



BRUSSELS | 19 JUNE 2024

European Elections: Ongoing Negotiations on New EU Leadership

Following successful completion of the European Elections and election of new [Members](#) of the European Parliament (MEPs), political leaders of EU Member states are now discussing the new leadership of the European Union institutions. The EU representation will be largely based on the results of the European elections where the incumbent conservative EU leadership won the majority of votes, despite the surge of radical parties across the continent. It is widely expected that Ursula von der Leyen will continue with a second mandate as President of the European Commission, the most influential EU leadership position, representing the European conservatives/ European People's Party (EPP). Von der Leyen's position has not yet been confirmed by the EU leaders, with notable opposition from Hungary, the incoming EU Presidency. Von der Leyen is in the middle of a [formal investigation](#) of the European Prosecutor's Office which has taken over from the Belgian prosecutors the investigation over "interference in public function, destruction of SMS, corruption and conflict of interest" related to procurement of Covid-19 vaccines.

The European Socialists and Social-Democrats who were the second largest party are expected to be represented at the helm of the European Council, the highest political body of the EU, with former Portuguese Prime Minister Antonio Costa as likely president. Antonio Costa, is also under investigation in Portugal, into alleged trading of influence and alleged drafting legislation that promotes

particular business interests, which prompted his resignation last November. Croatia's Prime Minister Andrej Plenković, also from the European Conservatives (EPP), [suggested](#) changing the current practice of EU Council 5-year mandate into a split conservative 2,5 years and socialist 2,5 years, resulting in absence of political agreement in spite of discussions until the late hours of Monday.

The legal situation of the current top candidates for the two most influential EU leadership posts, Ursula Von der Leyen and Antonio Costa, has prompted Politico to ask whether the top EU candidates have [asked the prosecutors if they are fit to serve](#).

Roberta Metsola, the President of the European Parliament, who is also a member of the Conservatives/ EPP, will likely serve another term at the Parliament's helm, whereas the influential post of chief of EU's diplomacy (high representative of the European Union) is tipped to go to Kaja Kallas, a liberal (Renew Europe) and current Prime Minister of Estonia. The posts of EU Commissioners, as well as the portfolios, are yet to be discussed and then presented by the new President of the European Commission (with each Member states represented by one Commissioner), following a confirmation hearing at the European Parliament. The European Parliament has in the rejected Commissioners-designate, ie. [Sylvie Goulard from France](#) proposed by Ursula von der Leyen and [Alenka Bratušek from Slovenia](#) proposed by Jean-Claude Juncker.

The last mandate of Von der Leyen's Commission saw tax policy as a tool to ensure further fight against tax avoidance, transparency and fair taxation of large companies, sustainability-related initiatives and green taxation as well as reform of EU's corporate taxation and VAT rules fit for the digital age.

[U.N. Publishes Framework Tax Convention Reference Terms](#)

The United Nations have published a ['Zero-Draft'](#) terms of reference for a United Nations Framework Convention on International Tax Cooperation on 7 June 2024. As mandated by the UN General Assembly in November 2023, following a positive vote on the resolution filed by the Nigeria, the zero draft terms of reference set out the basic parameters and mechanisms of a United Nations Framework Convention on International Tax Cooperation and provide guidance to the negotiation of the framework convention. The draft has not been formally approved by all members.

As detailed by the draft, the UN Framework Tax Convention will seek to include commitments on: fair allocation of taxing rights, including equitable taxation of multinational enterprises; effective taxation of high-net worth individuals; ensuring that tax measures contribute to addressing environmental challenges; transparency and exchange of information for tax purposes; and effective prevention and resolution of tax disputes.

The intergovernmental negotiation committee would be convened in New York and will meet for a set number of sessions in 2025 and 2026, supported by a bureau. The Secretary-General will provide the intergovernmental committee with the necessary facilities and resources to support their work. The second session and update to the terms of reference is currently scheduled for 15 July.

[Opinion of AG Kokott in Case C-432/23: F, Ordre des Avocats du Barreau de Luxembourg on Professional Secrecy of a Lawyer Under DAC](#)

On 30 May 2024, the Opinion of Advocate General Kokott was delivered in case [C-432/23](#) *F, Ordre des Avocats du Barreau de Luxembourg v Administration des contributions directes* on the professional secrecy of a lawyer in regards to Directive 2011/16/EU on administrative cooperation in the field of taxation.

The request for a preliminary ruling in the case raised the question as to whether

and, if so, under what conditions a tax administration may seek disclosure from a lawyer in the context of an exchange of information on request. The case deals with the issue of whether advice or representation provided on tax matters can generally be excluded from the protection afforded to LPP under EU law, as it can in Luxembourg law.

AG Kokott in her Opinion sets out that *"Ensuring uniform and lawful tax enforcement in a globalised world requires cooperation between tax administrations...At the same time, however, such an exchange of information and the enquiries associated with it lead to interference with the fundamental rights of the affected taxpayers and persons obliged to provide information....In that regard, the Court has already emphasised the importance of protecting the confidentiality of communications between lawyers and their clients in connection with the reporting obligation applicable to cross-border tax arrangements. The present case presents an opportunity to spell out further what protection legal professional privilege ('LPP') enjoys"*.

AG Kokott proposes in her conclusions at paragraph 65 of the Opinion that the Court should answer the questions referred as follows:

1. Legal advice provided by a law firm, even on matters of company law – for example on setting up a corporate investment structure – falls within the scope of the protection afforded by legal professional privilege as guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter').
2. A decision of the competent tax authority ordering a law firm to disclose information in the context of an exchange of information on request whereby that authority, broadly speaking, calls for the production of all documentation relating to certain transactions and its involvement in those transactions constitutes interference with the right to respect for communications between lawyers and their clients that is guaranteed by Article 7 of the Charter.
3. Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC is

compatible with Article 7 and Article 52(1) of the Charter, in so far as it does not include, beyond Article 17(4), any provision which formally permits interference with the confidentiality of exchanges between lawyers and their clients in the context of the system of exchange of information on request and which itself defines the scope of the limitation on the exercise of the right in question. This is because Article 17(4) of Directive 2011/16 gives the Member States sufficient discretion to fulfil the requirements of Article 7 of the Charter.

4. The national legislation of each Member State can and must stipulate the conditions, the scope and the limits of the duty to cooperate incumbent on lawyers, as information holders, in the context of the exchange of information on request under Directive 2011/16. In so doing, national law must, in particular, enable the competent authority to strike a balance on a case-by-case basis between the objectives in the general interest, on the one hand, and the protection afforded by legal professional privilege, on the other. Since Luxembourg law does not allow for such a balance to be struck in matters of tax law, Article 7 of the Charter precludes the application of the national law to that extent.

OECD Updated Guidance on Pillar One and Two

The OECD has now released additional [guidance](#) relating to the [report on Amount B](#) of Pillar One and guidance to ensure consistent implementation and application of the global minimum tax under Pillar Two. The updated Guidance concerns [Statement](#) on the definitions of qualifying jurisdiction within the meaning of section 5.2 and section 5.3 of the simplified and streamlined approach and [Statement](#) on the definition of covered jurisdiction for the Inclusive Framework political commitment on Amount B. The Guidance includes a list of countries (qualifying jurisdictions) within the meaning of section 5.2 (Operating expense cross-check) and a list of qualifying countries within the meaning of section 5.3 (Data availability mechanism) as of June 2024.

Regarding Pillar Two, the OECD issued guidance and overview for recognising

qualified status for the legislation of jurisdictions implementing the Global Anti-Base Erosion (GloBE) Rules:

- **Administrative Guidance:** [Administrative Guidance](#) on a number of key topics where consistency and simplifications were sought by Inclusive Framework members and stakeholders. This package of administrative guidance sets out simplified procedures that will allow MNE Groups to aggregate various categories of deferred tax liabilities for determining whether they have reversed within five year and therefore do not need to be recaptured. This guidance will be incorporated in the [Commentary to the GloBE Model Rules](#).
- **CbCR Safe Harbour guidance:** [additional interpretative CbCR guidance](#) on 27 May which also ensures the consistent treatment of those intra-group payments and avoids the need for further adjustments under the global minimum tax where a consistent treatment is applied in the first place.
- **Qualified status:** [Question & Answer document](#) summarising the main features of this Transitional Qualification Mechanism. This mechanism will provide jurisdictions with the certainty that their rules will be recognised as qualified by other implementing jurisdictions for a transitional period while a full legislative review is being undertaken and will provide MNEs with certainty as to which jurisdictions rules it must comply with in line with the agreed rule-order.

Industry & Tax Professionals Call for Clearer VAT Guidance on Charitable Donations

CFE Tax Advisers Europe has issued a [Joint Statement](#) with Accountancy Europe, AmCham EU and E-Commerce Europe calling for clearer VAT guidance on charitable donations for social and sustainability goals.

Our organisations represent a variety of businesses and tax professionals who see an opportunity for the European Commission to strengthen the EU's values and sustainability goals through the ubiquitous application of VAT relief on charitable donations across the EU. Businesses across Europe can make a difference every day by donating goods, as the destruction of unsold goods comes at an extremely high cost for people and the environment.

The European Environmental Bureau estimates that the value of destroyed electronics and clothing in the EU will amount to €71.29 billion by 2030. Ranging from wholesome food to spare appliances and furniture, the goods in question would not find a place in the market, but could make material contributions to charitable causes while pursuing EU goals in the Waste Framework Directive and in sustainability reporting.

The importance of harmonising VAT donations across the EU27 has also been recognised in the recent Report on the Single Market spearheaded by Enrico Leta, President of the Jacques Delors Institute, which was published on 16 April 2024. This report asks the European Commission to consider greater harmonisation of VAT neutralisation options for donations across the Single Market.

With this statement, we call upon the European Commission to provide further guidance to Member States on applying the VAT Directive exemption on charitable donations, to alleviate concerns about VAT avoidance and to facilitate corporate donations across the EU.

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