**Follow up to the European Parliament non-legislative resolution on fair taxation in a digitalised and globalised economy: BEPS 2.0**

1. **Resolution tabled pursuant to Rule 136(5) of the European Parliament's Rules of procedure**
2. **Reference numbers:** 2019/2901(RSP) / B9-0238/2019 / P9\_TA-PROV(2019)0102
3. **Date of adoption of the resolution:** 18 December 2019
4. **Competent Parliamentary Committee:** Committee on Committee on Economic and Monetary Affairs (ECON)
5. **Brief analysis/assessment of the resolution and requests made in it:**

The resolution comes at a time when discussions on a reform of the international corporate tax framework are currently ongoing within the Inclusive Framework of the Organisation for Economic Co-operation and Development (OECD). The last meeting on 29-30 January 2020 confirmed the overall support for a consensus based solution. The aim is to have a political agreement on a framework solution in July 2020 and a final consensus-based solution with a final report to be delivered to the G20 by the end of 2020. The nature of the international discussions has gone beyond focusing on the taxation of the digitalised economy to cover broader issues articulated around two broad pillars: i) realigning taxing rights with the new realities of value creation and ii) setting a global minimum effective taxation of the profits of multinational companies.

The resolution of the European Parliament encourages finding a consensual solution to the tax challenges arising from the digitalisation of the economy. It calls on the Commission to evaluate the Member States’ implementation of Anti-Tax Avoidance Directive, to analyse possible new ways of circumventing this directive, and to present new legislative proposals to counter such methods when necessary. It calls on the Commission to clarify how the new tax rules (new nexus and allocation of taxing rights) would co-exist with the current transfer pricing rules as suggested by the OECD. The resolution also calls for a joint and ambitious EU position for the OECD negotiations, ensuring that the EU speaks with one voice, and invites the Commission to provide support in developing the EU’s position. The resolution invites the Commission to provide an impact assessment on revenues for every Member State for both pillars, including spill-over effects. The resolution encourages the Commission to achieve a deal at international level which would then be transposed at EU level through relevant EU legislation. It calls on the Commission to prepare the legal base for incorporating the outcome of an international deal into EU law and to present a legislative proposal as soon as possible. The resolution supports the commitment of the President of the Commission to take action at EU level should a global agreement not be reached by 2020, on the condition that this EU solution is not limited to digital businesses, understanding that this would establish a minimum level of tax that would prevent unilateral measures. The resolution calls to evaluate the criteria of the EU list of non-cooperative jurisdictions for tax purposes once the international rules and/ or the EU’s newly agreed reforms have been adopted. Last, the resolution calls on the Commission to explore the possibility of avoiding a legal base requiring unanimity.

The Commission believes a deep reform of the international business taxation system to fit the modern economy is of vital importance. The Commission supports an international agreement at the OECD/ G20 level. It will be important to negotiate the best possible outcome for all EU Member States and to ensure that the specificities of the Single Market are respected in any solution.

Therefore, the Commission welcomes the spirit of the resolution and undertakes to reply to those calls made on it.

1. **Response to the requests and overview of the action taken, or intended to be taken, by the Commission:**

**Paragraph 2**

The Commission is currently carrying out conformity checks of Member States’ transposition of the provisions of the Anti-Tax Avoidance Directive (ATAD)[[1]](#footnote-1). On the request of the European Parliament calling on the Commission to analyse possible new ways of circumventing this directive, and to present new legislative proposals to counter such methods when necessary, the Commission will take this into consideration when evaluating the implementation of the directive and reporting to the Council thereon by 9 August 2020. These efforts will concentrate in particular on the provisions of the ATAD which have already affected companies through the application by national legislation measures and which might have triggered new avoidance or circumvention efforts.

**Paragraph 25**

The new nexus and allocation rules are not meant to directly interact with the current transfer pricing rules because they will be applied only to a specifically identified part of the revenues of a multi-national enterprise (MNE), i.e. residual profits. They will remunerate market jurisdictions with an additional amount (i.e. on top of what a market jurisdiction receives under the current transfer pricing rules) for the value created for the MNE therein. So, in principle, the Commission does not see a clash. Regarding the possibility of working out rules for profit allocation based on a fractional apportionment, the Commission continues to support its proposal for a Common Consolidated Corporate Tax Base (CCCTB) and is actively engaged in discussing its technical elements with Member States in Council.

**Paragraph 26**

The OECD has announced a multilateral mechanism for dispute resolution in case of double taxation (including between Amounts A and C) as a likely deliverable in the context of Pillar 1. The Commission will explore the interaction between the outcome of this OECD initiative and the Directive on dispute resolution at EU level.

**Paragraphs 35 and 36**

The Commission is playing an active part in the international discussions and is working with the Member States to ensure that issues of common concern for the EU - such as the compatibility with the EU Treaty and Single Market rules - are taken into account and that the solutions are beneficial for the EU as a whole as well as to its Member States. By speaking with one voice, the EU can influence the key design elements of the project in a way that the outcome for the EU as a whole is positive. The Croatian Presidency has expressed its endeavour to identify common elements, which may be relevant for the Member States in relation to the ongoing work at the OECD. The Commission welcomes this intention and stands ready to continue working with the Member States and the Presidency to ensure a timely and well-coordinated participation in the OECD discussions.

**Paragraphs 37, 29 and 17**

In line with the request of the Member States, the Commission has been working to assess the economic impact of Pillar 1 and Pillar 2 proposals on the Member States as well as the EU as a whole. About the possible revenue impacts of the solutions currently discussed by the OECD, preliminary results of the Commission’s economic analysis on both pillars have already been presented to the Member States and the final results of the static assessment should be shared in the coming months. The preliminary results of the static assessment appear to suggest that the EU as a whole could benefit under Pillar 1, and that all Member States would benefit from Pillar 2. In line with discussions at the OECD level, the Commission’s economic analysis of Pillar 1 includes evaluations of specific sectoral carve-outs (e.g., extractive sector), although the accuracy of such empirical analysis may be limited by the public availability of the relevant macroeconomic data. The Commission stands ready to assist Member States on further refining the analysis of the impact of the proposals.

**Paragraph 38**

In line with the European Parliament, the Commission requested the Member States to share all the data which they shared with the OECD and to authorise the OECD to discuss with the Commission the breakdown of their results per Member State in order to support further progress on the economic analysis.

**Paragraph 39**

The Commission confirms its engagement and support in finding an international agreement at the OECD/ G20 level. A global agreement is the best way forward as it would bring stability in the international tax framework. Such agreement would also stop the proliferation of unilateral measures and enable the existing ones to be phased out. If a global solution is agreed, the Commission will reflect on the next steps and seek a common approach to implementation within the EU. However, if a solution is not found by the end of 2020, or the solution is not ambitious enough, the strong rationale for action at EU level will remain.

**Paragraph 40**

The Commission believes that an international agreement on both Pillar 1 and Pillar 2 is the best way forward. The two-pillar approach would be most effective way to tackle both the question of digital value creation and the challenge of the changing nature of tax competition.

**Paragraphs 41**

If a global solution is agreed on both the reallocation of profits and minimum effective taxation, the Commission will seek a common approach implementation within the EU. This would be beneficial to businesses and tax administrations through reduced compliance costs and increased tax certainty. The Commission will strive to ensure that the solutions put forward are fully adapted to the constraints of the Single Market and do not create distortions of competition and restriction of the cross border activities of business within the EU.

**Paragraph 42**

The Commission agrees that the criteria of the EU listing process should be reviewed in light of experience to date and international developments. The Commission will propose such a review in the Code of Conduct Group and will provide any technical input and support needed on this issue.

**Paragraph 43**

The Commission acknowledged in its Communication *‘Towards a more efficient and democratic decision making in EU tax policy’[[2]](#footnote-2)* that new challenges that have emerged, in the EU and globally, have exposed the limits of unanimity in tax policy at both EU and national levels. It outlined the options that exist in the EU Treaties to move from unanimity to qualified majority voting and invited EU leaders to hold a discussion on their use and make concrete progress.

1. Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, OJ L 193, 19.7.2016, p. 1 [↑](#footnote-ref-1)
2. COM/2019/8, Communication from the Commission of 15 January 2019, Towards a more efficient and democratic decision making in EU tax policy, <https://ec.europa.eu/taxation_customs/sites/taxation/files/15_01_2019_communication_towards_a_more_efficient_democratic_decision_making_eu_tax_policy_en.pdf> [↑](#footnote-ref-2)