



Brussels, 30 November 2023
(OR. en)

16100/23

FISC 275
ECOFIN 1294

'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. prev. doc.:	15502/23
Subject:	Draft Ecofin report to the European Council on tax issues - Approval

1. The Ecofin Council 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 endorsed by the Working Party on Tax Questions (High Level) on 23 November 2023 for submission to the Council on 8 December 2023. 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 suggest to the Council (Ecofin) to approve the report as set out in the Annex as an “A”-item on its agenda, with a view to its transmission to the European Council (14-15 December 2023).

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 Spanish 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 2012¹, the statement of the Members of the European Council of 25 March 2021², the Council conclusions in the VAT area of 2012³ and of 2016⁴, the Council conclusions on “Responding to the challenges of taxation of profits of the digital economy” of 2017⁵, the Council Conclusions of 2020 on the future evolution of administrative cooperation in the field of taxation in the EU⁶, 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 beyond⁷.
3. The Spanish Presidency set out, as priorities in the area of tax policy, the progress in the new international taxation framework and the fight against aggressive tax planning through the strengthening of antifraud and anti-avoidance measures and, in particular:
 - tackling entities with no or minimal substance set up in Member States with the main objective of obtaining a tax advantage by eroding the tax base of other Member States;

¹ 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.

² Doc. ST 18/21.

³ Doc. ST 9586/12.

⁴ Doc. ST 9494/16.

⁵ Doc. ST 15175/17.

⁶ Doc. ST 8482/20.

⁷ Doc. ST 13350/20.

- taking advantage of the digital transition to prevent VAT fraud and support EU businesses;
 - developing a more efficient procedure for the management of withholding taxation; and
 - strengthening cooperation among tax authorities in Member States and promoting tax good governance.
4. The Spanish Presidency showed the high priority given to the taxation field with the organisation of 24 full-day meetings and four half-day meetings of Working Party on Tax Questions (WPTQ), two full-day meetings and one half-day meeting of the Code of Conduct Group and two half-day meetings of the Fiscal Counsellors/Attachés. The work on all pending files was pursued, including the amendment of the Directive on administrative cooperation for tax purposes, the proposals comprised by the “VAT in the Digital Age” package, the proposal on faster and safer relief of excess withholding taxes (FASTER), the proposal to prevent the misuse of shell entities for tax purposes (UNSHELL), proposals for a Council Directive establishing a Head Office Tax system for micro, small and medium sized enterprises (HOT), a Council Directive on transfer pricing and a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT), the update to the EU list of non-cooperative jurisdictions for tax purposes, as well as the revision of the Energy Taxation Directive.
5. More specifically, the Council:
- a) took stock of the progress in the negotiations on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy by the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) and approved a statement on this subject;
 - b) adopted a position on behalf of the EU and its Member States on tax cooperation at the United Nations in relation to the conclusions of the report of the Secretary General of United Nations published on 8 August 2023;
 - c) adopted the Council Directive amending Directive 2011/16/EU (DAC8);
 - d) made substantial progress towards an agreement on the Council Directive on faster and safer relief of excess withholding taxes;

- e) took note of the Presidency progress report on the VAT in the Digital Age package;
 - f) advanced the negotiations of the proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes through the analysis of several new approaches with a view of bringing together the diverging views on important parts of the proposal;
 - g) made progress on the proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast); and
 - h) started the examination of the proposals for a Council Directive establishing a Head Office Tax System for micro, small and medium sized enterprises (HOT), a Council Directive on transfer pricing and a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT).
6. 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 report⁸. The EU list was most recently updated by the Council on 17 October 2023⁹.
7. More detailed information on individual dossiers can be found below.

⁸ Doc. ST 15757/23 + ADD 1-12.

⁹ OJ C, 23.10.2023, C/2023/437.

B. EU TAX LEGISLATION

1) Direct Taxation

a) FASTER

8. On 19 June 2023 the Commission issued a proposal for a Council Directive on Faster and Safer Relief of Excess Withholding Taxes ("FASTER")¹⁰. This proposal aims at introducing, across the EU, more efficient (and harmonised) procedures concerning cross-border cases of relief from withholding taxes that Member States levy on income from holding publicly traded securities (dividends on equities and interest on bonds). Through a mandatory register and standardised reporting obligations of large financial intermediaries, as well as through harmonised tax relief procedures and a digital EU tax residence certificate for taxpayers (investors) concerned, a twofold objective is sought: supporting the good functioning of the Capital Markets Union by facilitating cross-border investment, and ensuring fair taxation by preventing tax fraud and abuse in this area.
9. The Spanish Presidency gave this legislative proposal a high level of priority and made good technical progress at the level of the WPTQ (six WPTQ meetings took place and four compromise texts were discussed).
10. Technical analysis of this legislative proposal and discussions with Member States revealed that the initial text proposed by the Commission had to be adjusted, before it could be submitted to the Council for agreement. Therefore the Spanish Presidency made a number of amendments to the text, most notably:
 - adapted the rules applicable to the issuing of the digital tax residence certificate;
 - included provisions that would allow certified financial intermediaries to assume the position of non-certified intermediaries, in order to facilitate the application of the relief and complete the information that must be reported to the tax administrations;
 - strengthened the scope of information to be reported by certified financial intermediaries and specified a number of other related provisions;
 - clarified the conditions under which Member States may reject the requests for quick refund, in order to reduce the possibilities for fraudulent claims;

¹⁰ Doc. ST 10820/23 + ADD 1-5.

- added special provisions that govern the cases related to indirect investments; and
 - further specified the provisions on late payment interest, liability, personal data protection and on evaluation of the future Directive.
11. One of the principal issues in these negotiations is a request by a number of Member States to keep the possibility of maintaining their current systems of relief at source from the withholding tax. In order to make further progress on the matter, the Presidency proposed to foresee such a possibility, under specific conditions. Another topic raised by one delegation was that the establishment of the financial intermediary register and reporting obligations be voluntary for Member States.
 12. A general orientation discussion on this file was held at the WPTQ (High Level) meeting on 23 November. It became clear that substantial progress has been made and, in particular, the provision regarding the electronic tax residence certificate was broadly supported. Nevertheless, further technical work is required before the file can be submitted to the Council for approval of a general approach.

b) Misuse of shell entities

13. 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)¹¹.
14. 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.
15. 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 first round of article-by-article analysis of the proposal was completed on 23 May during the French Presidency.

¹¹ Doc. ST 15296/21.

16. Under the Czech Presidency, 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 would be necessary before an agreement could be feasible.
17. Under the Swedish Presidency, progress was made on a number of controversial issues, such as the scope, criteria of minimum substance, tax consequences and tax residency certificate. The HLWP provided guidance for further work on these and also other outstanding issues. Delegations stressed the interlinkages between different parts of this complex Directive, meaning that an orientation chosen in one part of the Directive might influence the solution in other parts.
18. The Spanish Presidency continued work on this file, which was discussed in the WPTQ on 4 July and 5 September and in the HLWP on 4 October and 23 November. In the July Working Party the following issues were discussed: tax consequences, links with domestic anti-abuse legislation, excluded entities, minimum substance, rebuttal of the presumption and reduction of administrative burden, tax residency certificate and exchange of information. Based on delegations' views expressed and building on the progress made during the previous Presidencies, in September the Presidency presented a compromise text covering the whole draft Directive. On this text, delegations expressed diverging views which prevented them from reaching an agreement and, as an alternative, suggested a two-stage approach. This approach consisted of a first stage in which the Directive would include an automatic exchange of information based on a number of agreed hallmarks, that would take place together with the application of domestic tax consequences, where considered appropriate. In a second stage, best practices about the use of that information to apply tax consequences among the Member States would be exchanged. In addition, it was suggested that after an evaluation of such practices a new proposal may be launched in the future, if appropriate.

19. In October, the Presidency asked in the HLWP whether delegations would like to continue working on the compromise text or could consider the two-stage approach. Although the principle of a two-stage approach was supported to some extent, several delegations considered that the main pending issues would not be solved by this approach and a number of delegations considered that it may require further analysis. During that meeting, the Commission suggested an alternative way forward that could be based on a minimum standard approach and a tool box of consequences. Taking into account that more technical work would have to be done regarding the two-stage approach, the Presidency submitted a proposal to the November HLWP based on the suggestions made by the Commission in order to check whether this could be an acceptable alternative way forward. However, there was no agreement on this new proposal within reach that would be acceptable for everybody, so further discussions will be needed in order to find compromise solutions on outstanding issues.

c) Proposals for Council directives on BEFIT, on Transfer Pricing and on the Head Office Tax System

20. On 12 September 2023 the Commission tabled three important new legislative proposals for Council directives in the area of corporate taxation:

- proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT),¹² the core objective of which is to develop a common corporate tax framework for large multinationals in the EU. With BEFIT being proposed, the Commission withdrew the proposals on Common Corporate (Consolidated) Tax Base (the CCTB/CCCTB), which were on the table of the Council since 2016 and were put on hold due to the global negotiations on the Two-Pillar reform (in the framework of the OECD/G20 Inclusive Framework on BEPS);

¹² Doc. ST 12965/23 + ADD 1-3.

- proposal for a Council Directive on transfer pricing,¹³ which essentially aims at integrating into EU law key transfer pricing principles and rules, which are agreed in the framework of the OECD, and also creates the possibility to establish, within the Union, common binding rules on how the arm's length principle should be applied to specific transactions;
- proposal for a Council Directive establishing a Head Office Tax (HOT) System for standalone micro, small and medium sized enterprises,¹⁴ which aims at simplifying corporate tax compliance for micro, small and medium size companies (SMEs) that decide to operate across borders within the EU. The Commission essentially proposes that SMEs that have a permanent establishment at least in one another ("host") Member State, could voluntarily continue to apply the tax rules that they are familiar with (of the "home" MS), and could calculate and report the taxable result of their permanent establishment in other ("host") Member State to the tax authorities of the "home" Member State. The latter would then apply the tax rate of the "host" Member States to the taxable result and collect the corporate income tax due by the permanent establishment before transferring the resulting revenues to the respective host Member States. This system could reduce compliance costs, encourage cross-border expansion of SMEs and contribute to ensuring a level playing field for the participation of SMEs in the internal market.

21. Member States have begun the analysis of and technical work on these three proposals at the level of the WPTQ. Three WPTQ meetings were held regarding this issue.

¹³ Doc. 12954/23 + ADD1.

¹⁴ Doc. 12951/23 + ADD 1-5.

d) Directive on global minimum taxation (Pillar 2) and the negotiations in the Inclusive Framework on BEPS on the Two-Pillar reform

22. The Council Directive (EU) 2022/2523 of 15 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union ('Pillar 2 Directive')¹⁵ should be transposed by Member States by 31 December 2023.
23. In July 2023, further progress on the remaining elements of the Two-Pillar reform was announced by the OECD/G20 Inclusive Framework on BEPS, as set out in its Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. Concerning Pillar 2, on 13 July 2023 the Inclusive Framework adopted a package of documents which included an agreement on the data points of the GloBE Information Return and further administrative guidance, notably including two new safe harbours. The Council (Ecofin) was updated (on 14 July 2023) by the Presidency on these matters¹⁶.
24. To date, further progress has been made in the OECD/G20 Inclusive Framework on BEPS, in line with the revised timeline. Concerning Pillar 2, the multilateral instrument on the subject to tax rule (STTR) has been made available for signature as of 2 October 2023. This instrument, together with bilateral negotiations, will allow countries to efficiently implement the STTR in existing bilateral tax treaties. Progress is also being made on the remaining aspects of both building blocks (Amount A and Amount B) of Pillar 1, and the Multilateral Convention that will implement Amount A in particular. Delegations are being regularly informed in the Working Party on Tax Questions (High Level) about the state of play in these negotiations.
25. In the context of the ongoing work and bilateral contacts on these matters, the Presidency suggested that Member States discuss the possibility that the Council (Ecofin) reconfirms its political support to the Two-Pillar solution, as these negotiations are entering their final stages.

¹⁵ OJ L 328, 22.12.2022, p. 1.

¹⁶ See doc. 11223/23.

26. Following the meeting of Fiscal Counsellors/Attachés on 13 October 2023 and further bilateral contacts, as well as the meeting of the Committee of Permanent Representatives (Part 2) on 31 October, the Council on 9 November 2023 approved the statement, where, among other points, it welcomed and supported the agreement reached by the Inclusive Framework on the clarifications concerning application of Pillar 2 contained in the administrative guidance endorsed by the Inclusive Framework in December 2022, in February 2023 and in July 2023 – including the transitional Undertaxed Profits Rule and Qualified Domestic Minimum Top-up Tax Safe Harbours, the new guidance on Transferable Tax Credits, as well as the transitional Country-by-Country Reporting Safe Harbour and the GloBE Information Return. The Commission also made a statement to the minutes of the Council meeting, notably indicating its view that the administrative guidance endorsed by the Inclusive Framework in December 2022, February 2023 and July 2023 is compatible with the Pillar 2 Directive¹⁷.

2) **Indirect Taxation**

a) VAT in the Digital Age

27. On 8 December 2022, the Commission issued its package “VAT rules for the digital age”, containing three proposals:

- a proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age¹⁸;
- a proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age¹⁹; and
- a proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards information requirements for certain VAT schemes²⁰.

¹⁷ Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union (OJ L 328, 22.12.2022, p.1).

¹⁸ Doc. ST 15841/22.

¹⁹ Doc. ST 15842/22.

²⁰ Doc. ST 15843/22.

28. The package has three objectives. Firstly, it sets out to modernise the VAT reporting obligations by introducing digital reporting requirements based on electronic invoicing. Secondly, it intends to address the challenges of the platform economy by updating the applicable VAT rules. And thirdly, it seeks to address administrative burden by moving towards a single VAT registration.
29. The Commission presented its package at a Working Party meeting under the Czech Presidency, and the Swedish Presidency started its work on the package, including compromise texts on all three aspects of the proposals, which were welcomed by the delegations as a solid basis for further work.
30. To steer the further work on this file, on 16 June 2023 the Council held a policy debate on the proposals, which was prepared by the HLWP on 1 June 2023. In the debate, Ministers generally welcomed the broad lines of the Commission proposals and the progress made under the Swedish Presidency. Many ministers also requested flexibility on domestic digital reporting frameworks as well as further work on the exact form of the enhanced role of platforms in the collection of VAT in the area of short-term accommodation rental and passenger transport services.
31. Whereas the Spanish Presidency pursued the work on all three parts of the package, the progress was most tangible on the platform economy and the single VAT registration.
32. On the parts related to the single VAT registration, the Presidency accommodated the concerns of many delegations by removing the parts of the proposal related to the extension of the deemed supplier provision and to works of art and second-hand goods. The new feature related to a mandatory import one-stop-shop was postponed to be discussed in relation with the VAT aspects of the reform of the Union Customs Code, also due to objections to a mandatory use of the IOSS from several Member States, as well as the proposal from a few of them to explore alternative solutions.

33. On the part related to the platforms, the Presidency pursued a strategy to reconcile the position of delegations with doubts with respect to the deemed supplier rule or seeking more flexibility regarding short-term accommodation rental and passenger transportation services and those trying to minimise the fragmentation in the internal market. While a majority of Member States support the latest Presidency compromise text, some delegations could not support it and some suggested an optional application of the deemed supplier rule, with a few of them suggesting the substitution of the deemed supplier rule by reporting obligations.
34. The file was discussed at eight WPTQ meetings held in July, September, October and November as well as in two HLWP meetings held in July and in November. Detailed progress on the package is further explained in the progress report ST 15877/23.
- b) Revision of the Energy Taxation Directive (ETD)
35. 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)²¹, ('the ETD proposal').
36. The ETD proposal is part of the "Fit for 55" package²², 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.
37. 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

²¹ Doc. ST 10872/21.

²² Doc. ST 10849/21.

- c) preserving the capacity to generate revenues for the budgets of the Member States.
38. On 17 June 2022, the Council (Ecofin) took note of the Presidency progress report on the ETD proposal²³. On 6 December 2022, the Council (Ecofin) held a policy debate²⁴ on the ETD proposal and gave political guidance on the way forward. In general, the Ministers supported the more flexible Presidency approach and asked to find solutions to open issues. Taking into account the political guidance, technical analysis continued during the first semester of 2023 and a full revised compromise text was presented.
39. Building on the progress made by the previous Presidencies, the Spanish Presidency continued work on the revision of the ETD. The file was analysed in the WPTQ on 6 July, 18 September and 8 November. Furthermore, an exchange of views took place at the HLWP on 4 October and 23 November. The Presidency submitted background notes on specific topics and possible alternative drafting for certain articles. The outstanding issues were analysed, whereas the focus was on the following issues: minimum levels of taxation, in particular tax rates at the end of the transitional period (January 1, 2033) and special treatment of natural gas and LPG; indexation of minimum levels of taxation; net calorific values; definition of business flights; wood taxation; interaction between the future ETD and the state aid rules; and mixed products.
40. The Presidency managed to identify possible compromise solutions for some of the topics discussed. However, positions among delegations are still divergent on several crucial issues. Thus, further work is needed in order to reach a balanced compromise.

²³ Doc. ST 9874/22.

²⁴ Doc. ST 14736/22.

3) Administrative cooperation in the field of taxation

a) Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC 8)

41. A proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC 8) was presented by the Commission on 8 December 2022²⁵.

42. The key objectives of this legislative proposal were the following:

- a) to extend the scope of automatic exchange of information under DAC to information that will have to be reported by crypto-asset service providers on transactions (transfer or exchange) of crypto-assets and e-money. Expanding administrative cooperation to this new area is aimed at helping Member States to address the challenges posed by the digitalisation of the economy. The provisions of DAC 8 on due diligence procedures, reporting requirements and other rules applicable to reporting crypto-asset service providers will reflect the Crypto-Asset Reporting Framework (“CARF”) and a set of amendments to the Common Reporting Standard (“CRS”), which were prepared by the OECD under the mandate of the G20²⁶. The G20 endorsed the CARF and the amendments to CRS, both of which it considers to be integral additions to the global standards for automatic exchange of information²⁷.
- b) to extend the scope of the current rules on exchange of tax-relevant information by including provisions on exchange of advance cross-border rulings concerning high-net-worth individuals, as well as provisions on automatic exchange of information on non-custodial dividends and similar revenues, in order to reduce the risks of tax evasion, tax avoidance and tax fraud, as the current provisions of DAC do not cover this type of income;

²⁵ Doc. ST 15829/22 + ADD1 – ADD5.

²⁶ <https://www.oecd.org/tax/exchange-of-tax-information/crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.pdf>

²⁷ G20 Bali Leaders’ Declaration of 15-16 November 2022, point 31.
(https://www.g20.org/content/dam/gtwenty/gtwenty_new/about_g20/previous-summit-documents/2022-bali/G20%20Bali%20Leaders%27%20Declaration,%2015-16%20November%202022.pdf)

c) to amend a number of other existing provisions of DAC. In particular, the proposal seeks to improve the rules on reporting and communication of the Tax Identification Number (TIN), in order to facilitate the task of tax authorities of identifying the relevant taxpayers and correctly assessing the related taxes, and to amend DAC provisions on penalties that are to be applied by Member States to persons for the failure of compliance with national legislation on reporting requirements adopted pursuant to DAC.

43. Following preparatory work, as summarised in doc. ST 13210/23, the Council, and the issuance by the European Parliament of its opinion, on 17 October 2023, adopted the Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation²⁸.

b) Automatic exchange of tax-relevant information with non-EU jurisdictions

44. During the Spanish Presidency term, discussions and technical work continued as regards the state of play, risks and opportunities in the area of tax information exchange with non-EU jurisdictions, in particular covering aspects relating to the personal data protection framework and its correlation with work on international administrative cooperation.

45. This work will continue and will also build on the discussions on these matters that were held during previous Presidency terms²⁹. The aim is 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.

²⁸ OJ L, 2023/2226, 24.10.2023, p. 1.

²⁹ See doc. 10710/23, points 31-32, doc. ST 15506/22, points 46 to 48; doc. 9970/21, points 81 - 82 ; doc. 14651/21, points 50 - 59.

c) EU Agreements with Andorra, Liechtenstein, Monaco, San Marino and Switzerland

46. The Presidency initiated a discussion at the WPTQ (High Level) concerning possible amendments of the agreements on the automatic exchange of financial account information to improve international tax compliance which the EU has concluded with Andorra, Liechtenstein, Monaco, San Marino and Switzerland (in the form of Amending Protocols to the earlier agreements)³⁰.
47. The delegations were updated on the informal contacts the Commission has held with administrations of those five countries with the objective of exploring the scope of a possible amendment of these agreements, which would primarily consist of the necessary alignment with the changes made to the OECD Common Reporting Standard and other related adjustments.
48. The Commission indicated that the authorities of Andorra, Liechtenstein, Monaco, San Marino and Switzerland have expressed an interest in updating the agreements with the EU, and that EU Member States would benefit from having such updated agreements in place.
49. As a first step, the Presidency considered it appropriate to put for consideration of the HLWP whether delegations deemed it in their interest (and that of the EU) to amend the five agreements, and whether there was a need to continue pursuing informal contacts to further specify the possible scope of the amendments. Should the informal contacts continue, it is understood that the Commission will regularly update the Member States, through the WPTQ, on the matter.
50. Once the informal phase of “scoping” that the Commission services have conducted is considered conclusive, it would then be necessary to launch the formal process leading to the opening of negotiations (and formal consultations) on behalf of the EU, as appropriate.

³⁰ OJ L 268, 1.10.2016, p. 40–76; OJ L 225, 19.8.2016, p. 3–40; OJ L 339, 24.12.2015, p. 3–35; OJ L 346, 31.12.2015, p. 3–41; OJ L 339, 24.12.2015, p. 3–35.

51. In accordance with the requirements of the Treaty on the EU (Article 16(1) and (6) TEU in particular), it is the prerogative of the Council to carry out policy-making, to elaborate the Union's external action and to ensure that that action is consistent. Pursuant to Article 218(2) of the TFEU, it is for the Council to authorise the opening of negotiations, adopt negotiating directives, authorise the signing of agreements between the Union and third countries and conclude them.
52. Pursuant to TFEU Article 218(3) to (4), the Commission shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team. The Council may address directives to the negotiator and designate a special committee (e. g. the WPTQ) in consultation with which the negotiations must be conducted. To be noted, the Council must be in a position to express its position on the matter and, in case it has reservations on the talks, communicate this to the Commission.
53. To recall, in 2013 the Amending Protocols were negotiated by the Commission on the basis of the Council Decision authorising the Commission to open negotiations for such Agreements, with the negotiating directives (mandate), which was adopted by the Council on 14 May 2013 (and based on TFEU Articles 218 and 115)³¹.
54. At the WPTQ (High Level) meeting on 4 October 2023, all delegations agreed that it is in the interest of the EU to work towards amending the existing agreements with the five countries, and that the informal "scoping" that the Commission services have conducted with these countries can be considered conclusive at this stage. Member States should be kept informed of any further developments, as appropriate.
55. Delegations also agreed that the process of formal consultations pursuant to these agreements is launched only once (and only if) the Council adopts a Decision pursuant to Article 218 TFEU authorizing the Commission to open the negotiations with these five countries on the matter.

³¹ The Council Decision and negotiating directives are set out in doc. ST 9356/13 RESTREINT UE/EU RESTRICTED; see also the minutes of the Council in doc. ST 9506/13.

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

- *Position to be taken in the Trade Specialised Committee on Administrative Cooperation in VAT*

56. On 4 September 2023, the Commission issued a proposal for a Council Decision on behalf of the European Union within the Trade Specialised Committee on Administrative Cooperation in VAT and Recovery of Taxes and Duties established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part³².

57. While within the Council currently the competent preparatory body on UK-related matters is the Working Party on the United Kingdom, the WPTQ was consulted on this proposal, and no objections were raised.

58. The Council adopted the Decision in question on 16 October 2023 (OJ L, 2023/2408, 31.10.2023).

- *Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of VAT*

59. In October, the Commission updated delegations on the negotiations with the authorities of Norway to amend the agreement on administrative cooperation, combating fraud and recovery of claims in the field of VAT, and consulted them on the draft amendments to the agreement.

60. Since a very broad majority of delegations could agree to the draft amendments, the Presidency concluded that the next step was to await the Commission proposals for the signing and conclusion of the agreements under Article 218 TFEU.

61. On 24 November 2023, the Commission issued its proposals³³.

³² Doc. ST 12523/23 + ADD 1.

³³ Doc.

- *Administrative cooperation in VAT with other countries*

62. At the HLWP meeting on 4 October 2023, the Commission briefed delegations on the state of play of the exploratory contacts that took place with the authorities of Australia, Canada, Japan and New Zealand, as regards possibilities for further work towards administrative cooperation in the area of VAT. The Commission also updated delegations on the 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)³⁴. The Commission indicated that these negotiations are still on hold.

C. TAX POLICY COORDINATION (non-legislative activities)

63. 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. In light of the ongoing and future work in the area of taxation at the international level, there may be cases where Member States may consider the question of whether it is in the interest of the EU and of its Member States to feed into this work and to establish, coordinate and represent policy positions of the Union and Member States. Therefore, at the meeting of the Fiscal Attachés on 13 November 2023, delegations were debriefed about the principal rules that apply and procedures that have to be followed when establishing a position in the Council and coordinating policy positions of the Union and Member States in the area of taxation at international level. This work must be strictly based on the competences according to the provisions of the Treaties and has to reflect the principle of sincere cooperation and the unity of the international representation of the EU and its Member States, in accordance with the provisions of the Treaties and the case law of the Court of Justice of the European Union.

³⁴ 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.

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

64. The Code of Conduct Group (COCG) met on 3 July, 3 October and 22 November 2023.
65. The biannual revision of the EU list of non-cooperative jurisdictions for tax purposes was approved by the Council on 17 October 2023 and published in the Official Journal on 23 October 2023³⁵.
66. A more extensive report can be found in the dedicated biannual Code of Conduct Group report³⁶.

2) **UN Resolution on promoting inclusive and effective international tax cooperation at the United Nations**

67. On 30 December 2022, the UN General Assembly formally adopted a Resolution on the promotion of inclusive and effective international tax cooperation (Resolution 77/244). With the resolution, UN Members requested the UN Secretary General to prepare a report (for discussion at the 78th session of the UN General Assembly in September 2023) to analyse all relevant international legal instruments, other documents and recommendations that address international tax cooperation, taking into full consideration existing international and multilateral arrangements. To this end, the Secretary-General launched a consultation in February 2023.
68. On 8 March 2023, the Fiscal Counsellors/Attachés supported the submission of an EU contribution. Following this support, a draft contribution was circulated and approved by the HLWP through an informal silence procedure on 15 March 2023. The contribution was subsequently signed by the Chair of the HLWP and submitted to the UN Secretariat jointly by the delegations of the EU and of Sweden³⁷.

³⁵ OJ C/2023/437, 23.10.2023.

³⁶ Doc. ST 15757/23.

³⁷ Doc. ST 7564/23.

69. During the discussion at the HLWP on 25 April 2023 delegations expressed their support for the coordination, as relevant, of positions on international tax cooperation by the EU Member States to be conveyed in UN fora, while avoiding duplication of work. The HLWP was mandated to continue to oversee developments.
70. The UNSG report on the promotion of inclusive and effective international tax cooperation was published on 8 August 2023³⁸. The report provides an analysis of the existing arrangements in international tax cooperation and explores various options for enhancing international tax cooperation.
71. On 15 September 2023, Fiscal Attachés/Counsellors considered a draft position on behalf of the EU and its Member States on tax cooperation at the United Nations reflecting the conclusions of the report. The position was approved by the Council on 28 September 2023³⁹.
72. At the HLWP on 23 November 2023 the Presidency and the Commission reported on the progress in the negotiations at the Second Committee of the General Assembly at its seventy-eighth session on a draft resolution.

3) **Russia's aggression against Ukraine**

73. In the context of Russia's aggression against Ukraine with the participation of Belarus, the Council 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.
74. Firstly, Member States agreed on the need 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 within the EU and other instruments in the tax field in the context of the enforcement of the restrictive measures.

³⁸ <https://financing.desa.un.org/document/promotion-inclusive-and-effective-international-tax-cooperation-united-nations-a78235>

³⁹ Doc. ST 12967/23

75. In this context, the Working Party on Tax Questions will continue to examine 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 Freeze and Seize Task Force subgroup on tax enforcement.
76. At the HLWP meeting on 23 November 2023, delegations took note of the update provided by the Commission on the work of this subgroup.

4) **International developments**

77. The HLWP was regularly informed of relevant international developments in the area of tax policy, notably in relation to the meetings of the G20 Finance Ministers and the OECD/G20 Inclusive Framework on BEPS.
78. Issues related to the US Foreign Account Tax Compliance Act (FATCA) have been regularly brought to the attention of delegations at the HLWP meetings. As regards the issue of the so-called accidental Americans, at the end of 2022, the US Internal Revenue Service released a notice that temporarily relaxes the rules for being determined as non-compliant because of missing TINs for the years 2022, 2023 and 2024. In January 2023, this development was brought to the attention of the HLWP. In April 2023, the members of the HLWP underlined that a permanent and wider solution is needed to prevent Financial Institutions in EU to be treated as non-compliant because of missing TINs in cases where it is not possible for the Financial Institutions to collect TINs. In July 2023, in the HLWP delegations suggested to send a letter to the US, urging the US to provide a more permanent solution with a wider scope as soon as possible. As a consequence, in September 2023, the Spanish Presidency sent a letter to the US on behalf of the HLWP. In October, the HLWP was debriefed on the latest developments as regards FATCA. In November, the HLWP was informed about the meeting which took place between the Spanish Presidency and the US Treasury on 13 November.

5) Tax in non-tax areas (TINTA)

79. 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 Recommendation on developing social economy framework conditions, the EU position to be taken at the 10th CoP of the Framework Convention on Tobacco Control and the Artificial Intelligence Act.

6) Draft Multilateral Convention on the International Tax Dispute Resolution Council

80. On 10 March 2023 a draft Multilateral Convention on the International Tax Dispute Resolution Council was presented by a Fiscalis project group, making use of the possibility of an Alternative Dispute Resolution Commission of a permanent nature which is facilitated in Article 10 of Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms. On 23 November 2023, the HLWP was informed about the state of play of this issue.