



EUROPEAN COMMISSION

SECRETARIAT-GENERAL

PV(2021) 2402 final

- English translation of the French version which is authentic -

Brussels, 26 January 2022

TEXTE EN

MINUTES

of the 2402nd meeting of the Commission

held in Brussels

(Berlaymont)

on Wednesday 22 December 2021

(morning)

PV(2021) 2402 final

- English translation of the French version which is authentic -

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Single sitting: Wednesday 22 December 2021 (morning)

The sitting opened at 9.12 with Ms von der LEYEN, President, in the chair.

Present:

Ms von der LEYEN	President
Mr TIMMERMANS	Executive Vice-President
Mr DOMBROVSKIS	Executive Vice-President
Mr BORRELL i FONTELLES	High Representative / Vice-President
Mr ŠEFČOVIČ	Vice-President
Ms JOUROVÁ	Vice-President
Ms ŠUICA	Vice-President
Mr SCHINAS	Vice-President
Mr HAHN	Member
Mr SCHMIT	Member
Mr GENTILONI	Member
Mr WOJCIECHOWSKI	Member
Mr BRETON	Member
Ms FERREIRA	Member
Mr REYNDERS	Member
Ms DALLI	Member
Ms JOHANSSON	Member
Mr LENARČIČ	Member
Ms VÁLEAN	Member
Mr VÁRHELYI	Member
Ms McGUINNESS	Member

Absent:

Ms VESTAGER	Executive Vice-President
Ms GABRIEL	Member
Ms KYRIAKIDES	Member

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Ms URPILAINEN	Member
Ms SIMSON	Member
Mr SINKEVIČIUS	Member

The following sat in to represent absent Members of the Commission:

Ms CANENBLEY	Deputy Chef de cabinet to Ms VESTAGER
Ms ROUCH	Chef de cabinet to Ms GABRIEL
Mr ROSSIDES	Chef de Cabinet to Ms KYRIAKIDES
Mr LAHTI	Chef de cabinet to Ms URPILAINEN
Ms PREISING	Deputy Chef de cabinet to Mr SINKEVIČIUS

The following also sat in:

Mr SEIBERT	Chef de cabinet to the PRESIDENT	
Mr CALLEJA CRESPO	Director-General, Legal Service	
Ms AHRENKILDE HANSEN	Director-General, DG Communication	
Mr MAMER	Head of the Spokesperson's Service and Chief Spokesperson of the Commission	
Ms RISO	Deputy Chef de cabinet to the PRESIDENT	
Ms PETKOVA	Director of Coordination and Administration in the PRESIDENT's Office	
Ms HILI	Adviser in the PRESIDENT's Office	Item 8
Ms SCHULTZ	Policy Coordinator in the PRESIDENT's Office	
Ms MICELI	Policy Coordinator in the PRESIDENT's Office	Items 12/13 and 14
Ms ALLOUIS-LE LOSTEC	Head of Unit in the Secretariat-General	

Secretary: Ms JUHANSONE, Secretary-General, assisted by Ms DEPREZ, Director in the Secretariat-General.

1. AGENDAS

(OJ(2021) 2402 /FINAL; SEC(2021) 2402 /FINAL)

The Commission took note of that day's agenda and of the tentative agendas for forthcoming meetings.

2. WEEKLY MEETING OF CHEFS DE CABINET

(RCC(2021) 2402)

The Commission considered the Secretary-General's report on the weekly meeting of Chefs de cabinet held on Monday 20 December 2021.

3. APPROVAL OF THE MINUTES

(PV(2021) 2397; PV(2021) 2398; PV(2021) 2398, 2ND PART)

The Commission approved the minutes of its 2397th and 2398th meetings of 17 and 23 November 2021, and held over approval of the minutes of its 2399th, 2400th, and 2401st meetings of 1, 8 and 14 December 2021 for a later date.

4. INTERINSTITUTIONAL RELATIONS

(RCC(2021) 234)

The Commission took note of the record of the meeting of the Interinstitutional Relations Group (IRG) held by videoconference on Friday 17 December 2021 (RCC(2021) 234).

The Commission approved the lines proposed for the following points:

- **Amendment of Regulation (EC) No 138/2004 of the European Parliament and of the Council as regards regional economic accounts for agriculture (Regulation) – KOKKALIS report – 2021/0031 (COD)**

Line set out in SI(2021) 378.

- **Computerised system for communication in cross-border civil and criminal proceedings (e-CODEX system) and amendment of Regulation (EU) 2018/1726 (Regulation) – RADEV & MELO report – 2020/0345 (COD)**

Line set out in SI(2021) 380.

- **Contestable and fair markets in the digital sector (Digital Markets Act) (Regulation) – SCHWAB report – 2020/0374 (COD)**

Line set out in SI(2021) 396.

- **Amendment of Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Directive) – ZAMBELLI report – 2020/0262 (COD)**

Line set out in SI(2021) 406.

- **Amendment of Regulation (EC) No 883/2004 on the coordination of social security systems and regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (Regulation) – BISCHOFF report – 2016/0397 (COD)**

Line set out in SI(2021) 409/2.

- **Guidelines for trans-European energy infrastructure and repeal of Regulation (EU) No 347/2013 (Regulation) – KRASNODEŹBSKI report – 2020/0360 (COD)**

Line set out in SI(2021) 405.

- **Framework of measures for ensuring the supply of crisis-relevant medical countermeasures in the event of a public health emergency at Union level (Council Regulation) – 2021/0294 (NLE)**

Line set out in SI(2021) 411/2.

The Commission approved the lines set out for the following points, for transmission to Parliament:

- **Commission replies to the legislative resolutions (and list of non-legislative resolutions without formal reply) adopted by Parliament at its part session of November II 2021**

Line set out in SP(2021) 792.

- **Commission replies to the non-legislative resolutions adopted by Parliament at its part-session of September 2021 (Part II)**

Line set out in SP(2021) 787/2.

- **Commission replies to the non-legislative resolutions adopted by Parliament at its part-session of October I 2021 (Part II)**

Line set out in SP(2021) 791/2.

The Commission approved the line set out for the following point, for transmission to the European Economic and Social Committee:

- **Follow-up to the opinions of the European Economic and Social Committee – Plenary session of July 2021**

Line set out in SC(2021) 38/2.

The Commission took note of the following points:

- **Establishment of ‘Eurodac’ for the comparison of biometric data for the effective application of Regulation (EU) XXX/XXX [*Regulation on Asylum and Migration Management*] and of Regulation (EU) XXX/XXX [*Resettlement Regulation*], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes and amendment of Regulations (EU) 2018/1240 and (EU) 2019/818 (Amended proposal) (Regulation) – BUXADÉ VILLALBA report – 2016/0132 (COD)**

Information set out in SI(2021) 397.

- **Amendment of Regulation (EU) No 575/2013 and Directive 2014/59/EU as regards the prudential treatment of global systemically important institution groups with a multiple point of entry resolution strategy and a methodology for the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and eligible liabilities (Regulation) – FERNÁNDEZ report – 2021/0343 (COD)**

Information set out in SI(2021) 408.

- **Results of Parliament’s part-session of December 2021**

Information set out in SP(2021) 764.

5. COORDINATION OF EXTERNAL ACTION (RCC(2021) 51)

The Commission took note of the operational conclusions in RCC(2021) 51 of the

meeting of the Group for External Coordination (EXCO) held on Wednesday 15 December 2021.

6. WRITTEN PROCEDURES, EMPOWERMENT AND DELEGATION OF POWERS

6.1. WRITTEN PROCEDURES APPROVED

(SEC(2021) 422 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 13 and 19 December 2021.

6.2. EMPOWERMENT

(SEC(2021) 423 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 13 and 19 December 2021.

6.3. DELEGATION / SUBDELEGATION OF POWERS

(SEC(2021) 424 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted under the delegation and subdelegation procedures between 13 and 19 December 2021 archived in Decide.

6.4. SIGNIFICANT WRITTEN PROCEDURES

(SEC(2021) 425 AND /2)

The Commission took note of the significant written procedures for which the time limit expired between 20 and 22 December 2021.

7. ADMINISTRATIVE AND BUDGETARY MATTERS
(SEC(2021) 426)

ADMINISTRATIVE MATTERS
(PERS(2021) 120)

7.1. DG TRADE – APPOINTMENT OF AN AD14/15 DIRECTOR
(PERS(2021) 121 TO /3)

The Commission had before it applications under Article 29(1)(a)(i) and (iii) of the Staff Regulations for the post of Director of the ‘Asia (I), Services and Digital Trade, Investment and Intellectual Property’ Directorate in DG Trade (PERS(2021) 121).

It took note of the opinions of the Consultative Committee on Appointments of 29 August, 23 September and 7 October 2021 (PERS(2021) 121/2 and /3).

The Commission then examined the applicants’ qualifications for the post. It also considered their ability, efficiency and conduct in the service. On a proposal from Mr HAHN, in agreement with the PRESIDENT and after consulting Mr DOMBROVSKIS, it then decided to appoint Ms Joanna SZYCHOWSKA to the post.

This decision would take effect on a date to be determined.

7.2. DG TRADE – APPOINTMENT OF AN AD14/15 DIRECTOR
(PERS(2021) 122 TO /3)

The Commission had before it applications under Article 29(1)(a)(i) and (iii) of the Staff Regulations for the post of Director of the ‘Trade Defence’ Directorate in DG Trade (PERS(2021) 122).

It took note of the opinions of the Consultative Committee on Appointments of 29 August and 7 October 2021 (PERS(2021) 122/2 and /3).

The Commission then examined the applicants' qualifications for the post. It also considered their ability, efficiency and conduct in the service. On a proposal from Mr HAHN, in agreement with the PRESIDENT and after consulting Mr DOMBROVSKIS, it then decided to appoint Mr Martin LUKAS to the post.

This decision would take effect on a date to be determined.

**7.3. DG ENERGY – APPOINTMENT OF AN AD14/15 PRINCIPAL ADVISER
(PERS(2021) 92 TO /4)**

The Commission had before it applications under Article 29(1)(a)(i) and (iii) of the Staff Regulations for the temporary post of Principal Adviser for an integrated renewable energy strategy towards the 2050 carbon neutrality objective in DG Energy (PERS(2021) 92 and /2).

It took note of the opinions of the Consultative Committee on Appointments of 1 and 2 December 2021 (PERS(2021) 92/3 and /4).

The Commission then examined the applicants' qualifications for the post. It also considered their ability, efficiency and conduct in the service. On a proposal from Mr HAHN, in agreement with the PRESIDENT and after consulting Ms SIMSON, it then decided to appoint Mr Hans van STEEN to the post.

This decision would take effect on a date to be determined.

**7.4. DG TAXATION AND CUSTOMS UNION – AMENDMENT OF THE
ORGANISATION CHART AND SECONDMENT OF AN
AD14 OFFICIAL IN THE INTERESTS OF THE SERVICE UNDER
ARTICLES 37 AND 38 OF THE STAFF REGULATIONS**

On a proposal from Mr HAHN, in agreement with the PRESIDENT and after consulting Mr GENTILONI, the Commission decided:

- to create a temporary principal adviser post in DG Taxation and Customs Union; this post would be abolished upon the departure of the job holder;
- to transfer to this new post, in the interest of the service, under Article 7 of the Staff Regulations, Mr Dominik SCHNICHEL, an AD14 official and currently Director of the ‘Customs’ Directorate in DG Taxation and Customs Union;
- to second Mr Dominik SCHNICHEL, in the interests of the service, under Articles 37 and 38 of the Staff Regulations, to the German Federal Ministry for Economic Affairs and Climate Action, in Berlin, for a period of four years.

These decisions would take effect on 1 February 2022.

7.5. DG COMMUNICATION NETWORKS, CONTENT AND TECHNOLOGY – APPOINTMENT OF AN INTERIM EXECUTIVE DIRECTOR OF THE SMART NETWORKS AND SERVICES JOINT UNDERTAKING (SNS JU)

The Commission took note of the information in point 5 of PERS(2021) 120 and, on a proposal from Mr HAHN, in agreement with the PRESIDENT, and after consulting Mr BRETON, decided to appoint Mr Peter STUCKMANN, Head of the ‘Future Connectivity Systems’ Unit in DG Communications Networks, Content and Technology, to perform temporarily the duties of Executive Director of the Smart Networks and Services Joint Undertaking (SNS JU) until the Executive Director took up the post.

This decision would take effect immediately.

7.6. DG RESEARCH AND INNOVATION – APPOINTMENT OF AN INTERIM EXECUTIVE DIRECTOR OF THE GLOBAL HEALTH EDCTP3 JOINT UNDERTAKING (EDCTP3 JU)

The Commission took note of the information in point 6 of PERS(2021) 120 and, on a proposal from Mr HAHN, in agreement with the PRESIDENT, and after consulting Ms GABRIEL, decided to appoint Mr Elmar NIMMESGERN to perform temporarily the duties of Executive Director of the Global Health EDCTP3 Joint Undertaking (EDCTP3 JU), which he would perform in addition to his current duties until the Executive Director took up the post.

This decision would take effect immediately.

7.7. DG COMMUNICATION – APPOINTMENT OF A HEAD OF A EUROPEAN COMMISSION REPRESENTATION

The Commission took note of the decision taken by the Appointing Authority to appoint Mr Marius VAŠČEGA to the post of Head of the European Commission's Representation in Vilnius, Lithuania.

These decisions would take effect on 1 February 2022.

8. MONITORING THE APPLICATION OF EUROPEAN UNION LAW

INFRINGEMENTS – URGENT INDIVIDUAL CASE

(SEC(2021) 9050)

INFR(2021) 2261 – Poland – Violation of EU law, in particular Article 19(1), second subparagraph, of the Treaty on European Union, and the general principles of EU law, by the Polish Constitutional Tribunal

Decision: letter of formal notice pursuant to Article 258 of the Treaty on the Functioning of the European Union

The PRESIDENT asked Mr REYNDEERS to present the decision submitted to the College for approval on an infringement case concerning Poland.

Mr REYNDERS explained that it was proposed that day that the Commission open an infringement procedure and, therefore, send a letter of formal notice to Poland because of the serious concerns raised by recent rulings of the Polish Constitutional Tribunal.

In its rulings of 14 July and 7 October 2021, the Polish Constitutional Tribunal had considered the provisions of the EU Treaties to be incompatible with the Polish Constitution, thereby expressly challenging the primacy of EU law.

In the Commission's view, these rulings were in breach of the general principles of autonomy, primacy, effectiveness and uniform application of EU law, and the binding effect of rulings of the Court of Justice of the European Union. In particular, in its July 2021 ruling, the Constitutional Tribunal had denied the binding effect of any interim measures orders issued by the Court of Justice under Article 279 of the Treaty on the Functioning of the European Union (TFEU) to guarantee effective judicial review by an independent and impartial tribunal established by law.

In its October 2021 ruling, the Polish Constitutional Tribunal disregarded its obligations under EU law by considering unconstitutional – and thus not having effects in the Polish legal order – the Court of Justice's interpretation of Article 19(1) of the Treaty on European Union (TEU) whereby a national court could be called upon to review the legality of the procedure for appointing a judge and to rule on any irregularity in the appointment process in order to verify whether that judge, or the court in which the judge adjudicated, met the requirements of Article 19(1) TEU.

Mr REYNDERS said that, in the Commission's view, these rulings were also in breach of Article 19(1) TEU, which guaranteed the right to effective judicial protection, because the Polish Constitutional Tribunal had given it an unduly restrictive interpretation. It would deprive individuals before Polish courts of the full guarantees set out in that provision.

Furthermore, the Commission had serious doubts as to the independence and impartiality of the Constitutional Tribunal and considered that it no longer met the requirements of a tribunal previously established by law, as required by Article 19(1) TEU. As also highlighted by the Commission in 2017 in its reasoned proposal under Article 7(1) TEU, and as held by the European Court of Human Rights in its judgment of 7 May 2021, the process of appointment of three judges to the Constitutional Tribunal in December 2015 was in breach of the fundamental rules on the establishment and functioning of the system of constitutional review in Poland.

Mr REYNDERS noted that the seriousness of this breach gave rise to a reasonable doubt in the minds of individuals as to the independence and impartiality of the judges concerned. Other irregularities and deficiencies, such as in the case of the election of the President and Vice-President of the Constitutional Tribunal, had led to serious concerns being expressed about the impartiality of judges of the Constitutional Tribunal when handling individual cases. If the Constitutional Tribunal was called upon to rule on issues relating to the application or interpretation of EU law, the Commission considered that the Tribunal could no longer ensure ‘effective judicial protection by an independent and impartial tribunal previously established by law’, as required by Article 19(1) TEU, in the areas covered by EU law.

In the light of these considerations, in Mr REYNDERS’ view it could not be concluded that this was an isolated case of a deterioration in the rule of law situation in Poland. Rather, it had to be concluded that it was a systemic phenomenon.

As the Commission had repeatedly expressed its concerns in an in-depth dialogue with the Polish authorities, it considered that that day’s decision to send a letter of formal notice to Poland was justified.

In the course of the brief discussion that followed, the Commission raised the following points:

- the College’s broad support for the proposed decision to send a letter of formal notice to Poland for breach of EU law;
- a reminder of the clarification provided by the EU Court of Justice as regards the role of constitutional courts and the interpretation of EU law, according to which, in the event of doubt, national constitutional courts must follow the EU Court of Justice;
- a question on the possible existence of similar situations to that of Poland in other EU Member States.

In reply to this last question, Mr REYNDERS stressed that the Polish case was the only one in which a national constitutional tribunal challenged the primacy of the EU Treaties, as opposed to secondary law, and where the Commission had serious doubts as to the independence of that tribunal.

The PRESIDENT wrapped up the discussion by thanking Mr REYNDERS for his presentation.

The Commission adopted the decision in SEC(2021) 9050.

- 9. COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS – THE NEXT GENERATION OF OWN RESOURCES FOR THE EU BUDGET
(COM(2021) 566 TO /3; RCC(2021) 243)**
- 10. PROPOSAL FOR A COUNCIL DECISION AMENDING DECISION (EU, EURATOM) 2020/2053 ON THE SYSTEM OF OWN RESOURCES OF THE EUROPEAN UNION
(COM(2021) 570 AND /2; RCC(2021) 243)**

11. PROPOSAL FOR A COUNCIL REGULATION AMENDING REGULATION (EU, EURATOM) 2020/2093 LAYING DOWN THE MULTIANNUAL FINANCIAL FRAMEWORK FOR THE YEARS 2021 TO 2027 (COM(2021) 569 AND /2; RCC(2021) 243)

The PRESIDENT asked Mr HAHN to present the two legislative proposals which would form the basis of the next generation of EU own resources.

Mr HAHN explained that these proposals consisted of an amendment to the Decision on own resources and revision of the Regulation on the multiannual financial framework, and that they were introduced by a short Communication setting out the logic behind them.

On the basis of the interinstitutional commitment to repay loans taken out under the EU recovery plan, NextGenerationEU, the Commission was proposing three new own resources for the EU, based on (i) the share of the residual profits of multinationals that would be reallocated to the EU Member States under the recent agreement of the Organisation for Economic Co-operation and Development (OECD) and the G20 on fairer international taxation ('Pillar One'), (ii) the Carbon Border Adjustment Mechanism (CBAM), and (iii) the Emissions Trading System (ETS). Ultimately, between 2026 and 2030, these new sources of revenue were expected to generate up to EUR 17 billion per year on average for the EU budget.

Mr HAHN drew the meeting's attention to the fact that the proposals put forward that day were inseparable from the EU's ambitions in the fight against climate change, which were expressed in the Commission's proposals under the 'Fit for 55' heading.

He stressed that none of them was sufficient without the others and referred in particular to the Social Climate Fund. To achieve the EU's climate goals, it was thus necessary to extend the European Emissions Trading System to the transport and building sectors and to ensure the success of the new system through this fund, the purpose of which was to reduce the social impact of achieving the EU's climate

protection ambitions. The Social Climate Fund was anchored in the EU budget and had to be funded properly to be of assistance to European citizens. He considered that there was only one way of doing this in a sustainable manner, namely by introducing new own resources.

The EU's own resources from the Emissions Trading Scheme would also represent an important new source of revenue to repay loans taken out within the framework of NextGenerationEU, creating the conditions for the Member States to agree on the whole scheme.

Mr HAHN noted that the Commission had ensured that the burden of these own resources should be equitably distributed thanks to a fairness mechanism.

He considered that the political momentum was currently favourable to the introduction of new EU own resources, as set out in the interinstitutional agreement. At the same time, the EU was legally obliged to repay NextGenerationEU loans and from 2028 would require EUR 15 billion per year to this end. The EU had entered into this obligation towards investors. This repayment commitment and the new own resources were both crucial to the excellent rating of European bonds.

Mr HAHN emphasised that all stakeholders had an interest in the introduction of new own resources, as failing this the EU might have to reduce the volume of its budgetary programmes by around 10% after 2027. The aim was to avoid the need, in the next multiannual financial framework, for the Member States to sacrifice funding for important future-oriented programmes with high added value for the EU such as research, the environment and combating climate change, migration and external action, which were often the first to feel the impact of budget cuts.

Mr HAHN considered that the Commission's proposals that day were very important for the shared future of the EU, as they would make it possible (i) to finance the Social Climate Fund in full, with an allocation of EUR 8 billion per year, (ii) to take the first step towards repaying NextGenerationEU borrowing, i.e. around EUR 9 billion per year once all revenue had been paid, and (iii) to

guarantee in this way funding for programmes under the multiannual financial framework. He added that they would enable the power of the EU's budget to be harnessed, which was also a means of realising European ambitions.

He concluded his presentation by calling for the momentum generated by NextGenerationEU to be used to secure EU expenditure on its programmes and to pave the way for a more independent EU budget. For this reason, the Commission planned to bring forward from 2024 to 2023 the next stage of its proposals regarding a second basket of new EU own resources. This would be an important new milestone laid down by the current Commission for the future.

In the course of the discussion that followed, the Commission raised the following main points:

- full support for this very important initiative and the need for the College to promote it vigorously;
- the difficulty, nonetheless, of responding to the Member States' desire for new own resources which depended on taxation, a policy area in which unanimity in the Council was required;
- the fact that the proposed new own resources would form an essential part of the EU's economic recovery strategy and the modernisation of its budget;
- support for the proposal based on the OECD agreement, which set the minimum tax rate for large multinationals at 15% (Pillar One); the support which the Member States could provide for this;
- a mention of the uncertainty regarding the position that the United States would adopt on Pillar One, and the ongoing work at the Commission to propose a second set of EU own resources in 2023;
- a mention of the numerous constraints that had been taken into account in that day's proposals to ensure their soundness, balance and credibility;

- a question as to how the Member States would receive these proposals.

Mr HAHN explained that the balance of that day's proposals was due in particular to the fairness mechanism introduced by the Social Climate Fund, which could make them attractive to all the Member States.

The PRESIDENT concluded by thanking Mr HAHN for these extremely important proposals, which would enable the EU's ambitious policies to be financed thanks to a modernised budget.

Following this presentation, the Commission:

- approved the Communication in COM(2021) 566/3 for transmission to Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, and, for information, to the national parliaments;
- adopted the proposal for a Council Decision in COM(2021) 570/2, for transmission to Parliament, the Council and the national parliaments;
- adopted the proposal for a Council Regulation in COM(2021) 569/2, for transmission to Parliament, the Council and the national parliaments.

12. PROPOSAL FOR A COUNCIL DIRECTIVE ON ENSURING A GLOBAL MINIMUM LEVEL OF TAXATION FOR MULTINATIONAL GROUPS IN THE UNION

(COM(2021) 823 TO /3; SWD(2021) 580; RCC(2021) 246)

13. PROPOSAL FOR A COUNCIL DIRECTIVE LAYING DOWN RULES TO PREVENT THE MISUSE OF SHELL ENTITIES FOR TAX PURPOSES AND AMENDING DIRECTIVE 2011/16/EU

(COM(2021) 565 TO /3; SWD(2021) 577; SWD(2021) 578; SWD(2021) 579; SEC(2021) 565; RCC(2021) 247)

The PRESIDENT invited Mr DOMBROVSKIS and Ms GENTILONI to present the two proposals for Council Directives in the area of taxation being submitted to the College that day for approval, the first of which aimed at ensuring a minimum level of taxation for multinational enterprise groups and the second at laying down rules to prevent the misuse of shell entities for tax purposes in the EU.

Mr DOMBROVSKIS said that globalisation and the ever-growing digitalisation of the economy had put considerable pressure on the tax systems of the Member States. The Commission was constantly working on adapting EU taxation to the challenges of the twenty-first century and it had published a Communication on Business Taxation in May 2021. The two proposals for Directives were a follow-up to that Communication.

He stressed that the proposal on minimum taxation of multinationals transposed into EU law Pillar Two of the historic fiscal reform agreement recently concluded under the auspices of the Organisation for Economic Cooperation and Development (OECD) and the G20. Since 2013, the OECD had been exploring ways to address global tax challenges by developing a ‘Base Erosion and Profit Shifting’ (BEPS) initiative, in particular through the 15 key actions adopted in 2015.

Mr DOMBROVSKIS said, however, that the current rules still allowed large multinationals to earn significant income in a jurisdiction without paying corporate income tax there. New business models that relied heavily on intellectual property had made it easier for large multinationals to shift profits to low-tax jurisdictions and globalisation had exacerbated unfair tax competition. According to OECD calculations, USD 100-240 billion escape taxation every year – a trend that must be halted.

He explained that, to address the issue of the corporate taxation of multinationals, the OECD had proposed a two-pillar approach, namely (i) the allocation of taxing rights to one jurisdiction rather than another, and (ii) minimum effective taxation. The latter pillar set a minimum floor for tax competition in the area of corporate

income tax through the introduction of a global minimum corporate tax at a rate of 15% that the OECD member countries could use to protect their tax bases.

With regard to the proposal on the misuse of shell entities for tax purposes, Mr DOMBROVSKIS said that it was long awaited, particularly as examples of persistent misuse had been revealed by the recent OpenLux investigations and the Pandora papers. Moreover, public opinion was very sensitive to tax avoidance and tax evasion, and the European Parliament had always been in favour of adopting measures in those fields.

Therefore, that day's proposal for the first time directly addressed tax avoidance and tax evasion through the use of shell entities by companies and individuals. Shell entities were companies and other entities that did not have substance, that is to say they did not have offices, employees or equipment, and did not perform any genuine economic activity, only fulfilling registration and organisation requirements.

Mr DOMBROVSKIS said that the objective of the proposal was to provide concrete solutions for the three main problems posed by shell entities, namely (i) the lack of EU rules defining common minimum requirements in terms of economic activity for tax purposes, (ii) the lack of information that tax administrations needed to effectively apply existing rules against tax avoidance and evasion, and (ii) the promotion of shell entities by certain intermediaries.

Mr GENTILONI said that that day's two proposals for Directives were the result of extensive cooperation between the Commission and the Member States. The proposals were necessary in the current situation where the EU and the Member States had to protect their citizens and their economies from the crisis. The Commission was therefore sending a clear political message against a race to the bottom and in favour of fair taxation.

He pointed out that in recent decades crises had led to major reforms in the global regulation of certain economic sectors. The OECD agreement on the taxation of multinationals was such a case.

He said that the EU had played an important role in this agreement, in particular through the unanimous agreement reached by its Member States. That was why it was important for the EU to become the first jurisdiction in the world to introduce these new rules through its Directive. He added that time was pressing, as the two pillars of the OECD agreement were expected to enter into force in 2023 at global level.

Mr GENTILONI explained that the proposal introduced a minimum effective tax rate of 15% for groups of enterprises with a combined turnover of more than EUR 750 million, which concerned around 1 500 large groups in the EU. He noted that the EU did not intend to harmonise the tax systems of the Member States, but that a limit would be set to avoid a race to the bottom. The OECD standard rules would thus be introduced in the EU without further regulation, which was what the Member States wanted.

It remained to be seen when and how the United States would implement the OECD agreement, in particular by amending its existing system of a minimum tax on global intangible low-taxed income (GILTI) and taking a decision on the legal nature of the first pillar. In any event, he welcomed the EU's message stressing its ambition to reach a swift adoption of the OECD agreement at European level.

Finally, with regard to the so-called 'letterbox companies', used as a means of tax avoidance by international enterprises and individuals, Mr GENTILONI said that the EU was taking coherent steps in the current economic crisis by adopting clear rules for the identification of such letterbox companies thus demonstrating its ability to combat tax avoidance. He added that the European Parliament was very keen on this proposal and it should lead to an agreement among the Member States.

In the course of the brief discussion that followed, the Commission raised the following main points:

- the political and ethical importance of that day's proposals in view of the fact that the tax burden in the EU was increasingly based on the income of less

‘mobile’ taxpayers, namely workers and small and medium-sized enterprises, which was unfair;

- the need to pay the utmost attention to the measures taken by other global players in order to ensure that international pressure for the implementation of the OECD global agreement did not diminish.

The PRESIDENT thanked Mr DOMBROVSKIS and Ms GENTILONI for their excellent work.

Following these presentations, the Commission:

- adopted the proposal for a Council Directive in COM(2021) 823/3 for transmission to the European Parliament, the Council, the European Economic and Social Committee and the national parliaments, and, for information, to the Committee of the Regions and the European Data Protection Supervisor, together with the staff working document distributed as SWD(2021) 580, the contents of which were noted;
- adopted the proposal for a Council Directive in COM(2021) 565/3 for transmission to the European Parliament, the Council, the European Economic and Social Committee and the national parliaments, and, for information, to the Committee of the Regions and the European Data Protection Supervisor, together with the staff working document, the impact assessment, the summary thereof and the opinion of the Regulatory Scrutiny Board in SWD(2021) 577, SWD(2021) 578, SWD(2021) 579 and SEC(2021) 565, the contents of which were noted.

14. COMMISSION DELEGATED REGULATION (EU) .../... ON AMENDING DELEGATED REGULATION (EU) 2016/1675 SUPPLEMENTING DIRECTIVE (EU) 2015/849 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, AS REGARDS ADDING BURKINA FASO, CAYMAN

ISLANDS, HAITI, JORDAN, MALI, MOROCCO, THE PHILIPPINES, SENEGAL AND SOUTH SUDAN TO THE TABLE IN POINT I OF THE ANNEX AND DELETING THE BAHAMAS, BOTSWANA, GHANA, IRAQ AND MAURITIUS FROM THIS TABLE

(C(2021) 4335 TO /5)

The PRESIDENT noted that the Commissioners were asked that day to approve in principle a Delegated Regulation on updating the EU's list of third countries which had strategic deficiencies in their Anti-Money Laundering/Counter Terrorist Financing regimes that posed a significant threat to the EU's financial system (hereinafter 'high-risk third countries') and to grant an empowerment to Ms McGUINNESS for the formal adoption of this act.

She asked Mr DOMBROVSKIS and Ms McGUINNESS to present the draft Delegated Regulation.

Mr DOMBROVSKIS pointed out that an update to the list of high-risk third countries was necessary to enable the EU to protect its financial system and interests. It was, moreover, a legal obligation on the Commission, pursuant to Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

The EU list was based on the list compiled by the Financial Action Task Force (the FATF), the international standard setter in the field of countering money laundering and terrorist financing. The EU rules required the Commission to update its list one month after the FATF identified high-risk third countries. These rules were important to ensure the equal treatment of all the EU's third-country partners, including those that were to be deleted from the list as they had been deleted by the FATF.

Mr DOMBROVSKIS pointed out that being added to the EU list had consequences for the third countries concerned. Banks were, *inter alia*, required to monitor more closely commercial transactions carried out with these countries and EU funding

could no longer be channelled to them. He emphasised, however, that the Commission helped the third countries in which shortcomings had been identified so that they could be deleted both from the FATF's list and that of the EU.

Ms McGUINNESS turned to the changes to be made to the EU list of high-risk third countries. On the basis of the Commission's independent assessments, the proposal was to add to it nine third countries (Burkina Faso, the Cayman Islands, Haiti, Jordan, Mali, Morocco, the Philippines, Senegal and South Sudan) and delete from it five (the Bahamas, Botswana, Ghana, Iraq and Mauritius). The last update to the EU list dated back to 2020 and the FATF had amended its own list three times in 2021, changes which needed to be reflected in the EU's list as rapidly as possible.

The Commission and the European External Action Service would continue to provide support to the third countries added to the list in order to help them overcome deficiencies. Ms McGUINNESS emphasised that it was in the EU's interest both to encourage these countries to take the measures necessary in order to be able to be deleted from the list as rapidly as possible and to respond to the legitimate expectations of deletion of those countries which had already resolved their strategic deficiencies.

In conclusion, the PRESIDENT said that the Commission would continue contacts at the political level with all of the partner countries concerned in order to explain its decisions and discuss the way forward. She confirmed that Ms McGUINNESS would inform the Commissioners in due time of the formal adoption of this Delegated Regulation.

Following these presentations, the Commission adopted in principle the Delegated Regulation in C(2021) 4335/5 and, pursuant to Article 13 of its Rules of Procedure, empowered Ms McGUINNESS, the Member of the Commission responsible, to adopt it formally, in agreement with the PRESIDENT, in all languages as soon as the texts became available, with a view to its transmission to the European Parliament and the Council, and its publication in the Official Journal of the

European Union at the end of the period for objections laid down in the rules.

15. OTHER BUSINESS

LATEST DEVELOPMENTS IN EXTERNAL RELATIONS

The PRESIDENT invited Mr BORRELL to report on the latest developments in external relations.

Mr BORRELL began by referring to the election of the new President of Chile on 19 December, which he saw as a sign of change in Latin America. He also noted that important elections would soon be held in Colombia and Mexico.

He then referred to the many areas where tensions were being felt in Africa, namely the Sahel and particularly Mali, the Central African Republic and Burkina Faso. He mentioned the problems encountered by the intervention forces of certain Member States in these regions and in particular the Russian company Wagner's growing influence on the internal affairs of certain African countries.

Mr BORRELL continued his overview of the major foreign policy issues by referring to the presidential election expected to be held in Libya on 24 December. He noted the uncertainty surrounding the election and highlighted its importance to the country's stability.

With regard to Ukraine, he was concerned by the show of force by the Russian authorities, who had built up an unprecedented military presence at the border with Ukraine. In view of the seriousness of the situation, he justified the approach decided on by EU leaders at the last European Council meeting, which included drawing up a list of sector-specific economic sanctions and financial sanctions in response to acts of intimidation by the Russian authorities.

In that context, he referred to two draft treaties of relevance to the security of the European continent which the Russian President, Vladimir PUTIN, had presented to the US President, Joe BIDEN, and to the North Atlantic Treaty Organization (NATO).

He said that the EU and its Member States had to be involved in discussions on issues relating to the security architecture on the European continent. In his view, the OSCE ought to be the preferred forum for holding talks with the Russian government on matters concerning the security of the European continent, without neglecting other fora that could also be used for that purpose.

The PRESIDENT confirmed that the EU was one of the main stakeholders when it came to matters relating to the security of the continent. She supported the idea of the OSCE being the preferred forum for launching wider-ranging discussions on these matters at multilateral level. She highlighted the United States' declared willingness to systematically involve the EU in any discussions on Europe's security architecture. She also referred to the constructive role played by Member States in talks between Russia and Ukraine.

In conclusion, the PRESIDENT said that it was her deeply held conviction that any attempt to destabilise the EU was bound to fail, as demonstrated by the EU's response to the crisis in Belarus, which had been firm, effective and aligned with its values. However, she considered that the EU needed to ready itself to respond to new and sophisticated forms of hybrid, rather than military, threats, while standing united and basing its response on its democratic values, the upholding of fundamental rights and the principles of the rule of law.

The Commission took note of this information.

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The Commission's other discussions on certain agenda items are recorded in the special minutes.

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The meeting closed at 11.04.