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General Secretariat

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**WORKING PAPER**

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**MEETING DOCUMENT**

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| From:    | Presidency   |
| To:      | Working Party on Tax Questions (Digital Taxation)      |
| Subject: | Initial discussion on EU law compatibility of Pillar 2 |

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Delegations will find attached a document in view of the Working Party on Tax Questions (Direct Taxation - Digital) on 25 November 2019.

## **PRESIDENCY DISCUSSION DOCUMENT – INITIAL DISCUSSION ON EU LAW COMPATIBILITY OF PILLAR 2**

### **Introduction**

1. At the ECOFIN meeting on 8 November 2019, ministers discussed the state of play regarding tax challenges arising from the digitalisation of the economy. The Presidency had proposed that before the end of the year, initial findings on EU law compatibility of the solutions discussed at OECD level would be examined, building on the work done by the Commission on this. This approach received support at the ECOFIN and the relevant Council preparatory bodies were tasked to carry out the work under the lead of the Presidency.
2. Furthermore, on 6 November 2019, the Commission services organised a meeting of the Working Party IV on direct taxation on the modernisation of the international business tax system in the context of the single market. One of the topics concerned the legal aspects and the CJEU case law implications for the possible approaches for the modernisation of international business taxation. Member States also discussed the objectives and principles for the modernisation of international business taxation.
3. According to the OECD Programme of Work, pillar 2 would ensure that all internationally operating businesses pay a minimum level of tax.<sup>1</sup> The Global Anti-Base Erosion Proposal (“GloBE”) proposal is expected to affect the behavior of taxpayers and jurisdictions.<sup>2</sup> International discussions will continue at the OECD in November (TFDE and public consultation on pillar 1) and early December (Working Party 11 and public consultation on pillar 2).
4. According to the OECD Secretary-General's Tax Report to G20 Finance Ministers and Central Bank Governors, “it is hoped that some of the main features of Pillar Two can be agreed by the next meeting of the G20/OECD IF in January 2020 while a political agreement on the architecture of Pillar Two would be expected in the first half of 2020 too.”<sup>3</sup>
5. At this stage it is not known what exactly the aforementioned main features will be. It can be assumed that they could relate to the issues that are discussed in the public consultation document on the GloBE published on 8 November 2019<sup>4</sup> (i.e. some of the design aspects of the income inclusion rule, “IIR”).

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<sup>1</sup> Paragraph 55 of the Programme of Work.

<sup>2</sup> Paragraph 58 of the Programme of Work.

<sup>3</sup> <https://www.oecd.org/ctp/oecd-secretary-general-tax-report-g20-finance-ministers-october-2019.pdf>

<sup>4</sup> <http://www.oecd.org/tax/beps/public-consultation-document-global-anti-base-erosion-proposal-pillar-two.pdf.pdf>