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NOTE

From:	Permanent Representatives Committee (Part 2)
To:	Council
Subject:	Directive on ensuring a global minimum level of taxation for multinational groups in the Union <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 Framework¹.

¹ ST 13350/20.

2. 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 be transposed into the individual states’ national law in 2022, to come into effect in 2023. The UTPR should come into effect in 2024.
3. 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 reflected the model rules adopted by the Inclusive Framework on 14 December 2021². This proposal for a Directive aims to transpose Pillar Two within the EU.
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.

² ST 15294/21.

II. STATE OF PLAY

6. On 18 January 2022, the Ecofin Council held a policy debate on the proposal for a Directive³ 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. 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.
9. 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.
10. At the meeting of the Permanent Representatives Committee on 30 March, the Member States confirmed their support for the French Presidency's compromise text, with the exception of one Member State which maintained its position on the link between Pillar One and Pillar Two, and another Member State (which intends to choose the option provided for in Article 47a) which requested further clarification on the transposition of the Directive.

³ ST 5015/22.

III. KEY ISSUES

(a) 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 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. 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.
13. 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. For this reason, at the Ecofin Council meeting on 15 March the Presidency proposed that the agreement on the proposal for a Directive be accompanied by a Council statement 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, and calling for the other States Parties to respect that commitment. Only one Member State has not yet expressed support for this solution.
14. 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.

(b) Article 47a and transposition of the Directive

15. One Member State which intends to make use of the option not to apply the IIR and UTPR (on the basis of Article 47a) requested clarification of the scope of the obligations that would have to be laid down in national law pursuant to the text of the Directive.
16. In order to address this concern, while maintaining the overall balance of the compromise, the Presidency suggests that the text be supplemented with the following recital:

‘(14b) Member States that elect not to apply temporarily the IIR and the UTPR should transpose this Directive in such a way as to ensure the proper functioning of the system of global minimum level of taxation for multinational groups in the Union. This concerns in particular the obligation of domestic constituent entities in these Member States to provide information to constituent entities in other Member States and third country jurisdictions, so that other Member States and third country jurisdictions are able to apply the UTPR. The administrative burden for the tax administrations of the Member States having made the election should be limited to the greatest possible extent, while preserving the effective application of this Directive throughout the Union. Therefore, these Member States should also have the possibility of entering into a discussion with the Commission, seeking its guidance and assistance with a view to a common understanding on the practical arrangements concerning the transposition of this Directive into national law.’
17. The Presidency also proposes to clarify the reporting obligations of multinational groups whose ultimate parent entity is established in a Member State that has chosen not to apply temporarily the IIR and the UTPR, by adding the provisions set out in Annex II to Article 47a(2).

IV. NEXT STEPS

18. The Presidency considers that the compromise text set out in ST 7495/22, supplemented as indicated above by a recital 14b and a provision in Article 47a(2), and the Council statement, could form the basis for agreement on this file.
19. The Council is therefore invited to:
- examine the Presidency's proposals regarding the key issues set out in part III of this note;
 - reach a general approach on this legislative proposal with a view to the adoption of the Directive, subject to receiving the opinion of the European Parliament and legal-linguistic revision;
 - approve the statement to be entered in the minutes, as set out in the annex to this note.

Draft Council statement

The Council:

REAFFIRMS the commitment of the EU to the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy as well as to the implementation plan thereof agreed in October 2021 and INVITES all members of the OECD/G20 Inclusive Framework on BEPS to live up to their commitment on both pillars;

NOTES that since 2017 the EU has addressed the tax challenges arising from the digitalization of the economy and its continuous work has contributed to the global agreement on the Two-Pillar Solution;

CONFIRMS its continued support of the work at the OECD Inclusive Framework on BEPS and fully commits to the successful accomplishment, within the agreed timeline, of the ongoing work on the elements of Pillar 1, 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, as necessary, reassess the situation on Pillar 1, in the context of the ongoing work at the OECD Inclusive Framework on BEPS, with a view to ensuring a swift solution on the tax challenges arising from the digitalisation of the economy.

WELCOMES the swift agreement on the file; HIGHLIGHTS that the recourse to the delegated act in this specific file should not be interpreted as a precedent for other legislative instruments adopted under the special legislative procedure applied to tax matters.

Provisions to be added to Article 47a(2)*Article 47a**Election for a delayed application of the IIR and UTPR*

1. (...)

2. (...)

The ultimate parent entity mentioned in the first subparagraph shall nominate a designated filing entity in a Member State other than the Member State in which the ultimate parent entity is located or, if the group has no constituent entity in another EU Member State, in a third country jurisdiction that has, for the reporting fiscal year, a qualifying competent authority agreement in effect with the Member State in which the ultimate parent entity is located.

In such cases, the designated filing entity shall file a top-up tax information return in accordance with the requirements set out in paragraph 5 of Article 42 and the constituent entities located in the Member State that has made an election pursuant to paragraph 1 shall provide the designated filing entity with information necessary to comply with paragraph 5 of Article 42 and shall be exempted from the filing obligation referred to in paragraph 2 of Article 42.

3. (...)
