BRUSSELS | 19 MARCH 2024

European Parliament Adopts The World's First AI Law

In a 'historic' vote, the European Union became the first jurisdiction to adopt a landmark act on regulation of Artificial Intelligence (AI). The European Parliament legislative resolution of 13 March 2024 on the proposal for a Regulation of the European Parliament and of the Council of the EU on laying down harmonised rules on Artificial Intelligence ("Artificial Intelligence Act") was adopted at the Parliament session in Strasbourg last week. The European Parliament Internal Market Committee co-rapporteur Brando Benifei (S&D, Italy) said during the plenary: “We finally have the world’s first binding law on artificial intelligence, to reduce risks, create opportunities, combat discrimination, and bring transparency. Thanks to the European Parliament, unacceptable AI practices will be banned in Europe and the rights of workers and citizens will be protected. The AI Office will now be set up to support companies to start complying with the rules before they enter into force. We ensured that human beings and European values are at the very centre of AI’s development”.

GPAI (General-purpose) AI systems and their foundational models are mandated to fulfil specific transparency criteria, encompassing adherence to EU copyright law and the provision of comprehensive summaries of the training content. Enhanced GPAI models, with potential systemic risks, are subject to further prerequisites, including conducting model evaluations, assessing and mitigating systemic hazards, and incident reporting. Moreover, artificially created or manipulated multimedia content, known as "deepfakes", must be explicitly labeled as such. This is to ensure clarity and maintain the integrity of information in the digital space. In addition, other high-risk AI systems will be placed under stricter scrutiny due to their potential detriment to human health, safety, fundamental

rights, environment, democracy, and the rule of law. Examples of these high-risk AI applications comprise of critical infrastructure, education and vocational training, employment, essential private and public services like healthcare and banking, specific systems in law enforcement, migration and border management, justice and democratic processes, including influencing elections. The EU contends that it is imperative that these systems perform thorough risk assessments and mitigation, maintain logs, uphold transparency and accuracy, and guarantee human supervision at all times. Furthermore, citizens can submit complaints regarding AI systems and are to be provided with detailed explanations about decisions made by high-risk AI systems that impinge on their rights.

In the spirit of safeguarding collective human rights, the EU AI act establishes guidelines that prohibit certain AI applications, such as invasive technologies with biometric categorisation, i.e. indiscriminate collection of facial images from the internet or CCTV for facial recognition databases. The rules also extend to emotion recognition in workplaces and schools, social scores, and predictive policing that relies on profiling an individual or assessing their characteristics. Moreover, any AI designed to manipulate human behaviour or exploit human vulnerabilities is prohibited.

The regulation is subject to a final lawyer-linguist check and is expected to be finally adopted before the end of the legislature, then formally endorsed by the Council. It will enter into force 20 days after its publication in the Official Journal, and be fully applicable 24 months after its entry into force, except for: bans on prohibited practises, which will apply six months after the entry into force date; codes of practise (nine months after entry into force); general-purpose AI rules including governance (12 months after entry into force); and obligations for high-risk systems (36 months).

CFE Opinion Statement on *Engie* Case*:* State Aid in Deduction/Non-Inclusion Structure in Luxembourg

---

The CFE has issued an Opinion Statement of the ECJ Task Force on the decision of the CJEU of 5 December 2023 in Joined Cases C-451/21P and C-454/21P, *Engie*, on alleged State aid in relation to a deduction/non-inclusion structure in Luxembourg.

The *Engie case* concerns the question whether tax rulings issued by Luxembourg to

companies part of the French energy group Engie are compatible with primary EU law, notably rules on State aid; and, whether, and to what extent, the Commission can invoke the concept of "abuse of law" for a State aid challenge of *ex ante* tax assessment issued by a tax authority of a Member state in the form of a tax ruling. The Court set aside the General Court judgment of 12 May 2021, which initially upheld the European Commission findings of State aid. The CJEU's Grand Chamber found that the European Commission did not establish to the appropriate legal standard that the tax rulings related to the zero-interest convertible loan (ZORA) provided selective advantage for the Engie entities. It did not establish the correct reference framework for assessment of State aid by way of excluding the legal basis for the tax ruling practice from the reference framework itself (Articles 164 and 166 LIR). By establishing an erroneous reference framework, the Commission relied on a wrongfully based selectivity analysis, a key step in establishing State aid for purposes of Article 107(1) TFEU. Finally, the Court established that the Commission cannot invoke national anti-abuse rules to establish selectivity in a situation where the non-application of the "abuse of law" concept by tax authorities unless the non-application of the anti-abuse provisions is based on derogation from national law or administrative practice on anti-abuse provisions comparable to the case at issue (*in concreto*). Thus, the Grand Chamber judgment follows the Opinion of AG Kokott delivered on 4 May 2023.

The Court, however, opened the door for establishing selectivity of tax rulings such as those in the Engie case, where the basis for taxation consists of pre-agreed margin (mark-up), approved by the tax administration, and not under the rules of ordinary tax law, under specific conditions.

CFE Tax Advisers Europe welcomes the clarification and further guidance on the applicability of Article 107(1) TFEU to national (individual) tax measures provided by the Grand Chamber of the CJEU in this judgment. It is equally relevant from a perspective of competence (overlap of national corporate tax law and primary EU law, i.e. rules on State aid), and from the perspective of compliance of Member States' fiscal autonomy with the applicable rules on State aid.

Following *Fiat*, the CJEU confirmed that the Commission is in principle obliged to follow the Member state's interpretation of national law, unless the Commission is able to prove, after an exchange of arguments with the Member State concerned, that another

interpretation of national law prevails in the case-law or administrative practice of that Member State. The Court's decision contributes to the dynamic balance of powers in the European Union's legal order. Following the *Fiat* and *Engie* judgments, the review of national tax measures remains possible but under strict conditions. The CJEU did not endorse a mere "plausibility check". However, the Court pointed the Commission to another direction for challenging individual tax ruling such as those in the Engie case, where the basis of taxation consists of pre-agreed margin (mark-up), approved by the tax administration, and not under the rules of ordinary tax law. Therefore, the Luxembourg tax rulings practice may be under further investigation after this decision, albeit on a different basis.

We invite you to read the Opinion Statement and remain available for any queries you may have.

US House Hearing on Pillar 1 and Digital Taxes

The United States House Committee on Ways and Means (Tax Subcommittee of the US Congress House of Representatives) held a hearing related to the future of the OECD Pillar 1 and Digital Services Taxes, entitled "Tax Subcommittee Hearing on OECD Pillar 1: Ensuring the Biden Administration Puts Americans First". Republican Congressman Mike Kelly, Chairman of the Ways & Means Subcommittee on Tax, called on the Biden Administration to revisit the OECD negotiations on the Pillar 1 deal, saying that if Pillar 1 is enacted, the tax burden will fall disproportionally on American companies.

"The Biden Treasury Department has worked with OECD and foreign governments to craft this Pillar 1 proposal – instead of with the legislative body which represents the Americans that will have to pay for this deal. And in my eyes – the worst part of this negotiation is Treasury's complete lack of cooperation with Congress on OECD Pillar 1. The Biden Administration leapfrogged Congress and put the interests of foreign governments ahead of the concerns of the men and women elected to represent American taxpayers. We will do our due diligence to protect American companies and consumers and ensure they get a good deal.", Chairman Kelly said in his remarks.

Daniel Bunn, President and CEO of the Tax Foundation said at the hearing: *"With Pillar One, Amount A, very little is truly certain. It is uncertain whether a robust system for allocating profits is achievable. And even if it is, it may not result in the removal of all DSTs. The limited list and the option to retain such policies run contrary to the goals set out on a bipartisan basis by members of Congress. One thing that is more certain, however, is that if a multilateral solution to remove the DSTs is not agreed to, then DSTs will continue to spread and mutate with negative impacts on some of the most innovative companies in the world. Multilateralism is better than multiple rounds of a tax and trade war. As other countries lean toward unilateral approaches, though, it is worth recalling the unilateral U.S. approach to redefine where companies pay taxes, namely the border-adjusted tax proposal from 2016. As mentioned, the UN is building its own role in multilateral tax negotiations. In that forum, the United States and likeminded nations will likely have less leverage due to the procedural differences from the OECD."*, Daniel Bunn said in his Witness Statement.

Register Now: CFE Forum - 18 April 2024 Brussels

CFE Tax Advisers Europe will hold its 2024 Forum on 18 April 2024 in Brussels on the topic of "Sharing the Tax Pie: Revisiting the Role of the UN, EU & OECD in Tax Policy; and Taxable Presence Threshold (Fixed Establishment) in Indirect Taxation". The Forum will bring together two excellent panels of speakers to discuss the allocation of tax base from a direct and indirect tax perspective.

Speakers on the direct tax panel will include: Mr. Benjamin Angel Director, European Commission DG TAXUD; Professor Philip Baker, KC, OBE, Barrister and Professor of Law at Oxford University; Ms. Olivia Long, Head of Tax Policy at Matheson LLP (Ireland); Mr. Pascal Saint-Amans, Partner at Brunswick and previous Director of the OECD Centre for Tax Policy and Administration OECD Tax (CTPA); and Professor Irma Mosquera Valderrama, Professor of Tax Governance at University of Leiden Law School. The panel discussion will be moderated by Mr. Bruno Gouthière, Partner at CMS Francis Lefebvre Avocats and Chair of CFE Tax Advisers Europe Fiscal Committee.

The indirect tax panel will feature: Ms. Trudy Perié, Counsel, Loyens & Loeff, Netherlands;

Mr. Erik Stessens, Senior Vice President Tax, Mastercard; Dr. Marie Lamensch, Professor of Taxation, Louvain School of Management, UCLouvain; and, a speaker from the European Commission. The panel will be moderated by Mr. Jeremy Woolf, Barrister, Pump Court Tax Chambers, United Kingdom, and Chair of the CFE Indirect Taxes Subcommittee.

Further details and registration is available here.

ECOFIN Council: Ministers Discuss Economic and Budgetary Policy

---

The European Union Finance and Economy Ministers at the 12 March ECOFIN Council meeting discussed the state of play of the implementation of the Recovery and Resilience Facility (RRF), the economic and financial impact of Russia's aggression against Ukraine and approved guidelines for the 2025 EU budget. The Council also adopted a recommendation on the discharge to be given to the Commission in respect of the implementation of the EU budget for 2022, with recommendation to the European Parliament to grant the discharge. The Belgian Presidency and the Commission informed ministers on the outcome of the G20 meeting of 28-29 February 2024 in São Paulo, Brazil.

On social policy, productivity and labour reform, the Chairman of ECOFIN said: *"Clearly, productivity is a strong driver of competitiveness and we note that average productivity growth has stagnated in the EU over the last decade. Social investments and reforms are a crucial means to relaunch our productivity. Therefore, we urgently need to focus more on innovation, research and development, good education, upskilling, reskilling, and active labour market policies in the EU.", Vincent Van Peteghem, Belgian Deputy Prime Minister and Minister of Finance said.*

The selection of the remitted material has been prepared by:
Dr Aleksandar Ivanovski & Brodie McIntosh