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'A' ITEM NOTE

From: General Secretariat of the Council
To: Council

Subject: 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 2 June 2022 for submission to the Council on 17 June 2022 through Coreper. It was also agreed that the usual factual updates (parts in square brackets) would be made by the GSC after the Council meeting before the release of the final version of the report.
3. The Council (Ecofin) is therefore invited 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 (23-24 June 2022).

ECOFIN REPORT TO THE EUROPEAN COUNCIL ON TAX ISSUES

1. This Council report provides an overview of the progress achieved in the Council during the term of the French 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.

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. 18/21.

³ Doc. 9586/12.

⁴ Doc. 9494/16.

⁵ Doc. 15175/17.

⁶ Doc. 8482/20.

⁷ Doc. 13350/20.

3. In the aftermath of the COVID-19 pandemic, with a return to in-person meetings of the Council preparatory bodies, the French Presidency pursued the work on key files, including the transposition of the second pillar of the OECD Inclusive Framework statement on a two-pillar solution to address the tax challenges arising from the digitalisation of the economy, the revision of the Energy Taxation Directive, the future of VAT and updates to the EU list of non-cooperative jurisdictions for tax purposes, as well as the misuse of shell entities for tax purposes. In view of the Russian Federation's aggression, with the complicit participation of the Republic of Belarus, towards Ukraine, the French presidency also held discussions on improving the implementation of EU restrictive measures through possible enhanced use of administrative cooperation in the tax area and other tax enforcement instruments.
4. More specifically, the Council:
 - a) [reached a general approach][made good progress towards an agreement] on the proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union;
 - b) adopted the Council Directive amending Directive 2006/112/EC as regards rates of value added tax;
 - c) approved Council conclusions on the implementation of the VAT e-commerce package;
 - d) [took note of the Presidency progress report on the proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast)]; and
 - e) started the examination of the proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes.

5. The Code of Conduct Group (business taxation) also further continued its work on the various matters falling within its current mandate, including on the EU list of non-cooperative jurisdictions for tax purposes, as set out in its six-monthly report.⁸ The EU list was last updated by the Council on 24 February 2022⁹. More detailed information on individual dossiers can be found below.

A. INITIATIVES IN THE AREA OF EU TAX LAW

a) Corporate taxation

i. Tax challenges arising from the digitalisation of the economy

– Global minimum level of taxation for EU multinational groups (“Pillar 2”)

6. On 8 October 2021, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (‘the Inclusive Framework’) reached agreement on a reform of the international rules on the taxation of the profits of multinational enterprises. All EU Member States expressed their support for the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy. In its conclusions of 27 November 2020, the Council expressed its continued support for the work of the Inclusive Framework.
7. Minimum effective taxation, which constitutes ‘Pillar Two’, is based on two main rules (‘GloBE rules’) – the income inclusion rule (IIR) and the undertaxed payment rule (UTPR) – which are intended to ensure that the profits made by multinational groups with a turnover of at least EUR 750 million are taxed at an effective rate of at least 15 %. According to the October Statement of the Inclusive Framework, Pillar Two should come into effect in 2023. The UTPR should come into effect in 2024.

⁸ Doc. 9295/22 + ADD 1-9.

⁹ OJ C 413I, 12.10.2021, p.1.

8. In order to ensure that the implementation of the GloBE rules is consistent and compatible with EU law, 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 EU which broadly reflected, with certain adaptations to EU law, the model rules adopted by the Inclusive Framework on 14 December 2021.
9. In parallel, work is continuing on the timely and effective implementation of the rules on the allocation of taxing rights between jurisdictions ('Pillar One'), in order to develop a multilateral convention ('MLC').
10. The European Economic and Social Committee adopted its opinion on the directive proposal on 23 March 2022. The European Parliament delivered its opinion on 18 May 2022.
11. On 18 January 2022, the Ecofin Council held a policy debate on the proposal for a Directive 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.
12. 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 text with that of the OECD model rules and to identify the key issues to be settled at political level in order to reach agreement on the whole text.

13. At the Ecofin Council meeting on 15 March 2022, most Member States supported 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.
14. Taking account of these discussions, the Presidency adjusted the compromise text by specifying the transitional optional provisions and further clarifying the reporting obligations of the multinational groups the ultimate parent company of which is established in a Member State which chooses temporarily not to apply the IIR and the UTPR (Article 47a). Moreover, the Presidency further clarified the obligations to transpose the directive into national legislation by adding recital 14b. Finally, the parliamentary scrutiny reservation of one Member State was lifted.
15. As for the link between the two pillars and taking into account Member States' positions, the Presidency proposed that the Directive be accompanied by a statement of the Council confirming the participation of all Member States in the ongoing discussions within the Inclusive Framework as regards Pillar One, in line with the timetable for implementation approved in October 2021, stressing its importance and calling for the other Parties to respect that commitment. At the Ecofin Council meeting of 5 April, that Member State could still not accept this solution. [Possible further developments till June Ecofin].

ii. Misuse of shell entities

16. 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).¹⁰

¹⁰ Doc. 15296/21.

17. 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.
18. On 6 January 2022, at the HLWP, the proposal was presented to delegations and the Presidency announced its intention to launch the discussions in the Council on this file. The technical analysis of the proposal was carried out in the WPTQ (Direct taxation) on 11 March, 1 April, 6 May, 23 May and 9 June 2022. The first round of article-by-article analysis of the proposal was completed on 23 May. In principle, most delegations supported the objectives of the proposal, but further important technical work will be necessary before an agreement could be feasible.

iii. Debt-Equity Bias Reduction Allowance (DEBRA)

19. On 11 May 2022, the Commission issued its proposal for a Council Directive on laying down rules on a debt-equity bias reduction allowance and on limiting the deductibility of interest for corporate income tax purposes. The aim of the proposal is to counter the tax incentive for companies to finance investments through debt rather than equity, due to the possibility for companies to deduct interests attached to debt financing, but not the costs associated with equity financing.
20. The proposal was presented to the Working Party on Tax Questions on 10 June 2022.

b) Value Added Tax (VAT)

21. Building on the progress during the previous Presidency terms¹¹, the French Presidency continued work in the area of VAT, while also taking stock of the results of, in particular, the entry into force of the VAT e-commerce package. More detailed information can be found below.
 - i. *Council Conclusions on the implementation of the VAT e-commerce package*
22. In December 2017 the Council adopted the VAT e-commerce package, consisting of a directive and two regulations, which set out new rules to overcome the barriers to cross-border online sales and to address challenges arising from the VAT regimes for distance sales of goods and for the importation of low-value consignments. These rules were supplemented in late 2019 by an amendment to the VAT Directive and a Council Implementing Regulation, in order for the new rules to enter into force on 1 January 2021. Due to the difficult circumstances of the COVID-19 pandemic, the date from which the new measures would apply was postponed to 1 July 2021.
23. At the same time, in its 2020 Communication on an action plan for fair and simple taxation supporting the recovery strategy¹², the Commission announced an initiative called ‘VAT in the digital age’ with the aim of updating the rules for the sharing economy, moving to a single EU VAT registration, modernizing VAT reporting obligations and facilitating e-invoicing.
24. In order to take stock of the situation, the Presidency convened the Working Party on Tax Questions (Indirect Taxation/VAT) on 31 January 2022 to discuss the state of play of the implementation of the VAT e-commerce package with a view to further work in this area. On the basis of this discussion, the Presidency presented delegations with draft Council conclusions on this subject.

¹¹ See for example doc. 15082/18, points 30 to 111; doc. 10322/18, points 56 to 100.

¹² Doc. 9844/20.

25. The Working Party on Tax Questions (Indirect Taxation/VAT) examined these draft conclusions at its meeting on 25 February 2022 and submitted a text to the Working Party on Tax Questions (High Level), which reached agreement on the text at its meeting on 28 February 2022. The conclusions were subsequently approved by the Council at its meeting on 15 March 2022¹³.

ii. VAT definitive system

26. Following up on its VAT Action Plan – Towards a single EU VAT Area of 7 April 2016, the Commission suggested a two-step legislative approach for the definitive VAT system¹⁴. The file was discussed in the Council under the Romanian, the Finnish, the Croatian and the German Presidencies.

27. Member States agree that this dossier still requires thorough technical analysis before the final policy choices are made. As already indicated by the Council¹⁵, the best way forward is to continue focusing on the key elements of the Commission proposal and the analysis of options of accompanying measures. Further work on the definitive VAT system should continue while not preventing or slowing down efforts to improve the current VAT system.

iii. VAT rates reform

28. On 18 January 2018, the Commission issued a proposal for a Directive amending Directive 2006/112/EC as regards rates of value added tax.¹⁶ The objective of this legislative proposal was to introduce 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.

¹³ Doc. 7104/22.

¹⁴ This approach was described in a more detailed fashion in previous reports, for example doc. 9970/21, points 25-31.

¹⁵ Doc. 9970/21, points 32 to 39.

¹⁶ Doc. 5335/18.

29. In essence, the Commission proposed 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).
30. The Commission proposal was examined during the term of the Bulgarian, the Romanian, the Finnish, the Croatian, the German and the Portuguese Presidencies.
31. On 7 December 2021, under the Slovenian Presidency, the Ecofin Council adopted a general approach on the proposal with substantial changes to the Commission proposal. The agreed text included the preservation of the positive list of goods and services to which reduced rates can be applied – albeit with a number of additions and modifications to update and modernise the list – as well as a number of sunset clauses for environmentally harmful goods. It also struck a careful balance between granting equal access to existing derogations and preventing a proliferation of reduced rates and exemptions with deductibility of input VAT.
32. After the agreement on a general approach, the European Parliament was re-consulted on account of the substantial differences between the text agreed at the Ecofin Council and the Commission proposal on which the European Parliament was initially consulted. On 9 March 2022, the European Parliament provided its new opinion on the file.
33. After the legal-linguistic finalisation, the text was adopted at the meeting of the Ecofin Council of 5 April 2022. The Directive was subsequently published in the Official Journal on 6 April 2022¹⁷.

¹⁷ OJ L 107, 6.4.2022, p. 1.

iv. VAT Committee

34. On 18 December 2020, the Commission submitted a Proposal for a Council Directive amending Directive 2006/112/EC as regards conferral of implementing powers to the Commission to determine the meaning of the terms used in certain provisions of that Directive¹⁸ (“VAT Committee Directive”). According to the Commission, the objective of the proposal is to provide a more uniform application of the EU VAT legislation. To achieve this, the Commission proposed to establish a comitology committee which would assist the Commission in the adoption of binding implementing measures by qualified majority voting. In the Commission’s view, this would make decision-making more efficient and save the European Court of Justice from having to solve interpretation questions so frequently.
35. During the discussions in the WPTQ (Indirect Taxation) over the first semester 2021, although in general Member States could support the overall objective of the proposal, many delegations expressed their reservations, especially as regards the shifting of power from the Council to the Commission and moving towards qualified majority voting. Some delegations were of the view that the current system can be improved, namely through the presentation of more proposals for Council implementing acts based on Article 397 of the VAT Directive.

v. VAT reverse charge mechanism extension

36. On 10 February 2022, the Commission published a proposal to extend the application period of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud and of the Quick Reaction Mechanism against VAT fraud.
37. The aim of the proposal is to prolong the possibility for Member States, contained in Article 199a of the VAT Directive, to apply the reverse charge mechanism – which allows Member States to designate the recipient of a supply as the person liable for the payment of VAT – to combat fraud and the possibility to use the Quick Reaction Mechanism set out in Article 199b of the same directive to combat fraud in very specific cases.

¹⁸ Doc. 14293/20.

38. The proposal was examined in the Working Party on Tax Questions, where the proposal was generally welcomed. The delegations agreed to prolong the proposed duration of the extension by one year, i.e. until 31 December 2026.
39. The European Economic and Social Committee and the European Parliament issued their opinions on the proposal respectively on 23 March and 3 May 2022.
40. The legislative text, finalized by the lawyer-linguists, was subsequently adopted by the Council at its meeting on 3 June 2022.

vi. *Ninth Commission report on VAT registration, collection and control procedures*

41. Every three years the Commission presents a report on the VAT registration, collection and control procedures pursuant to Council Regulation (EEC, Euratom) No 1553/89, with the aim of fostering efficient and effective VAT administration procedures in order to limit revenue losses.
42. On 7 April 2022, the Commission published its ninth report, covering the period 2016-2019, and subsequently presented the report at the HLWP of 12 May 2022, where delegations took note of it.

c) Excise duties

i. *Revision of the Energy Taxation Directive (ETD)*

43. 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)¹⁹, ('the ETD proposal').

¹⁹ Doc. 10872/21.

44. The ETD proposal is part of the “Fit for 55” package²⁰, 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 interconnected proposals, which all drive towards the same goal of ensuring a fair, competitive and green transition by 2030 and beyond. The package covers a range of policy areas and economic sectors: climate, energy and fuels, transport, buildings, land use and forestry.²¹
45. The ETD proposal aims at the following objectives:
- 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;
 - 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
 - preserving the capacity to generate revenues for the budgets of the Member States.
46. In the view of the Commission, these objectives would be achieved by switching from taxation based on volume to taxation based on energy content, by introducing a ranking of rates according to their environmental performance and by limiting incentives for fossil fuel use. According to this ranking, conventional fossil fuels, such as gas oil and petrol will be taxed at the highest rate and electricity at the lowest rate.

²⁰ Doc. 10849/21.

47. On 11 September 2019, the Commission published a report²² on the evaluation of the ETD, pointing out that the current rules do not contribute to the new EU regulatory framework and policy objectives in the area of climate and energy. On 5 December 2019 the Council (Ecofin) approved conclusions on the EU energy taxation framework²³, emphasising the important role of the harmonisation of energy taxation through the ETD in ensuring the proper functioning of the internal market. The Council also supported an update of the legal framework for energy taxation contributing to wider economic and environmental EU policy objectives. The conclusions called on the Commission to ensure that the proposals were fully assessed in terms of their economic, social and environmental costs and benefits. In preparation of the ETD proposal, the Commission carried out a public consultation.²⁴
48. On 20-21 July 2021, at the informal meeting of the HLWP, which was dedicated to the “Future challenges in the taxation area”, delegations could already express their preliminary views on the role of taxation in green transition during the working session “Taxation aspects of the Green Deal”. On 22 July 2021 the Commission presented the ETD proposal in the Committee of Permanent Representatives (Part 2).
49. The technical discussions in the WPTQ (Indirect Taxation – Excise duties/Energy taxation) were launched on 9 September 2021 when the Commission presented both the proposal and the impact assessment.
50. At the HLWP on 23 September 2021, the Slovenian Presidency informed delegations about the state of play, the work planned and its intention to make as much progress as possible on this file during its term of office.
51. The technical examination of the proposal in the Working Party on Tax Questions (Indirect Taxation – Excise duties / Energy taxation) continued on 6 October, 20 October, 15 November and 24 November 2021 with an article-by-article analysis. The first round of analysing all articles was completed on 24 November 2021.

²² Doc. 12153/19.

²³ Doc. 14608/19.

²⁴ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12227-Revision-of-the-Energy-Tax-Directive-/public-consultation_en.

52. During the examination of the proposal quite a few questions were asked about a variety of aspects of the proposal, such as switching from volume to energy content based taxation, introducing a ranking of rates according to the environmental performance, taxation of new products, indexation, aviation and maritime sectors as well as the links with other files of the “Fit for 55” package.
53. At the HLWP on 25 November 2021, the Slovenian Presidency informed delegations about the results of the work and the progress on the dossier, also in the context of the “Fit for 55” package. On 7 December 2021, as an ‘A’ item, the Council (Ecofin) took note of the Presidency progress report on „Fit for 55“ package proposals handled by the Ecofin Council, including the ETD proposal.²⁵
54. At the HLWP on 6 January 2022 the French Presidency continued the discussion on the revision of the ETD proposal by suggesting a way forward and confirming its commitment to make progress on this file. Technical analysis of the proposal was carried out at the WPTQ (Indirect Taxation – Excise duties / Energy taxation) on 10 January, 11 February, 10 March, 8 April, 2 May and 1 June 2022.
55. The analysis covered the whole proposal after work was divided into four blocks of topics: 1) scope of taxable products and energy content approach, structure of rates at the end of the transitional period, renewables; 2) minimum taxation levels and content of fiscal categories, structure of rates in 2023, transitional periods and indexation; 3) state aid and transport; 4) industry, agriculture, fishing and households. Based on the discussions at the WPTQ, the Presidency submitted partial compromise texts on blocks one and two.
56. [On 17 June 2022, the Council (Ecofin) took note of the Presidency progress report on the ETD proposal.²⁶]

²⁵ Doc. 14574/21.

²⁶ [Doc. 9874/22.]

ii. *Tax-free shops in the French terminal of the Channel Tunnel*

57. On 16 December 2021, the Commission submitted to the Council a proposal for a Council Directive amending Directive 2008/118/EC and Directive (EU) 2020/262 as regards tax-free shops situated in the French terminal of the Channel Tunnel.
58. The objective of the proposal was to authorize the reopening of tax-free shops in the French terminal of the Channel Fixed Link following the United Kingdom's withdrawal from the European Union.
59. The proposal was examined by the Working Party on the United Kingdom and the Working Party on Tax Questions.
60. The European Economic and Social Committee and the European Parliament delivered their opinions on 23 February and 9 March 2022, respectively.
61. The Ecofin Council subsequently adopted the Directive at its meeting on 5 April 2022. The Directive was published in the Official Journal on 6 April 2022.

d) Financial Transaction Tax (FTT)

62. On 14 February 2013, the Commission submitted a proposal for a Council Directive implementing enhanced cooperation in the area of financial transaction tax.
63. At this stage, 10 Member States continue to participate in the enhanced cooperation in the area of FTT: Austria, Belgium, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain (hereafter referred to as "participating Member States").
64. The main aspects of the ongoing negotiations on this dossier were summarized in the previous Ecofin report to the European Council on tax issues.²⁷

²⁷ Doc. 8891/20, points 67-70, doc. 14863/19, points 104-110.

65. The European Council in its conclusions of 17-21 July 2020²⁸ (point A29) indicated that "*The Union will over the coming years work towards reforming the own resources system and introduce new own resources. [...] ... the Union will, in the course of the next MFF, work towards the introduction of other own resources, which may include a Financial Transaction Tax.*" In this regard, the Commission has recently clarified that²⁹ "*should there be an agreement on this Financial Transaction Tax, the Commission will make a proposal in order to transfer revenues from this Financial Transaction Tax to the EU budget as an own resource. If there is no agreement by end of 2022, the Commission will, based on impact assessments, propose a new own resource, based on a new Financial Transaction Tax. The Commission shall endeavour to make these proposals by June 2024 in view of its introduction by 1 January 2026.*"

B. ADMINISTRATIVE COOPERATION

a) Administrative cooperation with Norway in the area of VAT

66. On 26 April 2022, the Commission submitted to the Council a Recommendation for a Council Decision to authorise the Commission to open negotiations for the amendment of the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, fight against fraud and recovery of claims in the area of value added tax.³⁰

²⁸ Doc. EUCO 10/20.

²⁹ See European Parliament legislative resolution of 16 December 2020 on the draft Council regulation laying down the multiannual financial framework for the years 2021 to 2027 (09970/2020 – C9-0409/2020 – 2018/0166(APP)), Commission Declaration on establishing a Financial Transaction Tax based Own Resource.

³⁰ Doc. 8461/22 + ADD 1.

67. The aim of the envisaged negotiations for the amendment of the EU-Norway Agreement on administrative cooperation, combating fraud and recovery of claims in the field of VAT³¹ would be twofold:
- a) provide Member States, to the extent possible and so far as necessary, with new cooperation tools with Norway, similar to the ones introduced in the Regulation 904/2010 with Regulation (EU) 2018/1541, and
 - b) update the legal references to Directive 95/46/EC by references to Regulation (EU) 2016/679.
68. Further details are set out in the draft directives for the negotiation, which will be annexed to the Council Decision.
69. Following the meeting of the Working Party on Tax Questions (Indirect Taxation) on 2 May 2022, all delegations could support the substance of the draft Council Decision and of the negotiating directives, as proposed by the Commission.
70. The Council Decision authorising the opening of negotiations with the Kingdom of Norway to amend the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax, as well as the negotiating directives, were adopted by the Council on [17 June 2022]³².

³¹ OJ L 195, 1.8.2018, p. 3.

³² Doc. 8901/22 and doc. 9643/22.

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

71. At the HLWP meeting of 12 May 2022, the Commission briefed delegations on the following issues:

- a) VAT-related aspects of the discussions with the UK in the context of the Protocol on administrative cooperation and combating fraud in the field of value added tax and on mutual assistance for the recovery of claims relating to taxes and duties;³³
- b) the early stage of exploratory contacts with the authorities of Australia, Canada, New Zealand and Japan, as regards possibilities for further work towards administrative cooperation in the area of VAT. The Commission indicated that these exploratory talks continue with Japan, as, at this stage, contacts with Australia, Canada and New Zealand did not yield satisfactory results.
- c) negotiations with the authorities of the People's Republic of China, in view of the conclusion of a non-binding Memorandum of Understanding (possible future administrative cooperation framework between the EU and People's Republic of China in the area of VAT).³⁴ The Commission indicated that these negotiations are now on hold.

³³ OJ L 149, 30.4.2021, p. 10.

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.

72. It is recalled that, concerning the negotiation and conclusion of non-binding instruments under EU law (such as the abovementioned Memorandum of Understanding), and in accordance with the requirements of the Treaty on the EU (Article 16(1) TEU in particular), policy-making remains a prerogative of the Council. It is therefore for the Council to assess whether it is in the interest of the Union to enter into such discussions (negotiations) on a possible non-binding instrument. Moreover, following the Court of Justice judgment in case C-660/13 (Swiss MoU), the Secretaries General of the Council, the Commission and the European External Action Service agreed, in 2017, on the Arrangements for non-binding instruments.³⁵ These Arrangements apply to all non-binding instruments irrespective of the policy field and of who represents the Union in the negotiations with the third party or parties and irrespective of their denomination or form. It is understood that the Commission will continue to regularly update the Member States on the progress in these negotiations (including on any further contacts with non-EU countries in this field), and will revert to the Council at the end of the negotiations to seek, in accordance with Union law, the Council's authorisation of the signature of the non-binding instrument on behalf of the Union.

c) *Improving the implementation of EU restrictive measures using tax policy instruments*

73. In the context of Russia's aggression against Ukraine with the complicit participation of Belarus, on 27 April and 25 May 2022 the French presidency held meetings of the Working Party on Tax Questions to examine 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 noted that the actions by Russia and Belarus gravely impaired the cooperative environment with the Russian Federation and the Republic of Belarus in the area of taxation under multilateral and bilateral instruments of international law.
75. Under the fundamental change of circumstances provoked by these actions, the EU Member States have decided to discontinue all exchanges of information for tax purposes with these two countries.

³⁵ Doc. ST 15367/17.

76. Secondly, EU Member States examined a number of measures aiming at enhancing the use of administrative cooperation and other instruments in the tax field in the context of the enforcement of the restrictive measures.
77. EU Member States agreed to study further the use of spontaneous exchanges of information on designated persons and entities on the list in Annex I to Regulation (EU) No 269/2014 and the informal establishment of a temporary ad hoc cooperation platform to facilitate discussions on the implementation of the restrictive measures in the tax field.
78. EU Member States also discussed other possible measures to support the efficiency of EU restrictive measures, such as the suggestion to intensify the use of tax audits with regard to listed persons and entities, as appropriate, as well as coordinating tax information and simultaneous tax examinations requests by EU Member States under the OECD Mutual Administrative Assistance in Tax Matters (MAC) to third countries, and taking stock of financial information exchanged with European non-EU countries in a coordinated manner.
79. Finally, EU Member States welcomed the call to a heightened attention to the possibility of tax refunds that benefit persons or entities on the list of sanctioned persons, where possible.
80. The Working Party on Tax Questions will monitor further developments concerning the above measures[, including the work taking place within the temporary platform created by the Commission on 3 June 2022 in the form of a subgroup on tax enforcement within the Freeze and Seize Task Force].
81. At its meeting on 18 May 2022, the Committee of Permanent Representatives took note of this work.

d) Fiscalis programme for cooperation in the field of taxation

82. The Fiscalis programme aims at supporting tax authorities to enhance the functioning of the internal market, foster competitiveness, fight tax fraud, tax evasion and tax avoidance and improve tax collection. On 28 February 2022 the Commission presented to the HLWP the Fiscalis Programme Progress Report 2020³⁶ and on 12 May 2022 the Commission presented to the HLWP the Fiscalis Programme Annual Progress Report 2021³⁷. The reports provide an overview of the progress achieved in the respective years by the Fiscalis programme, the main results, the issues arisen and the lessons learned. 2021 was the first year of implementation of the new Fiscalis programme under the Multiannual Financial Framework 2021-2027.
83. On 12 May, the Commission informed the HLWP also about the participation of third countries in the Fiscalis programme.

C. TAX POLICY COORDINATION

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.

a) Code of Conduct Group (business taxation)

84. The Code of Conduct Group (COCG) met on 24 January, 27 April and 2 June 2022; the subgroup on internal/external issues was convened on 14 January, 2 and 7 February, 16 and 31 March, 5 May and 18 May 2022.
85. The biannual revision of the EU list of non-cooperative jurisdictions for tax purposes was approved by the Council on 24 February 2022 and published in the Official Journal on 3 March 2022.³⁸

³⁶ Doc. 6009/22.

³⁷ Doc. 8383/22.

³⁸ OJ C 413I, 12.10.2021, p 1-4.

86. Apart from the usual work, which is more extensively covered in the dedicated biannual Code of Conduct Group report, the French Presidency, in coordination with the Chair of the COCG, conducted horizontal discussions on a number of aspects of the EU listing process, including the impact on the listing process of media revelations and the OECD BEPS Inclusive Framework agreement on Pillar Two.

b) International developments

87. The HLWP was regularly informed of relevant international developments in the area of tax policy, notably in relation to the meetings of the G20 Finance Ministers and the OECD/G20 IF on BEPS. The regular discussions at the HLWP, together with an informal discussion at the level of Ministers in September 2021, contributed in a meaningful way to the ultimate agreement at the OECD/G20 BEPS Inclusive Framework.

88. Issues related to the US Foreign Account Tax Compliance Act (FATCA) were brought to the attention of delegations in January and March 2022 when the French Presidency informed the HLWP about the state of play on FATCA and discussed the way forward. In May, building on the progress made during the previous Presidency terms, the French Presidency held an informal videoconference with the US Internal Revenue Service (IRS) and the Treasury Department on FATCA, focusing on the issue of the so-called accidental Americans, including the problem of obtaining more guidance from the IRS and the Treasury to prevent the closure of bank accounts of accidental Americans in the EU. In June the French Presidency debriefed the HLWP on this meeting. Contacts with the US authorities are ongoing and further informal meetings with the US counterparts will be planned.

c) Tax in non-tax areas (TINTA)

89. 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 proposed directive on the energy performance of buildings, the proposed amendment of the alternative investment funds managers regulation and the proposed amendment of the European long-term investment funds regulation, as well as the proposed directive on improving working conditions in platform work, the Council conclusions on reinforcing intercultural exchanges in the European space through artists and cultural professionals' mobility, and through multilingualism in the digital world, and the Commission Communication "REPowerEU: Joint European Action for more affordable, secure and sustainable energy".
