 2022, all Member States but one could support the compromise text of the draft Directive and the draft Council statement.<sup>12</sup>
9. The Czech Presidency continued work and bilateral contacts in order to secure the necessary support to the draft Directive by all delegations, and the draft text of the Directive was revised by lawyers-linguists.<sup>13</sup>

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<sup>10</sup> Doc. 15294/21.

<sup>11</sup> Doc. 10355/22, points 6 to 15.

<sup>12</sup> Doc. 10497/22.

<sup>13</sup> Doc. 8778/22.

10. [On 6 December 2022 the Council (Ecofin) adopted the Directive ensuring a global minimum level of taxation for multinational groups in the EU, [accompanied by a statement for the minutes]]<sup>14</sup>. [[On 6 December 2022 at the Council (Ecofin) all Member States [but one] were ready to vote in favour of the adoption of the Directive ensuring a global minimum level of taxation for multinational groups in the EU.]

b) Misuse of shell entities

11. On 22 December 2021, the Commission submitted a proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU (the „Unshell“ proposal).<sup>15</sup>

12. The objective of the proposal is to prevent tax avoidance and evasion through actions by undertakings without minimal substance, and enhance the proper functioning of the internal market. The proposal aims to fight against the misuse of shell entities for improper tax purposes and to ensure that shell companies in the EU that have no or minimal economic activity are unable to benefit from tax advantages.

13. On 6 January 2022, at the HLWP, the proposal was presented to delegations and the French Presidency announced its intention to launch the discussions in the Council on this file. The technical analysis of the proposal was carried out in the WPTQ (Direct taxation) on 11 March, 1 April, 6 May, 23 May and 9 June 2022. The first round of article-by-article analysis of the proposal was completed on 23 May.

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<sup>14</sup> [reference to be updated]

<sup>15</sup> Doc. 15296/21.

14. Under the Czech Presidency, the technical analysis in the WPTQ continued on 11 July, 27 September and 22 November 2022. Progress was made on exploring the way forward as regards tax consequences and compromise texts were submitted on parts of the proposal, such as the identification of entities not having minimum substance as well as on exchange of information. In principle, most delegations supported the objectives of the proposal, but were of the view that further important technical work will be necessary before an agreement could be feasible.

c) Debt-Equity Bias Reduction Allowance (DEBRA)

15. On 11 May 2022, the Commission issued its proposal for a Council Directive on laying down rules on a debt-equity bias reduction allowance and on limiting the deductibility of interest for corporate income tax purposes. The aim of the proposal is to counter the tax incentive for companies to finance investments through debt rather than equity, due to the possibility for companies to deduct interest attached to debt financing, but not the costs associated with equity financing.
16. The proposal was presented to the Working Party on Tax Questions on 10 June 2022. The Czech Presidency devoted three meetings to the article-by-article examination of the proposal, giving the delegations the opportunity to ask the Commission questions on the functioning of the mechanism provided for in the Directive proposal. The examination was completed on 15 November 2022.
17. In light of the many interlinkages with other corporate tax files, both those currently under discussion in the Council and those announced by the Commission in the near future in its Communication on business taxation for the 21<sup>st</sup> century, the examination of the DEBRA proposal will be suspended and, if appropriate, it would be reassessed within a broader context only after other proposals in the area of corporate income taxation announced by the Commission have been put forward.

## 2) **Indirect Taxation**

### a) Revision of the Energy Taxation Directive (ETD)

18. On 14 July 2021, the Commission submitted a proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast)<sup>16</sup>, ('the ETD proposal').
19. The ETD proposal is part of the "Fit for 55" package<sup>17</sup>, which aims at implementing the ambitious EU targets to reduce emissions by at least 55% by 2030, as compared to 1990 levels, and to achieve climate neutrality by 2050. The package consists of a set of inter-connected proposals, which all drive towards the same goal of ensuring a fair, competitive and green transition by 2030 and beyond.
20. The ETD proposal aims at the following objectives:
- a) providing an adapted framework contributing to the EU 2030 targets and climate neutrality by 2050 in the context of the European Green Deal. This would involve aligning the taxation of energy products and electricity with EU energy, environment and climate policies, thus contributing to the EU efforts to reduce emissions;
  - b) providing a framework that preserves and improves the EU internal market by updating the scope of energy products and the structure of rates and by rationalising the use of tax exemptions and reductions by Member States; and
  - c) preserving the capacity to generate revenues for the budgets of the Member States.
21. At the HLWP on 25 November 2021, the Slovenian Presidency informed delegations about the results of the work and the progress on the dossier, also in the context of the "Fit for 55" package. On 7 December 2021, as an 'A' item, the Council (Ecofin) took note of the Presidency progress report on „Fit for 55“ package proposals handled by the Ecofin Council, including the ETD proposal.<sup>18</sup>

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<sup>16</sup> Doc. 10872/21.

<sup>17</sup> Doc. 10849/21.

<sup>18</sup> Doc. 14574/21.

22. The technical analysis of the proposal continued under the French Presidency. The analysis covered the whole proposal after work was divided into the following sections: a) scope of taxable products and energy content approach, structure of rates at the end of the transitional period, renewables; b) minimum taxation levels and content of fiscal categories, structure of rates in 2023, transitional periods and indexation; c) state aid and transport; d) industry, agriculture, fishing and households. Based on the discussions at the WPTQ, the Presidency submitted partial compromise texts on blocks one and two.
23. On 17 June 2022, the Council (Ecofin) took note of the Presidency progress report on the ETD proposal.<sup>19</sup>
24. Building on the progress made by the previous Presidencies, the Czech Presidency carried out intensive work on the ETD proposal. Its objective was to make as much progress on this file as possible.
25. One of the topics discussed in Prague on 14 July 2022 during the informal HLWP was ‘Tax measures to counter the current EU energy price surge’. This discussion provided valuable background also in the context of the ongoing deliberations on the ETD proposal.
26. The technical examination of the ETD proposal at the WPTQ took place on 19 July, 12 September, 12 October, 10 November and 17 November 2022.
27. In July 2022, the Czech Presidency submitted a compromise text covering the whole ETD proposal and prepared revised compromise texts for the subsequent WPTQ meetings. The latest Presidency compromise text is set out in document WK 14524/2022.

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<sup>19</sup> Doc. 9874/22.



28. The Czech Presidency provided extensive explanations to the WPTQ, including in the form of background notes on specific topics. The Czech Presidency addressed a wide variety of issues raised by delegations, managed to converge views and to find compromise solutions, while not undermining the EU long-term environmental objectives.
29. Broad support was given by the delegations to the most discussed changes, but some delegations were not in a position yet to support the Presidency text or had scrutiny reservations. Thus, further work is needed in order to reach a compromise on the most sensitive outstanding issues.
30. [On 6 December 2022, the Council (ECOFIN) held a policy debate on the ETD proposal in order to get political guidance on the way forward.<sup>20</sup>]

b) Financial Transaction Tax (FTT)

31. On 14 February 2013, the Commission submitted a proposal for a Council Directive implementing enhanced cooperation in the area of financial transaction tax.
32. At this stage, 10 Member States continue to participate in the enhanced cooperation in the area of FTT: Austria, Belgium, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain (hereafter referred to as “participating Member States”).
33. The main aspects of the negotiations on this dossier were summarized in the 2019 and 2020 Ecofin reports to the European Council on tax issues.<sup>21</sup>

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<sup>20</sup> Doc. 14736/22.

<sup>21</sup> Doc. 8891/20, points 67-70, doc. 14863/19, points 104-110.

34. The European Council in its conclusions of 17-21 July 2020<sup>22</sup> (point A29) indicated that “*The Union will over the coming years work towards reforming the own resources system and introduce new own resources. [...] ... 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.*” In this regard, the Commission has clarified that<sup>23</sup> “*should there be an agreement on this Financial Transaction Tax, the Commission will make a proposal in order to transfer revenues from this Financial Transaction Tax to the EU budget as an own resource. If there is no agreement by end of 2022, the Commission will, based on impact assessments, propose a new own resource, based on a new Financial Transaction Tax. The Commission shall endeavour to make these proposals by June 2024 in view of its introduction by 1 January 2026.*”
35. Agreement on this dossier among the Member States participating in the enhanced cooperation is not expected by the end of the 2022.

c) Vehicle Taxation

36. On 31 May 2017, the Commission issued its proposal for a Council Directive amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures, as regards certain provisions on vehicle taxation<sup>24</sup>.

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<sup>22</sup> Doc. EUCO 10/20.

<sup>23</sup> See European Parliament legislative resolution of 16 December 2020 on the draft Council regulation laying down the multiannual financial framework for the years 2021 to 2027 (09970/2020 – C9-0409/2020 – 2018/0166(APP)), Commission Declaration on establishing a Financial Transaction Tax based Own Resource.

<sup>24</sup> Doc. 10175/17.

37. The proposal was presented together with another proposal to amend Directive 1999/62/EC as regards tolls and user charges<sup>25</sup> as part of the first mobility package. Together, these two proposals were meant to promote the application of a form of road charging that is related to the distance travelled, so as to incentivise cleaner, more efficient road transport operations. Whereas the proposal on tolls and user charges aimed to extend the road pricing principle to more vehicles, to phase out time-based charges (“vignettes”) and to make the methodologies for calculating charges simpler and greener, the objective of the proposal on vehicle taxation was to offer more scope for the lowering of vehicle taxes by gradually reducing the minima for these taxes as laid down in Directive 1999/62/EC.
38. The European Committee of the Regions issued its opinion on the proposal on vehicle taxation on 31 January 2018, the European Economic and Social Committee on 2 March 2018 and the European Parliament on 4 July 2018.
39. Since the proposal on road charges was adopted in March 2022, the Czech Presidency decided to continue the discussions on the proposal regarding heavy goods vehicle taxation in the Working Party on Tax Questions, given the proposal’s legal base (Article 113 TFEU) and the principal subject of the proposal (taxation).
40. The WPTQ examined the proposal in September and two Presidency compromise texts in October. The main features of the compromise text consisted of deleting the transition period and leaving Member States ample flexibility to change tax rates on heavy goods vehicles as well as introducing a review clause to assess the effects of the reduction of the minimum taxes.
41. Many Member States supported the compromise text, but some delegations were still not in a position to support the Presidency text. Therefore it was decided at the November Ecofin Council that further work was needed in order to reach a compromise.
42. [Agreement on the text was reached at the December Ecofin Council].

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<sup>25</sup> Doc. 9672/17.

3) **Administrative cooperation in the field of taxation**

a) DAC7 – ‘Switch-off’ mechanism

43. DAC7<sup>26</sup> extends the scope of the automatic exchange of information between member states’ tax authorities to the information reported by digital platforms, about income and revenues of the sellers on these platforms. The new rules for digital platforms will start to apply from 1 January 2023. Platform operators will have to report the collected information for the calendar year 2023 by 31 January 2024. To eliminate double reporting, DAC7 contains rules that permit “switching off” of the reporting obligations stemming from DAC7 for non-EU platform operators, essentially, in case it is determined, by way of an implementing act by the Commission, that Member States receive equivalent information from non-EU countries as reported by these platform operators to their national authorities.
44. At the HLWP meeting on 20 September 2022 delegations exchanged views on the policy aspects concerning the state of play in implementation of the DAC7 ‘switch-off’ rules, and at the HLWP meeting on 27 October 2022 were updated by the Commission on the ongoing work on its implementing act.
45. In this context, at the HLWP meeting on 20 September 2022, delegations also exchanged views on the correlation of the rules of DAC7 with the Multilateral Competent Authority Agreement on Automatic Exchange of Information on Income Derived through Digital Platforms (DPI MCAA). The DPI MCAA was prepared by the OECD, after the OECD/G20 BEPS Inclusive Framework on 29 June 2020 approved the Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy.

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<sup>26</sup> Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (OJ L 104, 25.3.2021, p. 1).

b) Automatic exchange of information in the area of taxation with non-EU jurisdictions

46. At the WPTQ meeting on 17 November delegations exchanged views on the state of play, risks and opportunities in the area of tax information exchange with non-EU countries, also covering aspects relating to the personal data protection framework and its correlation with legislative work on international administrative co-operation. In this context, delegations exchanged their general views on the areas which require particular attention to ensure the continuous functioning of the system of international exchange of information with non-EU jurisdictions, which is necessary for important reasons of public interest.
47. These discussions ensued at the WPTQ meeting on 25 November. This work, which is to be continued, is also a follow-up on discussions held previously, during recent Presidency terms<sup>27</sup>.
48. Against this background it is appropriate that Member States and the Commission continue their analysis in this area and explore avenues and possibilities for further coordination, which could be identified in the areas of Member States' domestic laws, EU legislation and the broader international context relating to instruments on automatic exchange of information with non-EU jurisdictions. This work should continue, also at WPTQ level, as necessary.

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<sup>27</sup> Doc. 9970/21, points 81 – 82 ; doc. 14651/21, points 50 – 59.

c) Administrative cooperation with other non-EU countries in the area of VAT

49. At the WPTQ meeting on 15 September 2022, the Commission briefed delegations on the following issues:

- a) negotiations (on the basis of the authorisation and the negotiating directives adopted by the Council)<sup>28</sup> with the authorities of Norway to amend the agreement on administrative cooperation, combating fraud and recovery of claims in the field of VAT will begin in the end of September. These negotiations are expected to be concluded by the end of 2022 or beginning of 2023.
- b) the state of play of the exploratory contacts with the authorities of Japan, as regards possibilities for further work towards administrative cooperation in the area of VAT, especially on fighting fraud in the area of e-commerce.
- c) negotiations with the authorities of the People's Republic of China, in view of the conclusion of a non-binding Memorandum of Understanding (possible future administrative cooperation framework between the EU and People's Republic of China in the area of VAT).<sup>29</sup> The Commission indicated that these negotiations are still on hold.

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<sup>28</sup> Council Decision (EU) 2022/1311 of 17 June 2022 authorising the opening of negotiations with the Kingdom of Norway to amend the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax (OJ L 198, 27.7.2022, p. 14) and doc. 9643/22.

<sup>29</sup> On 10 March 2021 the Council approved, with a number of observations (Doc. CM 1978/21 LIMITE, with further details set out in doc. ST 6351/21 LIMITE) that the Commission enter into negotiations with the authorities of the People's Republic of China, in view of the conclusion of a non-binding Memorandum of Understanding.

50. It is recalled that, concerning the negotiation and conclusion of non-binding instruments under EU law (such as the abovementioned Memorandum of Understanding), and in accordance with the requirements of the Treaty on the EU (Article 16 (1) TEU in particular), policy-making remains a prerogative of the Council. It is therefore for the Council to assess whether it is in the interest of the Union to enter into such discussions (negotiations) on a possible non-binding instrument. Moreover, following the Court of Justice judgment in case C-660/13 (Swiss MoU), the Secretaries General of the Council, the Commission and the European External Action Service agreed, in 2017, on the Arrangements for non-binding instruments.<sup>30</sup> These Arrangements apply to all non-binding instruments irrespective of the policy field and of who represents the Union in the negotiations with the third party or parties and irrespective of their denomination or form. It is understood that the Commission will continue to regularly update the Member States on the progress in these negotiations (including on any further contacts with non-EU countries in this field), and will revert to the Council at the end of the negotiations to seek, in accordance with Union law, the Council's authorisation of the signature of the non-binding instrument on behalf of the Union.

d) Regulation on administrative cooperation in the field of excise duties

51. Council Regulation (EU) No 389/2012<sup>31</sup> lays down the legal basis for administrative cooperation between Member States in the field of excise duties. Within the context of administrative cooperation, Member States currently exchange the data of economic operators included in national registers using a computerised system with a central register operated by the Commission, but only as regards the economic operators moving goods under “duty suspension”.

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<sup>30</sup> Doc. 15367/17.

<sup>31</sup> Council Regulation (EU) No 389/2012 of 2 May 2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) No 2073/2004 (OJ L 121, 8.5.2012, p. 1).

52. Under Chapter V of Council Directive 2020/262<sup>32</sup>, as from 13 February 2023 this computerised system will also be used for “duty paid” movements. To align the procedure for exchanging the data of economic operators moving goods under “duty suspension” with the procedure for goods under “duty paid”, on 24 October 2022<sup>33</sup> the Commission submitted a proposal to amend the 2012 Regulation on administrative cooperation in the field of excise duties.
53. Under the Czech Presidency an agreement was reached at working party level, and the consultation of the Parliament and the European Economic and Social Committee was completed. It is expected that the Council will adopt the proposed amendments by the end of January 2023.
- e) *Fiscalis programme for cooperation in the field of taxation*
54. The Fiscalis programme aims at supporting tax authorities to enhance the functioning of the internal market, foster competitiveness, fight tax fraud, tax evasion and tax avoidance and improve tax collection. Regulation (EU) 2021/847 establishing the ‘Fiscalis’ programme empowers the Commission to adopt delegated acts to supplement the Regulation with provisions on the establishment of a monitoring and evaluation framework. In August 2022 the Commission submitted the respective delegated act<sup>34</sup> to the Council and delegations did not raise objections to this delegated act.

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<sup>32</sup> Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (OJ L 58, 27.2.2020, p. 4).

<sup>33</sup> Doc 13979/22.

<sup>34</sup> Doc. 12055/22 + ADD 1.



## C. **TAX POLICY COORDINATION (non-legislative activities)**

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

### 1) **Code of Conduct Group (business taxation)**

55. The Code of Conduct Group (COCG) met on 20 September, 24 October and 23 November 2022; the subgroup on internal/external issues was convened on 6 July, 9 and 15 September, 24 October and 15 November 2022.
56. The biannual revision of the EU list of non-cooperative jurisdictions for tax purposes was approved by the Council on 4 October 2022 and published in the Official Journal on 12 October 2022.<sup>35</sup>
57. Apart from the usual work, the Czech Presidency, in coordination with the Chair of the COCG, conducted a number of bilateral discussions on the revision of the Code of Conduct (Business Taxation), on which no unanimous agreement was reached at the December 2021 Ecofin Council. In October 2022, the Czech Presidency tabled draft Council Conclusions on a revision of the Code of Conduct (Business Taxation), with a number of changes to the text that was rejected in December 2021. On this Presidency compromise text a provisional agreement was reached at the Subgroup on internal and external issues. This agreement was subsequently confirmed by the Code of Conduct Group (Business Taxation), after which the agreed text was submitted to the Council via Coreper and was approved by Ecofin on 8 November 2022. A more extensive report can be found in the dedicated biannual Code of Conduct Group report<sup>36</sup>.

### 2) **Russia's aggression against Ukraine**

58. In the context of Russia's aggression against Ukraine with the participation of Belarus, the Working Party on Tax Questions examined a number of measures that Member States could pursue to support the implementation of EU restrictive measures and prevent their circumvention through tax cooperation instruments.

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<sup>35</sup> OJ C 391, 12.10.2022, p 2-5.

<sup>36</sup> Doc. 14674/22.

59. Firstly, Member States decided to discontinue all exchanges of information for tax purposes with the Russian Federation and Belarus. Secondly, EU Member States examined a number of measures aiming at enhancing the use of administrative cooperation and other instruments in the tax field in the context of the enforcement of the restrictive measures.
60. In this context, the Working Party on Tax Questions decided to monitor further developments concerning these measures, including the work taking place within the temporary platform created by the Commission on 3 June 2022 in the form of a subgroup on tax enforcement within the Freeze and Seize Task Force.
61. At the HLWP meeting on 27 October, delegations took note of the information provided by the Commission on the work of this subgroup.
62. At the same meeting, a discussion was also held on the tax residency status of Ukrainian beneficiaries of temporary protection continuing to work remotely for Ukrainian companies. Over the summer of 2022, the Ukrainian authorities have called for help to avoid significant losses in tax revenues for Ukraine as a result of EU Member States granting tax residency to Ukrainian refugees, even though these Ukrainian nationals were still remotely working for Ukrainian companies.
63. On the basis of a non-paper from the Commission services, delegations discussed several options to address the situation.
64. Member States agree that it is important to support Ukraine, following the displacement of Ukrainian citizens caused by Russia's war of aggression against Ukraine. Member States recall the broader context of actions that the EU and the Member States are taking to address Ukraine's financial needs. Member States also agree that measures could be considered to minimize the negative income tax implications for Ukraine with regard to the large number of Ukrainian beneficiaries of temporary protection, in particular as regards employees that continue to work remotely for companies located in Ukraine, as appropriate.

### 3) **International developments**

65. 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 IF on BEPS.
66. Issues related to the US Foreign Account Tax Compliance Act (FATCA) have been regularly brought to the attention of delegations at the HLWP meetings. In October 2022, building on the progress made during the previous Presidency terms, the Czech Presidency held an informal videoconference at technical level with the US Treasury Department on FATCA, focusing on the issue of the so-called accidental Americans, including the problem of obtaining more guidance from the IRS and the Treasury to prevent the closure of bank accounts of accidental Americans in the EU. In October 2022 the Czech Presidency debriefed the HLWP on this meeting and discussed the way forward. Contacts with the US authorities are ongoing and further informal meetings with the US counterparts will be planned.

### 4) **Tax in non-tax areas (TINTA)**

67. On 19 November 2013, the HLWP agreed that tax provisions in non-tax dossiers leading to any changes in Member States' tax laws or administrative practices or having other consequences on taxation should fall under an 'informal alert mechanism'. The systematic approach of bringing these cases to the attention of tax experts, with the support of the General Secretariat, has continued to ensure that Member States are alerted in a timely manner, including on negotiations of agreements between the EU and third countries. The issues which were monitored by the HLWP include the Council Regulation on an emergency intervention to address high energy prices and the follow-up of the Conference on the Future of Europe.