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## New EU Commission Takes Office on 1 December

The newly elected European Commission / College of Commissioner led by President Ursula von der Leyen took over from Jean Claude Juncker over the weekend becoming the first woman to lead the EU 'government'. With the first gender-balanced Cabinet, von der Leyen [promised](#) to lead a geopolitical Commission that will harness the opportunities of the digital age whilst protecting the 'European way of life'. The new Economy Commissioner, Paolo Gentiloni, whose portfolio includes taxation will work together with Executive Vice-President Margrethe Vestager who is responsible for overseeing the enforcement of the EU State aid rules as well as making sure that Europe benefits from the digitalisation of the economy.

In her first working day, President von der Leyen pledged to make Europe the first climate neutral continent by 2050. The [New Green Deal](#) for Europe includes a revised Energy Taxation Directive. According to the leaked draft, the Commission will present a proposal to revise the Energy Taxation Directive to align it with Europe's climate ambitions by instructing the Commission services to "send the right pricing signals through appropriate taxation and subsidies policies, reflecting too on the use of competition policy tools that could support such transition". To that aim, the Commission will pursue efforts to move away from unanimity for taxation policies, and will review the State aid guidelines for environment and energy, to bring them in line with the New Green Deal. [Draft Council Conclusions](#) on the EU energy taxation framework also refer to energy taxation as an important fiscal instrument that could steer successful climate-friendly transition towards lower greenhouse gas emissions.



## European Commission Will Not Appeal the "Starbucks" State Aid Decision

The European Commission decided not to appeal the judgment of the General Court in the fiscal State aid case *Netherlands v Commission* (Starbucks). In a [statement for MLex](#), a spokesperson for the European Commission stated: "*After carefully assessing the General Court judgment of 24 September 2019 concerning the tax treatment of Starbucks in the Netherlands, the Commission has decided not to appeal the Court's ruling to the European Court of Justice,*" confirming comments by Commission Vice-President Vestager given in an interview.

By way of background, the General Court of the EU delivered on 24 September 2019 the first instance judgments in the fiscal State aid cases of Starbucks and Fiat. In the case

[Netherlands v Commission](#) (Starbucks), the Court annulled the Commission decision, which originally established that the Netherlands had awarded State aid to Starbucks by way of selective fiscal benefits. In [Luxembourg v Commission](#) (Fiat), the Court dismissed the action for annulment and upheld the Commission decision establishing State aid to Fiat Finance and Trade (now Fiat Chrysler Finance Europe). The Court confirmed Commission's competence to scrutinise individual tax rulings (including transfer-pricing rulings, Advance Pricing Agreements - APAs) that national tax administrations conclude with taxpayers. The judgments further indicate that the General Court accepts Commission's interpretation of the 'arm's length' principle as a 'yardstick' for assessment of the EU law compliance of individual tax rulings with Article 107(1) of the Treaty. The Court also sought to set limits to the Commission's powers in the review of national fiscal State aid measures, by stating that at this stage of development of EU law, the Commission does not have 'autonomous competence' to define 'normal taxation of a company', outside the scope of national taxation rules of each Member state. All General Court decisions are subject to review by the Court of Justice of the European Union.



## Commission Asks Ireland and Austria to Implement EU-law Compliant Interest Limitation Rules

The EU Commission requested that Austria and Ireland implement interest limitation rule as required by the EU's Anti-Tax Avoidance Directive. According to the Commission, neither Austrian nor Irish existing measures in national law could be considered 'equally effective' to those of Article 4 ATAD, hence are not considered compliant with EU law. If these Member states do not remedy the situation within two months, the Commission could refer them to the Court of Justice of the EU. For the other actions taken by the Commission against Member states, please refer to the [infringement package](#) published earlier.



## ECOFIN Council Meeting on 5 December to Discuss Revision of EU's AML Rules

In addition to discussing urgent climate action through use of the energy taxation instruments, EU finance ministers are expected to [adopt conclusions](#) on EU's new anti-money laundering framework, seeking to guide the EU Commission in introducing harmonised EU anti-money laundering rules as well as enhanced anti-money laundering supervision across the EU, primarily addressed to the financial sector.



## Recap: CFE Conference on AML Rules, Paris - 29 November 2019

The 12th European Conference on Tax Advisers' Professional Affairs, hosted by CFE and IACF, took place on 29 November 2019 entitled "Making Anti-Money Laundering More Effective for Tax Advisers". With the introduction of various compliance obligations arising out of the EU anti-money laundering rules, that have been introduced by the 5<sup>th</sup> AMLD, panellists also discussed the issues of introduction of beneficial ownership registers and

the related trends of making such registers public, as well as the existing FATF Standards and Recommendations that build on other EU transparency initiatives to prevent money laundering. As such, the panellists addressed the newly established regulatory environment as well as the background issues arising of various public revelations such as Panama Papers, how those affected the public, industries including tax advisory services and financial institutions, and how the OECD efforts in fighting money laundering by the unit on Tax & Crime address these problems.

The panel 1 discussion addressed international approach against money-laundering, and was chaired by Dick Barmantlo, Member of the CFE Professional Affairs Committee. As a key-note speaker, Nilimesh Baruah from the OECD Centre for Tax Policy and Administration presented the OECD work related to tax and crimes. Mr Baruah discussed the increasingly complex and innovative forms of tax evasion and other financial crimes as well as the intrinsic link between such crime and the use of corporate vehicles. Coinciding with the 10th Anniversary of the OECD Global Forum on Tax Transparency and Exchange of Information, Mr Baruah highlighted the indispensable role of the Global Forum in improving the transparency tools worldwide. Mr Baruah also spoke of the role of the Forum in providing governments tools to exchange data on previously opaque information, and give enforcement authorities means to address issues arising from the opacity of such structures for the benefit of their citizens.

Dr Kateryna Bogouslavska, of the Basel Institute of Governance and Chatham House explained the relevance of the Basel AML index, a research based ranking of countries' exposure to ML and TF risks. Dr Bogouslavska discussed the tax related risks and the relevance for tax advisers of the data and analysis contained in the publicly available Basel AML index. In the same panel discussion, a UK perspective on the AML approach was presented by Samantha Bourton of the UWA, who described the UK as one of the pioneer jurisdictions in the implementing key AML international obligations, often going well beyond the minimal requirements of the EU legislation. Finally, Professor Robby Houben, of the University of Antwerp discussed the emergence and proliferation of crypto assets and the risks for money laundering inherently contained in such new technologies largely based on distributed ledgers such as blockchain. In conclusion, Prof. Houben suggested that the perceived risks need to be addressed with future-proof regulation and enforcement, rather than 'blaming' the technology itself, which should be harnessed for wider societal benefit.

The second panel examined the perceived risks posed by the tax profession in facilitating money laundering based on the EU's Risk Assessments, compliance with the new and existing EU AML Directives and efforts taken to address money laundering in the broader international context and the effect this has on tax evasion. The panel discussion was chaired by Heather Brehcist, Head of Professional Standards at the Chartered Institute of Taxation (UK). Panellists considered the effectiveness and the impact of existing EU rules and the new requirements of the 5th AMLD, including making beneficial owners of legal entities registers public and providing increased access to information on the beneficial ownership. Wim Gohres, Chair of CFE's Professional Affairs Committee and John Binns, Partner BCL Solicitors UK, presented the AML rules in practice. Mr Gohres presented the application and administration of the AML rules in practice from a perspective of AML compliance in the Netherlands. Mr Binns highlighted the risks, challenge and opportunities arising out of the potential regulatory divergence between EU and the UK post-Brexit. Christian Leroy, a Member of the Board of the Conseil National des Barreaux, France compared and contrasted the differences in the implementation of the AML regime across EU jurisdictions, primarily identifying the issue of the original intent of the AML regime to

apply to the financial sector, such as banks, and subsequently being adapted to the non-financial sectors. Lastly, Gary Ashford, CFE Vice-President discussed the approach to civil treatment of tax fraud evaluating the possibilities and risks, the client perspective on such issues, reputational risks and transparency issues arising out of the international legal obligations such as DAC and OECD-based instruments for exchange of information. Mr Ashford highlighted the issues related to civil investigations of tax fraud, such as contractual disclosure facilities and the negotiated financial settlements.



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**The selection of the remitted material has been prepared by  
Piergiorgio Valente/ Aleksandar Ivanovski/ Brodie McIntosh/ Filipa Correia**



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