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European Union

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#### NOTE

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| From:    | Presidency                                                                                                                |
| To:      | Permanent Representatives Committee/Council                                                                               |
| Subject: | Directive on ensuring a global minimum level of taxation for multinational groups in the Union<br><i>General approach</i> |

#### I. INTRODUCTION

1. 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<sup>1</sup>.

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<sup>1</sup> ST 13350/20.

2. Minimum effective taxation ('Pillar Two' of the reform) is mainly based on two rules to be applied in domestic law ('GloBE rules') – an income inclusion rule (IIR) and an undertaxed payment rule (UTPR) – which are intended to ensure that the profits made by multinational groups with a turnover of EUR 750 million or more are taxed at an effective rate of at least 15 %. According to the October Statement of the Inclusive Framework, Pillar Two should be brought into law in 2022, to be effective in 2023, with the UTPR coming into effect in 2024.
3. In order to ensure that the implementation of the GloBE rules is consistent and compatible with EU law, and based on the model rules adopted by the Inclusive Framework on 14 December, on 22 December 2021 the European Commission presented a proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union<sup>2</sup>. This proposal for a Directive, which is intended to transpose Pillar Two into EU law, sets out the rules on the basis of which Member States will apply an additional tax in respect of the low-taxed income of a constituent entity of any national or multinational group that falls within the scope of the reform.
4. In parallel, work is continuing on the implementation of the rules on the allocation of taxing rights between jurisdictions ('Pillar One'), in accordance with the detailed implementation plan approved by the Inclusive Framework, in order to develop a multilateral convention ('MLC') which will be open for signature from mid-2022, with a view to its implementation as of 2023. At their meeting on 17 and 18 February 2022, the G20 finance ministers reiterated their commitment to this timetable.
5. The European Economic and Social Committee adopted its opinion on 23 March 2022. The European Parliament will deliver its opinion in the near future.

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<sup>2</sup> ST 15294/21.

## II. STATE OF PLAY

6. On 18 January 2022, the Ecofin Council held a policy debate on the proposal for a Directive<sup>3</sup> in order to provide political guidance for the technical examination of the text. The debate showed that all Member States agree that this tax issue is a priority, and that the rules agreed by the OECD Inclusive Framework need to be transposed into EU law as faithfully as possible and without delay.
7. Since the beginning of January 2022, and taking into account the guidance from ministers, the French Presidency has held nine meetings of the Working Party on Tax Questions (Direct Taxation, including three high-level meetings) dedicated to the technical examination of the proposal for a Directive. These meetings have made it possible, in particular, to significantly align the wording of the text with that of the OECD model rules and to identify the key issues still to be settled at political level in order to reach agreement on the whole text.
8. Progress was made in these negotiations at the Permanent Representatives Committee meeting on 9 March.
9. At the Ecofin Council meeting on 15 March 2022, most Member States were able to support the compromise text proposed by the French Presidency. Two Member States called for an adjustment of the parameters of the optional transitional derogation provided for in Article 47a of the Directive. One Member State indicated that it could not give its consent without a legal link with the entry into force of Pillar One, and one Member State maintained a parliamentary scrutiny reservation.

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<sup>3</sup> ST 5015/22.

10. Taking account of these discussions, the Presidency circulated a new compromise text on 28 March (ST 7495/22) which adjusts the optional transitional derogation arrangements, extending the time frame for applying the derogation to six years and increasing the maximum number of parent entities in a Member State in order to qualify for the derogation to twelve. Regarding bilateral contacts with the delegations concerned, the Presidency considers that the updated compromise text meets the technical expectations expressed and should now be acceptable to the Member States in question.

### **III. MAIN QUESTION (*the link between Pillar Two and Pillar One*)**

11. The OECD/G20 Statement of 8 October 2021 is based on two separate pillars, with different arrangements for implementation in accordance with the detailed implementation plan also approved by the Inclusive Framework. At the start of negotiations on the Commission proposal for a Directive, several Member States requested that the entry into force of the two pillars be linked by making the entry into force of Pillar Two contingent on the entry into force of the multilateral convention implementing Pillar One.
12. At the Ecofin Council meeting on 15 March 2022, the Presidency proposed that the agreement on the proposal for a Directive be accompanied by a Council statement confirming the commitment of all Member States to the ongoing process within the Inclusive Framework as regards Pillar One, in line with the timetable for implementation approved in October 2021, and calling for the other States Parties to respect that commitment. Only one Member State has not yet expressed support for this solution.

13. The Presidency would point out that the Commission and the Council Legal Service have confirmed the legal difficulties involved in the request, still maintained by one Member State, to link the entry into force of the two pillars by making the entry into force of Pillar Two contingent on the entry into force of the multilateral convention implementing Pillar One. In addition, this request is not acceptable to the majority of the Member States.
14. However, as the G20 has recently done, the EU must continue to affirm its political determination to conclude the work on both pillars according to the timetable set out in the agreement of 8 October 2021. In this context, the Presidency maintains its proposal that the agreement on the Directive be accompanied by a Council statement. The statement is set out in the annex to this note.

#### **IV. NEXT STEPS**

15. The Presidency proposes the compromise text set out in ST 7495/22 as a basis for agreement on this file.
16. The Permanent Representatives Committee is therefore invited to:
- seek agreement on a text for a general approach on this legislative proposal, on the basis of the compromise text set out in ST 7495/22, with a view to the adoption of the Directive, subject to receiving the opinion of the European Parliament and legal- linguistic revision;
  - suggest that the Council approve the statement to be entered in the minutes, as set out in the annex to this note.

**Draft statement by the Council**

The Council:

REAFFIRMS the EU's commitment to the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy and its implementation plan, approved in October 2021, and INVITES all members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) to uphold their commitment to the two pillars;

NOTES that, since 2017, the EU has risen to the tax challenges arising from the digitalisation of the economy, and that its continuous efforts have contributed to the global agreement on the two-pillar solution;

CONFIRMS its continued support for the work being carried out in the OECD/G20 Inclusive Framework on BEPS and is fully committed to successfully completing, within the agreed time frame, the ongoing work on Pillar One, including the multilateral convention, which should be open for signature in mid-2022 and enter into force in the course of 2023;

STRESSES that the Council will, where necessary, reassess the situation regarding Pillar One, in the context of the ongoing work in the OECD Inclusive Framework on BEPS, with a view to swiftly finding a solution to the tax challenges arising from the digitalisation of the economy;

WELCOMES the swift agreement on this file; STRESSES that use of the delegated act in this specific file should not be seen as a precedent for other legislative instruments adopted under the special legislative procedure applicable to tax matters.

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