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## **REPORT**

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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. The text of the ECOFIN report to the European Council on tax issues was prepared and agreed within the Council High Level Working Party on Tax Questions (HLWP).
3. The procedure for final approval is described in docs. 8446/20 and 8375/20.

**(DRAFT) 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 Croatian Presidency, as well as an overview of the state of play of the most important dossiers under negotiations in the area of taxation. It has been prepared on the basis of discussions in the Council High Level Working Party on tax issues (HLWP) covering strategic tax policy issues in the area of direct and indirect taxation.
2. The report reflects the state of play of relevant Council work and covers issues mentioned in a number of European Council conclusions (of 1-2 March 2012<sup>1</sup>, 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. In spite of the hindrances caused by the COVID-19 pandemic, the work during the Croatian Presidency term continued on a number of key files, such as digital taxation, rules on mandatory transmission and exchange of VAT-relevant payment information, simplification of VAT rules for small enterprises, the future of VAT rates, update on the EU rules on structures of excise duties on alcohol, updates to the EU list of non-cooperative jurisdictions for tax purposes.
4. More specifically, the Council:
  - a) adopted the legislative package on mandatory transmission and exchange of VAT-relevant payment information, which consists 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) adopted the Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises and Regulation (EU) No 904/2010 as regards the administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises;
  - c) approved Conclusions concerning the structure and rates of excise duties applied to manufactured tobacco;
  - d) approved Conclusions on the future evolution of administrative cooperation in the field of taxation in the EU;
  - e) completed negotiations on the Council Directive amending Directive 2011/16/EU to address the urgent need for deferring certain time limits for the filing and exchange of information in the field of taxation due to the COVID-19 pandemic;
  - f) examined proposals deferring deadlines in relation to VAT e-commerce package, due to the COVID-19 pandemic;

- g) 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 to ECOFIN on 12 June 2020.<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.
8. The Maltese, Estonian and Bulgarian Presidencies examined article-by-article all chapters of the CCTB proposal and preliminary compromise text proposals were tabled. A joint evaluation of the impact of certain articles of the CCTB proposal on national tax revenues was undertaken in parallel, using a common methodology and common hypotheses. A debate was initiated during the Estonian Presidency on the extent to which the CCTB proposal could provide an appropriate policy response to the direct taxation challenges posed by the digitalisation of the economy.

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<sup>14</sup> Doc. 8374/20.

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

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

9. The issue of the right mix between harmonisation and flexibility in the context of increased international competition being constantly resurfacing, the ECOFIN Council furthermore held a policy debate on the matter on 23 May 2017. On this occasion, several Ministers supported the objective of as broad as possible corporate tax base to preserve national tax revenues.
10. Subsequent discussions during the Austrian, Romanian and Finnish Presidency revealed however a divergence of views among delegations on three groups of issues:
- a) whether or not to extend the scope to all, or a broader range of, companies;
  - b) how to deal with the anti-avoidance provisions in the context of ATAD 1 and 2; and
  - c) how to deal with the proposed tax incentives (Articles 9 (3), 11 and 42);
- thereby undermining further progress at technical level.

11. The HLWP meeting of 3 March 2020 discussed the state of play and possible ways forward on these issues. On this occasion:
- a) Most delegations agreed that a reorientation of the Council work on the CCTB proposal towards issues linked to OECD discussions could prove more useful in preparation for possible future EU hard law in this area and suggested to wait until those issues that are linked to OECD negotiations stabilise before resuming discussions on such issues;
  - b) Several delegations nevertheless stressed that the objectives of the CCTB proposal go beyond that of ongoing OECD/G20 discussions, e.g. improve the functioning of the EU internal market, and insisted that these different dimensions should not be forgotten;
  - c) Some other delegations argued that WPTQ should discuss some CCTB-related issues (e.g. financial accounting) in parallel to OECD negotiations in order to shape EU Member States' positions in related international discussions;
  - d) As to the main issues preventing further progress: 1) the positions of delegations on the issue of the scope remained largely unchanged, 2) anti-tax avoidance measures that do not have a direct impact on the tax base calculation could be put aside for the time being considering that they are not within the scope of international negotiations and the existing rules provided by ATAD, 3) discussions on the proposed tax incentives will continue to be put on hold but could be resumed once international negotiations (in particular on Pillar 2) have concluded by the end of 2020.
12. A WPTQ meeting to follow up on the 3 March 2020 HLWP meeting was due to take place on 13 March 2020 but was cancelled as a result of the COVID-19 lockdown measures. This meeting was also due to discuss the issues of financial accounting and principal tax authorities.

## "Digital taxation" package

13. 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".
14. 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").
15. The Austrian Presidency brought the DSTD to the ECOFIN Council on 4 December 2018 with a view to a general approach.<sup>17</sup> The Austrian Presidency presented a compromise text which did not gain unanimous 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>17</sup> Doc. 14885/18.

16. 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 digitalization.
17. 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**

18. Despite the COVID-19 pandemic 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 many of its subsidiary bodies in the field of taxation to produce a final report by the end of 2020.
19. The ECOFIN Council on 17 May 2019 discussed digital taxation in the international context. Ministers supported discussions at EU level in order to exchange views on the issues under negotiation in the OECD. In line with these discussions the Finnish Presidency dealt with the topic at technical level. At the ECOFIN Council on 8 November 2019 there was an overall support for continuing the technical analysis of the OECD proposals and work related to impact analysis. The HLWP and WPTQ were tasked with continuing work on this in a proactive way.



20. The OECD/G20 Inclusive Framework on BEPS adopted on 29-30 January 2020 a statement defining the direction of further work. It sets out the two pillars of the approach. The unified approach on Pillar 1 addresses the broader challenges of the digitalized economy by focusing on the allocation of taxing rights, including taxable presence without the traditional physical presence of a company. Pillar 2 (also called GloBE proposal - "Global Anti-Base Erosion Proposal") focuses on the risks of profit shifting to entities subject to no or very low taxation and proposes measures which aim to ensure that corporate profits are subject to taxation at an effective minimum rate.
21. The G20 meeting of Finance Ministers and Central Bank Governors on 22-23 February 2020 welcomed the recent progress and encouraged continued efforts to agree on key policy features by July 2020 and have political agreement on a global consensus-based solution by the end of 2020.
22. It is as of yet not clear what the impact of the COVID-19 pandemic will be on the timetable of the OECD negotiations. Nevertheless, the Inclusive Framework meeting scheduled to take place on 1-2 July 2020 in Berlin has been postponed to October 2020.
23. The Croatian Presidency discussed digital taxation at the meetings of HLWP on 15 January 2020 and WPTQ (digital taxation) on 23 January 2020 and 13 February 2020. It brought the matter to ECOFIN Council on 21 January 2020. The Presidency invited the ECOFIN Council to exchange views on tax challenges arising from digitalization.<sup>18</sup>
24. At the ECOFIN Council, the Presidency noted that all Member States shared the view that an international solution was considered the preferred way forward as opposed to fragmentation and unilateral measures. The Presidency also noted that there was readiness to explore the options put forward by the OECD Secretariat, even if substantive views on the two pillars vary.
25. Following the discussions at ministerial level, the Croatian Presidency followed further work in the OECD preparatory bodies, notably Working Parties 1, 2, 6 and 11 as well as the Task Force on Digital Economy which held an online meeting on 8 April 2020.

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<sup>18</sup> Doc. 5109/1/20.

26. Furthermore, on 20 February 2020 the Chair of HLWP sent a letter to the OECD,<sup>19</sup> confirming that EU Member States agree that OECD discussed the results of its assessment with the Commission without transmission of data with a view to determining the differences in the results and clarifying the reasons therefore.

### **Value Added Tax (VAT) and excise duties**

27. As regards VAT, in 2016, the Council adopted two sets of conclusions: in May 2016<sup>20</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>21</sup>
28. 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>22</sup>, the Finnish Presidency continued work on the legislative files in the area of VAT.

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<sup>19</sup> Doc. WK 5870/20.

<sup>20</sup> Doc. 9494/16.

<sup>21</sup> Doc. 14257/16.

<sup>22</sup> See, for example Doc. 15082/18, points 30 to 111; Doc. 10322/18, points 56 to 100.

29. In the area of excise duties, following the Council conclusions of 2016 regarding Directive 92/83 EEC<sup>23</sup> the work in the Council evolved on the basis of the legislative proposals tabled by the Commission in 2018 concerning the legislative proposal to amend the rules on the structure of excise duty on alcohol.
30. In particular, during the term of the Croatian Presidency, the legislative dossiers at varying stages of progress that were on the table of the Council and/or its preparatory bodies, as appropriate, covered the following areas of VAT and excise duties:
- a) Definitive VAT System;
  - b) VAT rates reform;
  - c) Mandatory transmission and exchange of VAT-relevant payment information;
  - d) Simplification of VAT rules for small enterprises;
  - e) Structures of excise duties on alcohol and alcoholic beverages;
  - f) Structures and rates of excise duties on manufactured tobacco;
31. More detailed information on individual dossiers in the area of VAT and excise duties can be found further in the text.

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<sup>23</sup> Doc. 15009/16.

a) Definitive VAT System

**Background**

32. 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>24</sup>
33. 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>25</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 taxable person (CTP) and the so-called "cornerstones" of the definitive system of VAT (set out as amendments to Article 402 of the VAT Directive).

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<sup>24</sup> Doc. 12617/17.

<sup>25</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).

34. 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>26</sup>.
35. 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.
36. Member States appreciate the initiative taken by the Commission to reach a definitive VAT system.
37. 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>26</sup> Proposal for a Directive amending Directive 2006/112/EC as regards rates of value added tax.

38. 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>27</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").
39. 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**

40. 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>27</sup> Doc.15082/18, points 57 to 88.

41. 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.
42. 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.
43. Member States agree, essentially, to build on the idea of having a single cross-border B2B transaction instead of two.
44. 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, a few Member States supported the notion of a CTP and the application of reverse charge as regards supplies to CTPs.

45. 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.
46. 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.

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

### **Way forward**

48. Member States agree that this dossier still requires thorough technical analysis before the final policy choices are made.
49. As already indicated by the Council<sup>28</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>28</sup> Doc. 15082/18, points 89 to 91.



50. 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.

51. 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.
52. Further work on the definite VAT system should not prevent or slow down efforts to improve the current VAT system.

b) VAT rates reform

53. 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>29</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.
54. 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).
55. The Commission proposal was examined of this was started during the term of the Bulgarian, the Romanian and the Finnish Presidencies.
56. To be noted, some Member States see the need for the proposal for VAT rates reform to be discussed also in the context of the legislative proposal for a Definitive VAT system, as both legal texts, once agreed, are part of a coherent system of VAT and as the derogations relating to goods and services would cease to apply upon introduction of the definitive arrangements referred to in Article 402 of the VAT Directive. Some Member States underline that the VAT rates proposal should be given a priority and discussed and adopted independently.

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<sup>29</sup> Doc. 5335/18.

57. The technical discussions continued under the Croatian Presidency exploring further the option of a positive list, the use of CN<sup>30</sup> codes (where possible) for goods and CPA<sup>31</sup> codes for services and the principles and conditions of applying VAT reduced rates. Suggestions were also made on advancing the European Green Deal by introducing a more beneficial VAT treatment for supplies with low CO<sub>2</sub> emissions.

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

58. Following preparatory work during December 2018 - November 2019<sup>32</sup>, the Council on 18 February 2020 adopted the legislative package consisting of:

- i) Directive (EU) 2020/284 amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers;<sup>33</sup> and
- ii) Regulation (EU) 2020/283 amending Regulation (EU) No. 904/2010 as regards measures to strengthen administrative co-operation in order to combat VAT fraud.<sup>34</sup>

59. These two legislative acts 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. These legislative acts set out EU rules which will enable Member States to collect and process relevant data on cross-border payments in order to combat VAT fraud.

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<sup>30</sup> Commission Implementing Regulation (EU) 2019/1776 of 9 October 2019 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff

<sup>31</sup> Commission Regulation (EU) No 1209/2014 of 29 October 2014 amending Regulation (EC) No 451/2008 of the European Parliament and of the Council establishing a new statistical classification of products by activity (CPA) and repealing Council Regulation (EEC) No 3696/93

<sup>32</sup> See doc. 14863/19, points 69 to 72.

<sup>33</sup> OJ L 62, 2.3.2020, p. 7.

<sup>34</sup> OJ L 62, 2.3.2020, p. 1.

d) Simplification of VAT rules for small enterprises

60. Following preparatory work during January 2018 - November 2019<sup>35</sup>, the Council on 18 February 2020 adopted the Directive (EU) 2020/285 amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises and Regulation (EU) No 904/2010 as regards the administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises.<sup>36</sup>

e) VAT e-commerce package

61. After request of various Member States and business associations the Commission put forward on 8 May 2020 proposals<sup>37</sup> in relation to a postponement of the entry into application of the VAT e-commerce package. The proposals respond to the unforeseen problems stakeholders are facing to the COVID-19 crisis. The HLWP finalized the draft compromise texts on 4 June 2020.

f) Structure and rates of excise duties on manufactured tobacco

62. The Council on 1 June 2020 approved the Conclusions concerning the structure and rates of excise duty applied to manufactured tobacco.<sup>38</sup> These conclusions were approved in response to the Commission evaluation of 10 February 2020 of Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco.<sup>39</sup>

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<sup>35</sup> See doc. 14863/19, points 73 to 78.

<sup>36</sup> OJ L 62, 2.3.2020, p. 13.

<sup>37</sup> Doc. 7886/20.

<sup>38</sup> Doc. 8483/20.

<sup>39</sup> Doc. 5960/20 + ADD1.

g) Structures of excise duties on alcohol and alcoholic beverages

63. In response to Council Conclusions of 6 December 2016<sup>40</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>41</sup>
64. In the course of negotiations<sup>42</sup> 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>43</sup>
65. At the meetings of ECOFIN Council on 12 March 2019<sup>44</sup>, 17 May 2019<sup>45</sup> and 8 November 2019 good progress has been made. However no agreement on a compromise text could be reached, as further work was required 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.
66. During the term of the Croatian Presidency, further consultations with Member States concerned continued and it became evident that further work will be required to resolve the remaining concerns on draft Article 22(8) of Directive 92/83/EEC.

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<sup>40</sup> Doc. 15009/16.

<sup>41</sup> Doc. 9570/18 + ADD 1, ADD 2.

<sup>42</sup> Doc. 14863/19, points 85 to 91.

<sup>43</sup> Doc. 9347/19, point 5.

<sup>44</sup> Doc. 6942/19.

<sup>45</sup> Doc. 9347/19 + ADD 1.

*h) Financial Transaction Tax (FTT)*

67. The Commission on 14 February 2013 submitted a proposal for a Council Directive implementing enhanced cooperation in the area of financial transaction tax.
68. 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").
69. The main aspects of the ongoing negotiations on this dossier were summarized in the previous ECOFIN report to the European Council on tax issues.<sup>46</sup> To be noted, a large number of important considerations have to be taken into account in the discussions among the participating Member States, before any consensus is presented to all Member States for an inclusive discussion. 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 Permanent Representatives Committee, agreement in Council).
70. In the light of the foregoing, as already indicated in the December 2016 ECOFIN report to the European Council on tax issues<sup>47</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>46</sup> See doc. 14863/19, points 104-110.

<sup>47</sup> Doc. 15254/16, point 45.

## **B. Administrative cooperation**

### **a) Directive on administrative cooperation in the field of taxation (DAC)**

71. The Council on 29 May 2020 approved the Conclusions on the future evolution of administrative cooperation in the field of taxation in the EU.<sup>48</sup> These conclusions were approved in response to the Commission evaluation of 12 September 2019 of Directive 2011/16/EU on administrative cooperation in the field of taxation.<sup>49</sup>
72. The Council requested that the Commission, taking into account these Council Conclusions, as well as the objectives set out in Directive 2011/16/EU, undertake all the relevant studies and, after carrying out relevant technical analyses, public consultations and impact assessments, submit to the Council a legislative proposal as soon as possible. The Council also invited the Commission to address the most urgent issues as a priority, such as challenges arising from digital platform economy, and, for that purpose consider phasing in the legislative proposals in order to facilitate legislative progress.
73. As a consequence of the outbreak of the COVID-19 pandemic, at the request of a number of Member States, the Presidency on 17 April 2020 sent a letter to the European Commission, indicating that for many Member States, given the severe impact on conditions of work and limited availability of personnel across the EU, it will be crucial to free-up the resources needed in Member States for critically important measures aimed at coping with the crisis and its direct negative effects.

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<sup>48</sup> Doc. 8482/20.

<sup>49</sup> Doc. 12173/19 and 12174/19.

74. Many Member States indicated that it will be very difficult to meet the existing deadlines scheduled for the 2nd semester of 2020 relating to:
- a) the reporting and the automatic exchange of financial account information in accordance with Article 8(3a) and (6) (inserted into DAC by Council Directive 2014/107/EU (DAC 2)), and
  - b) the reporting and information exchange requirements relating to cross-border arrangements in accordance with Article 8ab(1), (2), (7), (12) and (18) (inserted into DAC by Council Directive (EU) 2018/822 (DAC 6)).
75. In response to this request, the Commission on 8 May issued a proposal for a Council Directive amending Directive 2011/16/EU to address the urgent need for deferring certain time limits for the filing and exchange of information in the field of taxation due to the COVID-19 pandemic<sup>50</sup>.
76. Following the preparatory work, the Permanent Representatives Committee on 3 June 2020 authorized the use of written procedure for adoption thereof.<sup>51</sup> It is expected that the draft Directive will be adopted by the Council before 1 July 2020.

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<sup>50</sup> Doc. 7883/20.

<sup>51</sup> Doc. 8326/20.



**b) Fiscalis**

77. 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>52</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.
78. The proposal was examined in the Working Party on Tax Questions (Fiscalis). On 28 November 2018 Permanent Representatives Committee agreed on a partial general approach with a view to commencing negotiations with the European Parliament in the context of the ordinary legislative procedure.<sup>53</sup>
79. The European Economic and Social Committee delivered its opinion on 17 October 2018.<sup>54</sup>
80. 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.
81. Two trilogues were held on 23 January and 21 March 2019 with a number of technical meetings in between those trilogues.
82. The outcome of negotiations was brought for state of play to Permanent Representatives Committee on 27 March 2019. The text includes bracketed provisions that are still under consideration and that are likely to form part of horizontal negotiations on the MFF.

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<sup>52</sup> Doc. 9932/18.

<sup>53</sup> Doc. 14208/18 and doc. 14209/18.

<sup>54</sup> Doc. 14207/18.

83. 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.
84. Negotiations are expected to resume in 2020, once horizontal issues have been solved between the co-legislators.

### **C. Tax Policy Coordination**

85. 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)**

86. The Code of Conduct Group (COCG) met two times under the Croatian Presidency, on 4 February and 2 March 2020, whilst its subgroup on external issues, chaired by the Croatian Presidency, met on 16 and 24 January 2020.
87. The COCG meetings planned on 1 April and 3 June 2020, as well as the subgroup meetings of 20 March and 13 May, were cancelled due to the COVID-19 lockdown measures. They were replaced by a Fiscal Attachés meeting on 26 May 2020, which was convened to discuss the work ahead and accumulated backlog in the context of the COVID-19 pandemic, as well as to agree on the COCG 6-month progress report to the 12 June 2020 ECOFIN Council<sup>55</sup> and accompanying Council conclusions<sup>56</sup>.
88. The main highlight of first two months of the year was the revision of the EU list of non-cooperative jurisdictions for tax purposes at the ECOFIN Council meeting of 18 February 2020<sup>57</sup> and the related monitoring of commitments taken by jurisdictions in this context.

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<sup>55</sup> Doc. 8374/20.

<sup>56</sup> Doc. 8375/20.

<sup>57</sup> Doc. 6129/20.

89. Moreover, at its meeting held on 2 March 2020, the COCG agreed on an approach for the assessment of ring-fencing elements in manufacturing regimes in third country jurisdictions.

**b) International developments**

90. 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, the OECD/G20 Inclusive Framework on BEPS, its Task Force on the Digital Economy (TFDE) and The Global Forum on Transparency and Exchange of Information for Tax Purposes.

91. On 19 November 2013, the HLWP agreed that tax provisions in no-tax dossiers leading to any changes in Member States' tax laws or administrative practices or having other consequences on taxation should fall under an 'informal alert mechanism'. The systematic approach of bringing these cases to the attention of tax experts, with the support of the General Secretariat, has continued to ensure that Member States are alerted in a timely manner, including on negotiations of agreements between the EU and third countries. Issues which were monitored by HLWP were i.a.: implementation of the US FATCA (exchange of letters with the US authorities), state of play on the Directive on public country-by-country reporting (pCBCR).