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EU Tax Alert

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EU Tax Alert

In this publication, we look back on recent tax law developments within the European Union (EU). We discuss, amongst other things, relevant case law of the Court of Justice of the European Union (CJ), Opinions of its Advocate Generals (AG), as well as relevant case law of the national courts of the Member States.

Furthermore, we set out important tax plans and developments of the European Commission (EC), the Council of the European Union (Council) and the European Parliament (EP).

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Content

1. Highlights in this edition

European Commission adopts new State Aid framework accompanying Clean Industrial Deal

On 25 June 2025, the European Commission adopted a new State aid framework supporting the Clean Industrial Deal (CISAF), to enable Member States to push forward the development of clean energy, industrial decarbonisation and clean technology.

The CISAF sets out the conditions under which Member States can grant support for certain investments and objectives in line with EU State aid rules. Under the Framework, the Commission will authorise aid schemes introduced by Member States to boost clean industry, enabling the swift rollout of individual aid. The CISAF will be in place until 31 December 2030, giving Member States and businesses long-term predictability.

The CISAF replaces the Temporary Crisis and Transition Framework (TCTF), which has been in place since 2022. The framework simplifies State aid rules in five main areas: (i) the roll-out of renewable energy and low-carbon fuels; (ii) temporary electricity price relief for energy-intensive users to ensure the transition to low-cost clean electricity; (iii) decarbonisation of existing production facilities; (iv) the development of clean tech manufacturing capacity in the EU; and; (v) the de-risking of investments in clean energy, decarbonisation, clean tech, energy infrastructure projects and projects supporting the circular economy. For more information on this CISAF please click here.

AG Kokott's Opinion on whether Belgium breached EU Law by refusing to allow a deduction for taxes paid abroad by a CFCs (*European Commission v Kingdom of Belgium*, Case C-524/23)

On 22 May 2025, AG Kokott delivered her Opinion in the case *Commission v Belgium* (Case C-524/23). This case concerns the alleged failure by the Kingdom of Belgium to transpose Article 8(7) of Directive (EU) 2016/1164 (the Anti-Tax Avoidance Directive, ATAD), which requires Member States to allow a deduction for taxes paid by a controlled foreign company (CFC) abroad, when its income is attributed to the domestic taxpayer. The central legal issue addressed by the CJ in this case is whether the provision mentioned above must be implemented when a Member State opts for the CFC regime set out in Article 7(2)(b) ATAD, which targets only non-genuine arrangements aimed at securing a tax advantage.

The case arose after Belgium implemented CFC rules in 2017 following Article 7(2)(b) of the ATAD and not transposing Article 8(7) on the basis of the ATAD's minimum harmonisation clause provided in Article 3. Belgium maintained that Article 8(7) was not mandatory in cases of artificial arrangements and that permitting deductions would undermine the intended deterrent effect of the measure. The European Commission disagreed with this view and initiated infringement proceedings against Belgium, arguing that the non-transposition of the aforementioned article constituted a breach of EU law.

In her Opinion, AG Kokott first addressed the admissibility of the action, rejecting Belgium's claim that the European Commission's pleas in law were vague and had changed between the reasoned opinion and the formal application. She confirmed that the substance of the complaint remained consistent and that the action was therefore admissible.

AG Kokott then addressed the merits of the European Commission's action starting with an analysis of whether the adoption of the ATAD is covered by the European Union's legislative competences. In this regard, the AG noted that doubts had been raised in legal literature and by some Member States as to whether ATAD falls within the scope of Article 115 TFEU, its legal basis. That provision permits approximation of laws only where national differences 'directly affect the functioning of the internal market', which could be derived from a restriction of fundamental freedoms or from an appreciable distortion of competition between the undertakings concerned. In her view, tax harmonization alone is not sufficient in principle to substantiate competence under Article 115 TFEU as harmonization is not an end in itself, and such legal basis requires a clear link to the removal of significant competitive distortions or barriers within the internal market. AG Kokott recognised that the ATAD does not remove barriers to cross-border activity but rather imposes restrictions – such as anti-abuse rules and income inclusion measures – that may in fact limit fundamental freedoms. Kokott further noted that a direct effect on the functioning of the internal market requires greater effort of justification in the case of direct taxation than in the case of indirect taxation, the harmonization of which must only be 'necessary'. She then found that it is not immediately obvious how this is thought to be the case with respect to the ATAD provisions and, to that extent, that it appears doubtful whether such Directive can rely on Article 115 TFEU as a legal basis. Despite these doubts, AG Kokott held that the EU's legislative competence for adopting the ATAD must remain open in the present action and could only be clarified by means of a preliminary ruling proceeding that call into question the validity of such Directive. It is worth noting, though, that in the case none of the parties had alleged that the EU lacked competence to adopt the ATAD.

Moving forward with the analysis of the action's merits, AG Kokott rejected Belgium's argument that Article 8(7) of the ATAD, by referring to national law for the calculation of the deduction, implicitly allowed Member States to deny such deduction altogether. In her view, the reference to national law concerns only the method of calculation, not the existence of the deduction itself. She noted that the wording of the provision assumes that a deduction is required, and national law merely determines how it is computed. Therefore, she opined that Belgium could not rely on that wording to justify non-transposition of the ATAD provision.

Applying a teleological interpretation, AG Kokott emphasized that the purpose of Article 8(7) is to avoid double taxation. However, she noted that - in cases involving non-genuine arrangements under Article 7(2)(b) ATAD - such a risk does not exist. This is because those arrangements are to be disregarded for tax purposes, and any income attributed to the parent company should not have been taxed abroad in the first place. Accordingly, there is no actual risk of double taxation that would necessitate the deduction.

The AG further explained that the non-application of Article 8(7) in such cases reinforces the ATAD's primary objective (i.e., to combat aggressive tax planning by disincentivising artificial profit-shifting). She found that allowing a deduction would, in effect, reward the very conduct ATAD seeks to prevent. Moreover, she noted that ATAD explicitly allows for minimum harmonisation under Article 3, which permits Member States to implement stricter domestic measures to protect their corporate tax base.

AG Kokott also drew a comparison with case law on minimum harmonisation in other fields of EU law, particularly consumer protection. She argued that Member States are not required to transpose exceptions or derogations in minimum harmonisation directives if doing so would undermine the directive's core objective. In this case, she noted that excluding the deduction for foreign tax enhances the deterrent effect and better serves the goal of protecting the domestic tax base.

On these grounds, AG Kokott concluded that the action of the European Commission must be dismissed. In her view, Belgium was not required to transpose Article 8(7) of the ATAD when applying Article 7(2)(b), as a teleological interpretation of such Directive confirms that this provision is not intended to apply in the context of non-genuine arrangements. In the AG's Opinion, denying the deduction in these cases lies within the discretion permitted under ATAD's minimum harmonization framework.

State-of-Play of the Proposed Unshell/ATAD 3 Directive

On 20 June 2025, the publication of the ECOFIN's progress report on tax issues confirmed that negotiations on the proposed Unshell/ATAD 3 Directive will no longer be continued in the Council and that the focus going forward will be on assessing the feasibility of incorporating such proposal's objectives in DAC6's hallmarks as part of the current evaluation and revision of the DAC (DAC2-DAC6).

The Unshell/ATAD 3 Directive proposal, originally tabled in December 2021, was introduced with the aim to combat the misuse of so-called 'shell' companies for tax purposes within the EU. Under the initial proposal, entities with more than 75% passive income, mainly engaged in cross-border activities and lacking sufficient economic substance could be denied tax benefits under EU tax directives and tax treaties, such as withholding tax relief. Since the publication of the initial proposal in 2021, however, EU Member States have not managed to reach unanimous agreement required for the adoption of the Unshell/ATAD 3 Directive and, thus, negotiations have remained open since then.

Recently, Member States have discussed a new potential way forward: integrating key elements and goals of the Unshell/ATAD 3 Directive into the existing DAC6 framework (also known as the EU Mandatory Disclosure rules). DAC6 is part of the EU directive on administrative cooperation in taxation (DAC). It requires intermediaries – and in some cases, taxpayers – to report certain cross-border arrangements that meet specific 'hallmarks' indicating potential tax avoidance or abuse. After DAC6 reports are filed, they are automatically exchanged among tax authorities of EU Member States. The DAC is currently being evaluated by the European Commission and a legislative proposal for the revision of the DAC is expected in the first quarter of 2026.

The proposed approach would streamline the original Unshell/ATAD 3 proposal's objectives – the identification of high-risk, low-substance entities – through amending and/or adding to DAC6's existing hallmarks. This approach (i.e., an amendment of DAC6 instead of implementing an additional EU Directive) is also in line with the EU Commission's current tax decluttering and simplification agenda.

During the most recent EU Council meeting in June 2025, it emerged that the analysis and negotiations on the EU Unshell Directive should no longer be continued by the EU Council. Instead, delegations broadly welcomed a focus going forward on assessing the feasibility of the proposed DAC approach and to determine whether it could serve as a viable solution, particularly in the context of the current evaluation of the DAC (i.e., DAC2 to 6). The new legislative proposal changing the DAC (also referred to as DAC10) is expected in the beginning of 2026 at the earliest. We will continue to monitor these developments closely.

If you have any questions about how this may affect your EU operations, please do not hesitate to reach out to one of our experts.

ECOFIN reaches political agreement on the proposal to shift VAT liabilities to suppliers and marketplaces for low value consignments

On 13 May 2025, the Economic and Financial Affairs Council (ECOFIN) reached political agreement on a proposal that changes the rules for the levy of VAT on imports of consignments from outside the EU with an intrinsic value not exceeding EUR 150 (Low Value Consignments).

Under the proposed rules, suppliers and marketplaces will become liable for VAT on the import and sale of Low Value Consignments, also when the import is made on behalf of the consumer. The existing postal and courier arrangement will be abolished. The proposal aims to increase the use of the Import One Stop Shop (IOSS).

These proposed rules are intended to apply as of 1 July 2028. The European Parliament will now be consulted on the proposed changes. The proposal should, thereafter, be formally approved by the Council of the European Union. It is expected that this legislative process will take place in the coming months.

For more information about this new proposed rules and our thoughts, please see our dedicated web post on this topic.

CJ judgment on the methodology of customs valuation for goods imported on the basis of a provisional purchase price (*Tauritus*, Case, C-782/23)

On 15 May 2025, the CJ delivered its judgment in the case of *Tauritus* (C-782/23). The case concerns the determination of the customs value of products released for free circulation into the EU customs territory on the basis of a provisional price, where the final price is determined on the basis of objective factors unknown at the time of the lodging of the customs declaration and beyond the control of the contracting parties.

Between 2015 and 2017, Tauritus UAB released diesel fuel and jet fuel for free circulation in Lithuania on the basis of a provisional price agreement, for which pro forma invoices were issued by the suppliers. In the customs declarations, Tauritus referred to the provisional price to determine the customs value in accordance with a secondary customs valuation method. After release, the provisional price would be adjusted on the basis of the average market price and the average exchange rate during a specified period, as a result of which, the final price could be higher or lower than the provisional price at the moment of the lodging of the customs declaration. Subsequently, final invoices were issued by the suppliers. Upon receiving these final invoices, Tauritus generally submitted requests to amend the customs value of the imported products.

During a post-release control carried out by the *Kauno teritorinė muitinė* (regional customs service, Lithuania), it was found that between 29 September 2016 and 1 February 2017, thirteen customs declarations had been lodged for which the final invoice price was higher than the provisional price, but no amendment of the customs value was requested by Tauritus, meaning that additional import VAT in respect of the imports was unpaid. Consequently, the regional customs service claimed additional sums of import VAT, as well as interest on arrears for the period between the date of acceptance of the customs declarations concerned and the date on which the control report was drawn up.

Tauritus brought an action against the decision of the regional customs service. During the national proceedings, the *Lietuvos vyriausiasis administracinis teismas* (Supreme Administrative Court, Lithuania) questioned whether the transaction value method could be used to determine the customs value upon release for free circulation, given that the price was provisional and subject to later adjustments, which could result in an arbitrary or fictitious customs value. The court also questioned whether Article 173(3) of Regulation (EU) No 952/2013 ('UCC') requires a declarant to submit a request to amend a customs declaration if the customs value had been established using another customs valuation method than the transaction value method. As such, the Supreme Administrative Court referred preliminary questions to the European Court of Justice.

The CJ considered that the customs value of imported goods must, in principle, be determined on the basis of the transaction value method. As such, since the revaluation of the provisional price depends on objective factors which are beyond the control of the parties to those contracts, the mere fact that the final price was not determined upon the release for free circulation does not rule out that the customs value may be established on the basis of the transaction value. Furthermore, the CJ considered that the UCC provides for, among others, a simplified customs declaration procedure. This modality makes it possible to take into account a contractual revaluation of the transaction value of the goods after the acceptance of the customs declaration of those goods by submitting a supplementary customs declaration.

In light of the above, the CJ ruled that where goods are imported into the EU customs territory where only a provisional price is known and where the sales contract stipulates that the final price will be adjusted on the basis of certain predetermined objective factors, the value of which is fixed by a final invoice, the customs value of those goods must be determined by applying the transaction value method by using, as a general rule, the simplified customs declaration procedure.

2. Direct Taxation

Developments

Program and priorities for the Danish Presidency of the Council

On 24 June 2025, Denmark presented its program and key priorities for its Presidency of the Council of the European Union, which started on 1 July and runs until December 31, 2025.

Regarding taxation, the program notes that the Danish Presidency will aim to advance negotiations on revising the Energy Taxation Directive (ETD), strengthen the CBAM and support measures against tax avoidance and harmful tax competition. It will also promote tax simplification and enhanced administrative cooperation through further updates to the Directive on Administrative Cooperation (DAC).

Additional priorities of the Danish Presidency include finalizing the Customs Union reform, leading negotiations on the 2026 EU budget, and continuing discussions on a revised own resources framework. The Danish Presidency will also engage in international economic coordination, including preparations for the G20, IMFC, and COP30 climate finance discussions.

ECOFIN's Progress Report on Tax Issues

On 20 June 2025 the Economic and Financial Affairs Council (ECOFIN) approved its biannual report on tax issues (the Report), which provides an overview of the progress achieved in the Council under the Polish presidency, as well as an overview of the state of play of the most important dossiers currently under negotiation in the area of taxation.

Regarding the progress achieved by the Polish presidency, the Report notes that – during such term - the Council: (a) adopted the VAT in the digital age package; (b) adopted the proposals on the electronic VAT exemption certificate; (c) reached a general approach on the Directive on VAT rules for distance sales of imported goods and on import VAT as regards the incentivization of the IOSS; (d) adopted the Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC9); (e) approved Council conclusions on a tax decluttering and simplification agenda which contributes to the EU's competitiveness; (f) made progress on the revision of the Energy Taxation Directive; (g) continued discussions on the proposal for a Council Directive on transfer pricing (TP), as well as discussions on the possible establishment of a transfer pricing platform; (h) continued to discuss the proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes; and (i) took note of information from the Commission services on the negotiations on amending the EU Agreements with Andorra, Liechtenstein, Monaco, San Marino and Switzerland.

The Report further notes that the Code of Conduct Group (Business Taxation) also continued its work on the various matters falling within its current remit, including the EU list of non-cooperative jurisdictions for tax purposes, which was recently updated by the Council on 18 February 2025.

Finally, the Report provides a detailed explanation of the state of play of the most important dossiers/proposals currently under negotiation in the area of taxation, including – amongst others - the Unshell/ATAD 3 proposal (See Item below), the TP Directive, BEFIT and administrative cooperation (also in the area of gambling).

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Polish Presidency’s Progress Report on New Own Resources

On 13 June 2025, the Polish presidency of the Council of the European Union published its progress [report on new own resources](#) (the Report), which outlines the ongoing efforts to reform the EU’s budget financing system. This initiative stems from the 2020 Interinstitutional Agreement, which set a roadmap for introducing new own resources (NOR) to help repay the funds borrowed under the Next Generation EU program.

According to the Report, the work of the Polish presidency focused on two main areas: (i) evaluating the functioning of the current system of own resources system; and (ii) encouraging discussion between Member States on the adjust package for the next generation of own resources (NOR). Regarding the first item, the report notes that the current system was generally seen as functioning well but also noted that Member States identified areas for improvement, particularly in simplifying procedures, ensuring transparency, and reducing administrative burdens.

On the future of EU financing (i.e., the introduction of NOR), the Report notes that the Polish Presidency kick-started the discussions on the state of play and, where available, updated revenue figures for the proposed new own resources based on the Border Adjustment Mechanism (CBAM), the Emissions Trading System (ETS), statistics-based company profits (CPOR) (i.e., herein referred as the ‘Adjusted 2023 Package’), as well as BEFIT (Business in Europe: Framework for Income Taxation) and Pillar I.

The Report notes that several Member States were generally disappointed by the reluctance of the Commission to provide with updated revenue figures, and by its referral to work from 2023. As regards CBAM, it mentions that Member States welcomed the explanation by the Commission with respect to the CBAM simplification proposal (part of the ‘Omnibus I’ legislative package), the implications for the scope of CBAM and therefore, of its potential effect on revenues. With respect to ETS, the Report takes count of the opposition by some Member States on grounds of its repressiveness, and in contrast, the willingness of another group of Member States to consider the proposal was reiterated. Finally, regarding the CPOR, the Report notes that the discussions showed the opposition of most Member States to this new own resource, in particular, given its statistical nature.

Furthermore, the Report notes that the Polish Presidency proposed an exploration of additional/alternative NOR to the proposed ‘Adjusted 2023 Package’ that could help gather the required unanimity in Council. In such context, and based on a broad list of possibly NOR discussed in a [previous study](#), the Report mentions that the Presidency undertook to make a more in-depth analysis on potential own resources based on: (a) a common withholding tax in the EU; (b) a minimum tax on the ultra-high-net-worth of individuals in the EU; (c) taxation of large corporations; and (d) a common EU digital tax. These proposals received varied responses from Member States.

Finally, the Report makes some recommendations on both the functioning of the current system of own resources system; and the introduction of new own resources, suggesting – among other things – that modifications to the ‘Adjusted 2023 Package’ appear to be necessary.

Progress Report on the Revision of the Energy Taxation Directive

On 12 June 2025, the General Secretariat of the Council of the European Union published its [progress report](#) (the Report) on the revision of the Energy Taxation Directive proposed by the European Commission on 14 July 2021 (ETD Proposal).

The ETD proposal is part of the Fit for 55 package, which is aimed at implementing the ambitious EU targets of reducing emissions by at least 55% by 2030, as compared to 1990 levels, and achieving climate neutrality by 2050. The Report notes that, in the first half of 2025, the Polish Presidency continued work on the revision of the proposed Energy

Taxation Directive by preparing three sets of full compromise texts, with the most recent one being submitted to the Working Party on Tax Questions (Indirect Taxation - Excise Duties/Energy Taxation) of 20 May.

Regarding the role of energy taxation in achieving the common EU competitiveness goals, the Report notes that the Presidency considers that energy-intensive sectors, such as mineralogical and metallurgical processes, need more support. Therefore, according to the Presidency, allowing Member States to continue to give support in the form of an exclusion from the scope of the Directive is justified.

Furthermore, the Report notes the works of the Presidency in clarifying the interpretation and scope of key concepts included in the ETD proposal such as 'single use' and 'different single use.' It also highlights technical adjustments made to the text of the ETD proposal ensure legal consistency with other EU legislation and outlines the need for continued negotiations to reconcile differing Member State positions.

European Commission publishes its 2025 Annual Report on Taxation

On 24 June 2025, the European Commission published its Annual Report on Taxation reviewing the taxation policies in the EU member states. The report's indicator-based analysis assesses recent trends in EU tax systems and identifies how tax policy, implementation or compliance could be improved.

The report starts with providing the macroeconomic outlook and the challenges posed by an ageing population. It then assesses recent developments of the tax mix to inform the debate about a future-proof tax mix. In this respect, the report provides a detailed survey of tax revenues at EU and Member State level including a survey on the most important tax types (e.g. personal income tax, corporate income tax and value added taxes). In addition, the report describes recent tax policy initiatives at both EU and national levels. At a time when fiscal needs are high, the report presents the approaches to measure tax gaps. It also discusses the instrumental role of tax administrations to facilitate tax compliance and provides a detailed discussion of progressivity features of EU tax systems.

Key findings of this report, include – among others - the following:

- Tax revenues in the EU-27 decreased to 39% of GDP, the lowest ratio since 2011. The decline is mostly driven by lower revenues from environmental and property taxes.
- The EU-27 tax mix remained mostly stable over the last decade, although with labour tax revenues decreasing to 51.2%, consumption tax revenues decreasing to 26.9%, and capital taxes increasing to 21.9%, due to higher company profits.
- Member States reported close to 500 tax reform measures for 2024, aiming to generate revenue, ensure fairness, sustainability, and investment.
- Compliance gaps remain a concern, with VAT revenue losses estimated at EUR 89bn (for 2022) and corporate income tax losses estimated at EUR 40bn (in 2018). These are substantial losses in a time when public deficits and debt remain high.
- Tax audits collect additional revenues and can increase compliance. Compliance is also fostered when tax administrations work digitally, so citizens and businesses can submit their tax declarations online.
- An ageing population will increase the pressure on tax systems due to increased expenditure and a reduced workforce. Member States may need to shift away some of the burden from labour taxation towards other revenue sources. Additionally, an ageing workforce may also pose a challenge for the business continuity in tax administrations where increasingly, the average age of staff is moving closer to retirement age.

European Commission launches initiative on Savings and Investment Accounts

On 11 June 2025, the European Commission launched a public consultation on a proposed Recommendation on savings and investment accounts, as part of its broader Savings and Investments Union strategy. The initiative aims to enhance EU citizens' access to capital markets by promoting simple, accessible, and tax-efficient investment accounts across Member States.

[The Commission's blueprint envisions savings and investment accounts as a user-friendly gateway for retail investors to participate in capital markets. These accounts would allow individuals to hold a variety of financial instruments—such as listed shares, bonds, and investment fund units—within a single, streamlined framework. The initiative draws inspiration from successful national models and seeks to replicate best practices at the EU level.

A key element of the proposal is the favourable tax treatment of such accounts. The Commission is exploring options for tax incentives or simplified tax procedures to encourage long-term savings and investment. The goal is to make these accounts attractive for building wealth over time, whether for retirement, home ownership, or education funding.]

The Commission has invited feedback from a broad range of stakeholders -including consumers, financial institutions, and Member State authorities - via the Have Your Say portal. The consultation period will run for four weeks (10 June - 8 July 2025) and the input received will inform the final Recommendation, expected in Q3 2025.

Inclusion of tax law elements in the 28th legal regime still undecided

On 10 June 2025, the European Commission responded to a written question from the European Parliament regarding the proposed 28th legal regime, a key initiative under the Competitiveness Compass strategy. This initiative aims to simplify and harmonise the legal framework for companies operating across the EU, thereby enhancing the Single Market's attractiveness and reducing administrative burdens. The proposed 28th legal regime would offer a voluntary, harmonised EU-wide company form to simplify cross-border operations, particularly for start-ups and scale-ups.

While the exact legal structure is still under consideration, the recent response of the European Commission to the questions raised by the Parliament confirms that: (i) the regime is intended to be digital-by-default and uniformly applicable across Member States; (ii) it is still to be determined whether the proposal would be adopted as a European legal form or whether a new harmonized national legal form for companies would be more appropriate; and (iii) it also remains to be determined whether and what tax law elements could be included in the regime.

A public consultation on the 28th legal regime is scheduled to launch before the summer of 2025, with the legislative proposal expected in Q1 2026.

For more information on the 28th legal regime, please see our previous web post on this topic.

European Commission considering an ambitious review of the Dispute Resolution Directive

The European Commission is reportedly considering an ambitious review of Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the European Union (DRD). It should be remembered that, on 12 March 2024, the European Commission launched a targeted consultation giving stakeholders the opportunity to give feedback on the functioning of the EU's framework to help resolve cross-border tax disputes for businesses and citizens in relation to double taxation issues. The consultation period was between 14 March and 10 May 2024, and 16 Responses were received.

Pursuant to Mauro Faggion, Directorate-General for Taxation and Customs Unions at the European Commission, the input received on this legal framework indicates that the scope of the DRD is too narrow and that the DRM cannot be used if there is a differing interpretation of provisions within EU tax directives. Many respondents to the public consultation requested that the expanded scope of the DRM directive include taxes related to directives on pillar 2, VAT, anti-tax-avoidance, and the yet-to-be-adopted Commission directive on transfer pricing.

Faggion further noted that according to the feedback, the dispute resolution procedure should be more transparent and further enhance the role of taxpayers. Furthermore, he mentioned that the Commission should find a common solution or interpretation for some provisions of the directive that are currently subject to different interpretations among Member States.

According to Faggion, the major share of disputes arise from transfer pricing and, because of the pause in negotiation on the proposal for a transfer pricing directive, a workaround to help dispute prevention could be achieved through administrative cooperation. Furthermore, the possibility of establishing an international tax dispute resolution commission in line with Article 10 of the DRD was also mentioned. Such commission would be made up of a fixed, full-time panel of arbitrators focused on MAPs and opened to all Member States.

Sweden referred to the CJ for failing to bring its rules on preliminary income taxation in line with EU law

On 26 June 2025, the European Commission announced its decision to refer Sweden to the CJ for failing to comply with EU rules on the freedom to provide services under Article 56 TFEU and Article 36 of the EEA Agreement.

Swedish clients paying for work carried out by contractors established in other EU or EEA countries are obliged to withhold a preliminary income tax at a rate of 30% on the remunerations paid to contractors unless these have been approved by the Swedish tax authority (commonly known as 'F-tax approval'). The Commission deems that such an obligation to withhold preliminary income tax by Swedish clients in situations where foreign contractors have no Swedish permanent establishments- and hence no income tax liability in Sweden- infringes the freedom to provide services.

The Commission sent Sweden a letter of formal notice and a reasoned opinion in July 2023 and in May 2024, respectively, asking the Swedish authorities to clarify how they intend to remedy the incompatibility of the Swedish rules with EU law. The Commission considers that efforts by the authorities have, to date, been insufficient and therefore, is referring Sweden to the CJ.

Further background and information on this referral can be found here.

European Commission will analyse wealth taxes for high-net-worth individuals

On 19 May 2025, European Commissioner Wopke Hoekstra indicated that the European Commission has launched a study on wealth-related taxation, focusing on high-net-worth individuals which is expected to be completed by the end of 2025.

The initiative aims to assess the effectiveness of wealth taxes for individuals based both within and outside the EU. Commissioner Hoekstra noted the significant divergence among Member States in the taxation of capital income and wealth and emphasized the need for improved exchange of information on beneficial ownership, immovable property, and asset registration as a prerequisite for any common EU or international approach.

The announcement follows ongoing discussions around greater fairness in taxation, including the proposal of a 3% wealth tax on 600 ultra-high-net-worth individuals, which was debated at the recent EU Tax Symposium co-hosted by the European Parliament and Commission on 19 March 2025.

French Constitutional Court to examine France's Digital Service Tax

On 17 June 2025, the Supreme Administrative Court of France (*Conseil d'Etat*) sent a request to the French Constitutional Court (*Conseil constitutionnel*) to assess whether the French Digital Services Tax (DST) enacted and applicable since 2019 is compatible with French constitutional principles.

The DST enacted by France applies to resident and non-resident companies with a worldwide turnover (at consolidated level) exceeding EUR 750 million and a French turnover exceeding EUR 25 million. The tax base of the DST is the French-source turnover derived from: (i) services consisting of the making available of multi-sided digital interface to users, (ii) services consisting of the placing of advertising on a digital interface targeting users of that interface, and (iii) the transmission of data collected about users of such a digital interface. The tax rate applicable is 3%.

A taxpayer contested the French DST paid in 2019 before the Supreme Administrative Court of France on the ground that such a tax is allegedly contrary to the principles of equality between taxpayers guaranteed by constitutional rules. It is expected that the French Constitutional Court will render its decision within three months.

The decision of this national court could have a strong impact on other DSTs unilaterally adopted by EU Member States, which are currently under significant pressure because of the G7 agreement on global minimum taxes and country's commitment to engage on a 'constructive dialogue on the taxation of the digital economy and on preserving the tax sovereignty of all countries'.

EU Tax Observatory publishes policy note on Corporate Tax Competition

On April 2025, the EU Tax Observatory published a policy note titled 'The New Face of Corporate Tax Competition', which summarises the findings of a working paper analysing nearly 300 corporate tax reforms across EU Member States between 2014 and 2022. The study reveals a significant decline in the effective tax rate (ETR) of multinational companies - by 2.7% points - despite only a modest reduction in statutory rates.

The report warns that tax competition among Member States has intensified, undermining the EU's corporate tax base. It also notes that the implementation of the Global Minimum Tax may further accelerate the shift toward base-narrowing strategies, as countries adjust their incentive regimes to remain attractive while staying compliant.

The Observatory calls for a coordinated EU-level discussion on the future of tax incentives and fair competition, emphasising the need for transparency and coherence in corporate tax policy.

EESC calls for simplification and harmonisation of EU tax reporting obligations

On 18 June 2025, the European Economic and Social Committee (EESC) adopted an own-initiative opinion on assessing tax reporting obligations in the EU, with a strong call for simplification, harmonisation, and competitiveness in the EU tax framework.

The EESC supports the European Commission's efforts to reduce administrative burdens and improve the use and exchange of tax information between authorities. It stresses that simplification should not lead to unintended tax liabilities or open the door to harmful tax competition. Instead, it should focus on cost-efficient compliance and legal clarity.

The EESC opinion recommends harmonising inconsistent legal concepts across EU directives, conducting impact assessments and competitiveness checks for all new tax proposals, and introducing an EU-level advance ruling system to ensure consistent interpretation of tax rules. It also proposes the creation of a new Joint Transfer Pricing Forum to address cross-border tax issues more effectively.

The EESC's recommendations aim to support the Commission's broader agenda of tax decluttering, digitalisation, and enhancing the EU's economic competitiveness.

European Parliament's studies on the taxation of EU's financial sector and on tax barriers to cross-border mobility of workers

On 10 and 11 June 2025 respectively, the Subcommittee on Tax Matters (FISC) of the European Parliament published two studies titled (i) the taxation of the EU's financial sector – Options and experiences; and (ii) Tax Barriers and Cross-Border Workers: Tackling the Fragmentation of the EU Tax Framework.

The former study provides a mapping of the existing financial sector taxes applied in EU Member States and summarises the empirical evidence on the various effects associated with individual financial sector taxes. It focuses on the taxation of financial transactions, bank taxes, and the taxation of financial services. In the study, financial sector taxes are assessed in terms of their effect on fragmentation and the coherence of the EU financial sector. The FISC study also sketches some directions for reform to improve coherence of financial sector taxation. On 3 June 2025, the FISC held a workshop to discuss the findings of this investigation. The workshop's slides are available here.

Regarding the latter study, this is focused on tax barriers to cross-border mobility of workers in the EU. According to the investigation, tax fragmentation creates multiple negative impacts on the EU Internal Market, and compliance costs vary considerably across size, industries and countries. Furthermore, employees' choice of host country may be distorted by the differential tax treatment. The FISC study provides specific policy recommendations for more tax harmonisation and coordination, and for simplified compliance requirements.

3. State Aid

Case Law

CJ judgment on Spanish goodwill tax scheme (*Spain v Commission*, Case C776/23)

On 26 June 2025, the CJ delivered its judgment in the case *Spain v Commission* (Joined Cases C-776/23 P to C-780/23 P), on the Spanish tax amortization regime for financial goodwill arising from non-resident shareholding acquisitions. In 2014, the European Commission held that Spain's tax deduction for goodwill from indirect non-resident shareholdings constituted unlawful State aid and ordered its recovery. In 2023, the General Court annulled the Commission's decision, finding that it had misinterpreted earlier rulings covering direct and indirect shareholdings. On appeal, the CJ upheld the General Court's judgment.

In 2002, Spain introduced a corporate tax provision allowing companies acquiring a shareholding in a foreign company to deduct the resulting financial goodwill via amortization. Initially, the European Commission indicated in 2006 that this scheme did not fall within EU State aid rules. However, in 2007, the Commission opened a formal investigation. It issued decisions in October 2009 (for intra-EU acquisitions) and January 2011 (for non-EU acquisitions), declaring the measure a selective tax advantage constituting State aid incompatible with the internal market and ordered Spain to recover the aid (2009/2011 decisions). Both decisions required recovery of the unapproved tax advantages, subject only to limited carveouts for legitimate expectations of taxpayers. They provided that deductions already granted for shareholdings held by December 2007 could remain in place for their full amortisation period.

In 2012, the Spanish authorities issued a binding *interpretation* effectively extending the goodwill deduction to indirect acquisitions, where a Spanish company acquires a foreign holding company that owns a target. The relief scheme had to be applied to indirect acquisitions retrospectively. This extension had no EU Commission approval. The Commission later opened a new investigation and ultimately deemed the indirect-acquisition extension a new independent, unlawful aid scheme. Spain and several affected multinationals challenged the Commission's decision before the EU's General Court. In September 2023, the General Court annulled the Commission's 2014 decision, siding with Spain and the companies. The Commission then appealed to the CJ.

The core issue in front of the CJ was whether the goodwill amortization for indirect acquisitions was a separate new aid scheme (as the Commission argued) or merely part of the existing scheme already addressed in the initial 2009/2011 decisions (as Spain argued). This determination was crucial for whether companies could invoke protection of legitimate expectations and apply it also to indirect shareholdings held by December 2007. The dispute raised several legal sub-issues:

1. Whether the Commission's 2009/2011 decisions implicitly cover indirect acquisitions. Spain contended that those decisions (and their grandfathering exceptions) covered *all* foreign acquisitions, direct or indirect, whereas the Commission claimed it only considered direct acquisitions (since at the time Spain had not explicitly applied the law to indirect structures).

2. Whether companies had a legitimate expectation that indirect acquisition goodwill would receive the same transitional protection as direct acquisitions, given the Commission's earlier decisions and the principle of legal certainty.

The case thus tested the limits of the Commission's enforcement: can it treat an *interpretative* extension of a scheme as 'new aid' and retroactively deny earlier protections?

The CJ (Grand Chamber) dismissed the Commission's appeals in June 2025, thereby upholding the General Court's annulment of the 2014 decision. The Court confirmed that the Commission erred in law in its treatment of the indirect-shareholdings scheme. Key points in the Court's reasoning include:

- *Earlier decisions covered both direct and indirect acquisitions:* The CJ noted that the Commission's 2009/2011 decisions explicitly stated that their exceptions (allowing continued application for existing investments) applied to *both* direct and indirect share acquisitions. Those decisions, now final, defined the scope of the aid scheme. The General Court was correct to infer that indirect acquisitions were always within the scheme's ambit for purposes of the exceptions. Thus, companies engaging in indirect acquisitions had the same legitimate expectation of tax relief as those making direct acquisitions under the original scheme.

- *Legal certainty and no 'New' Aid:* The Court emphasized the EU law principle of legal certainty precluded the Commission from reclassifying the goodwill deduction for indirect acquisitions as a completely 'new' aid measure. Given the continuity with the original scheme, the Commission should have honoured the established framework, including any grandfathering clauses. The attempt to segregate indirect acquisitions as a novel aid scheme was incompatible with legal certainty.

The CJ's judgment means the Commission's 2014 decision is null, and Spain's tax amortization scheme (as it pertained to indirect acquisitions via foreign holdings) cannot be deemed unlawful State aid insofar as it fell under the originally allowed conditions. The result affirms that both direct and indirect foreign share acquisitions benefiting from the Spanish goodwill deduction are shielded by the legitimate-expectation protection recognized in the initial Commission decisions.

The judgment underscores that where a tax arrangement was initially accepted or conditionally tolerated by the Commission, businesses that relied on that framework may invoke legitimate expectations. Here, Spanish companies had planned acquisitions under an existing scheme with Commission-sanctioned exceptions, and the EU courts insisted that such reliance be respected.

Developments

European Commission approves EUR 1.2 Billion Dutch Plan to Drive Industrial Decarbonisation

The European Commission has given the green light to a Dutch State aid programme worth EUR 1.2 billion, known as 'NIKI,' under EU State aid regulations. The programme is designed to help businesses reduce greenhouse gas (GHG) emissions throughout the entire life cycle of their products and services. This includes emissions from raw material extraction, production, transportation, and end-of-life disposal or recycling. Funding will go to projects offering the highest environmental gains for the lowest cost to taxpayers, taking the full product life cycle into account.

A key feature of the NIKI programme is that it creates competition between two types of projects for the first time in a State aid scheme: direct decarbonisation projects and those focused on resource efficiency and circularity. Direct decarbonisation reduces emissions mainly by changing production processes, while resource efficiency and circularity projects achieve cuts by substituting primary or fossil-based raw materials with recycled, secondary, or bio-based alternatives. This approach supports the Netherlands' climate targets and aligns with the European Commission's 2024-2029 policy goals, which include fostering a more circular and resilient economy.

The NIKI scheme is open to companies of any size operating in manufacturing, waste management, or environmental remediation in the Netherlands. To be eligible, projects must demonstrate the potential to reduce at least 100,000 tonnes of lifecycle GHG emissions.

Funding will be awarded through a competitive bidding process, prioritising projects that request the lowest amount of aid per tonne of CO2 equivalent emissions avoided. The scheme does not favour specific technologies, ensuring a level playing field for diverse solutions.

Over the next five years, the Dutch government intends to hold one tender round annually under the NIKI programme.

4. VAT

Case Law

CJ judgment regarding joint and several VAT liability of company directors (*Genzyński*, Case C-278/24)

On 30 April 2025, the CJ delivered its judgment in the case *Genzyński* (C-278/24).

The case involved a former director, P.K., of a Polish company who was held jointly and severally liable for the company's VAT debts after enforcement against the company had failed. Under Polish law, directors can be held personally liable for a company's tax debts unless they can demonstrate that they filed for insolvency in due time, that the failure to do so was not due to their fault, or that they identified company assets sufficient to cover the tax debt. P.K. argued that he had acted with due diligence and that the company had only one creditor (the tax authority), making insolvency proceedings legally ineffective under Polish law.

The CJ held that EU law does not preclude such a national system, provided it respects the principles of proportionality, legal certainty, and equality. The CJ found that the Polish system does not impose strict liability, as it is limited to unrecoverable tax debts and allows directors to rebut the presumption of liability by demonstrating due diligence or lack of fault. The fact that the company had only one creditor does not in itself exempt the director from liability.

CJ judgment regarding VAT treatment of compensation for public transport services (*P. S.A.*, Case C-615/23)

On 30 April 2025, the CJ delivered its judgment in the case *P. S.A.* (C-615/23).

P. S.A., a transport company, sought an advance tax ruling on whether compensation from local authorities to cover losses from public transport services should be included in the taxable amount for VAT purposes. The direct beneficiaries of the collective public transport services, who purchase a transport ticket as consideration for those services, are the users of those services. The local authorities paying the compensation to that operator are not regarded as the customer of the public transport services. Hence, the local authorities were assumed to be a third party, and not the customer or supplier, in respect of the public transport services.

The compensation is based on vehicle-kilometres offered, not the number of users, and serves to subsidize overall transport costs. The CJ held that the compensation in question does not constitute a 'subsidy directly linked to the price' within the meaning of the VAT Directive and therefore, is not subject to VAT. It found that the compensation had not been not paid in return for a specific supply of services to identifiable recipients, nor did it directly influence the price of tickets, which was set independently by the local authority. The compensation was granted ex post to cover operational losses and was not tied to the actual use of the service by passengers.

CJ judgment regarding VAT exemption for small consignments sent to another Member State (*L. s.c.*, Case C 405/24)

On 8 May 2025, the CJ delivered its judgment in the case *L. s.c.* (C405/24).

The case concerns the VAT exemption for small consignments of a non-commercial character sent from third countries to private individuals in the EU. A Polish freight forwarding and customs clearance company, L. s.c., sought confirmation that such consignments imported into Poland are VAT exempt, even if the final consignee resides in another Member State. Polish tax authorities denied the VAT exemption, arguing that it only applies when the consignee resides in Poland, the Member State of importation.

The CJ held that the VAT exemption applies regardless of whether the consignee resides in the Member State of importation or in another Member State. The CJ found that neither the wording nor the context of the relevant EU provisions supports a restriction based on the consignee's place of residence. The CJ emphasized that the purpose of the exemption is to simplify the treatment of low-value, non-commercial consignments between private individuals, which are typically of personal or emotional value and not intended for commercial use.

The CJ concluded that national legislation which limits the VAT exemption to cases where the consignee resides in the Member State of importation is incompatible with EU law.

CJ judgment regarding VAT exemption for reimported goods in case of procedural customs breach (*Palmstråle*, Case C-125/24)

On 12 June 2025, the CJ delivered its judgment in the case *Palmstråle* (C-125/24).

The case concerns the reimportation of horses into the EU by a private individual (AA), who failed to comply with certain customs formalities. The reimportation of exported goods, by the person who exported them, in the State in which they were exported, is VAT exempt where those goods are exempt from customs duties. The Swedish customs authorities denied the VAT exemption for reimported goods under the VAT Directive to the reimportation by AA, arguing that the formal conditions for the customs duty exemption under the Union Customs Code had not been met. However, the Union Customs Code allows for customs duty relief even where a customs debt is incurred through procedural non-compliance, provided there is no attempt at deception.

The CJ held that the VAT exemption remains applicable, as long as the substantive conditions for reimportation as laid down in the provision in the Union Customs Code are met (i.e., the goods are returned in the same State and within three years), provided the failure to comply with customs formalities does not constitute an attempt at deception. Accordingly, the CJ ruled that non-compliance with formal customs obligations does not automatically disqualify a reimportation from the VAT exemption.

AG Kokott's Opinion on VAT treatment of tooling and intra-Community supplies (*Brose Prievidza, spol. s r. o.*, Case 234/24)

On 22 May 2025, the Opinion of AG Kokott was published in the case *Brose Prievidza, spol. s r. o.* (C-234/24).

The case concerns the VAT treatment of 'tooling', consisting of specialized, often custom-made equipment (such as moulds or fixtures) used to manufacture specific components. The tooling is typically ordered from the same subcontractor that produces the components but remains the property of the customer (or a related entity) and physically stays at the subcontractor's premises, where it is used exclusively for the customer's production.

In this case, Brose SK, a Slovak company, purchased automotive components from IME Bulgaria, which were manufactured using special tooling ordered and owned by Brose DE, a related German company. Although the tooling remained in Bulgaria, Brose DE later sold the tooling to Brose SK. The Bulgarian tax authorities denied Brose SK a refund of the Bulgarian VAT charged on the tooling, arguing that the Bulgarian VAT was incorrectly charged as the supply of the tooling was part of a zero-rated intra-Community supply (like the components). Advocate General Kokott concluded that the sale of the tooling constituted a separate, taxable domestic supply in Bulgaria, not part of an intra-Community supply. Since the tooling never physically left Bulgaria, the conditions for an intra-Community supply were not met. Kokott emphasized that the supply of the tooling and the supply of the components were made by different taxable persons and were economically and legally independent. As such, these supplies could not be treated as one single supply. Hence, AG Kokott held that VAT was rightfully charged on the tooling and that Brose SK is entitled to a refund of that VAT.

AG Szpunar's Opinion on VAT margin scheme for art supplied via legal entities (*Galerie Karsten Greve*, Case C-433/24)

On 12 June 2025, the Opinion of AG Szpunar was published in the case *Galerie Karsten Greve* (C-433/24).

A dispute on the interpretation of the VAT margin scheme arose in France. Galerie Karsten Greve (GKG) applied the margin scheme to the on-sale of paintings in France. These paintings were acquired from a UK-based legal entity (Studio Rubin Gideon). This UK-based entity was co-owned by the artist of the acquired paintings, Gideon Rubin. French tax authorities denied the application of the VAT margin scheme by GKG, arguing that the works were not supplied to GKG by the creator himself, but by a legal person (Studio Rubin Gideon).

AG Szpunar opined that the VAT margin scheme may apply even when the supply is made to the reseller by a legal person instead of the creator of the art, provided certain conditions are met. While the creation of the artwork must be done personally and manually by the artist (a natural person), the supply of the artwork may be carried out through a legal entity. The Advocate General emphasized that the VAT Directive does not restrict the legal form through which the supply is made. A restriction based on the legal form would contradict the objectives of the VAT margin scheme, which includes promoting the introduction of newly created artworks into the EU market.

To ensure the supply is still considered to be made 'by the creator,' AG Szpunar proposed two cumulative conditions: (1) the creator must have sufficient decision-making power within the legal entity to control the sale of the artwork; and (2) the proceeds from the sale must directly or substantially benefit the creator. According to the AG, this interpretation avoids unjustified distinctions based on legal form and ensures that the VAT margin scheme remains applicable in cases where artists operate through their own companies, provided they retain control and economic benefit over the proceeds of the artworks.

AG Kokott's Opinion on VAT treatment of pro bono legal services (*Zlakov*, Case C-744/23)

On 8 May 2025, the Opinion of AG Kokott was published in the case *Zlakov* (C-744/23).

The case concerns a Bulgarian lawyer who provided legal services free of charge (pro bono) to clients in financial difficulty. Since the case was won, the court awarded the lawyer a fee, to be paid by the opposing unsuccessful party, based on applicable Bulgarian legislation. The lawyer requested that 20% VAT be added to this fee, arguing that it constituted consideration for VAT purposes.

AG Kokott opined that such no-cure-no-pay legal services should be regarded as a supply for consideration and, therefore, are subject to VAT. She emphasized that under EU VAT law, the fact that the payment is made by a third party (in this case, the losing party) and the uncertainty surrounding the amount or timing of the payment do not preclude the existence of a taxable transaction.

The AG further clarified that the legal relationship necessary for a taxable transaction under VAT law does not have to be contractual. A statutory obligation, such as the one in this case, suffices to establish the required direct link between the service and the payment. The decisive factor is the existence of a direct link between the service rendered and the remuneration received that establishes a direct link between the provision of those benefits and the payment of the remuneration.

The AG also rejected the relevance of earlier case law such as *Tolsma*, (C-16/93) and *Baštová*, (C432/15) where the CJ ruled that no taxable transaction occurred in case of an 'uncertain remuneration'. In contrast to the *Tolsma* case, where the payment was made voluntarily and out of personal motives or sympathy, the payment in *Zlakov* was legally mandated and directly linked to the legal service provided. As for *Baštová*, the Advocate General clarified that the uncertain payment in that case was not taxable because the payment in that case was not linked to a service rendered to another party, but related to prize money awarded for winning a competition.

5. Customs Duties, Excises and other Indirect Taxes

Case Law

CJ judgment on the tariff classification of food supplements in a liquid form (*Prisum Healthcare*, Case C-252/54)

On 8 May 2025, the CJ delivered its judgment on the classification of food preparates with the intended function of a food supplement.

In March 2023, Prisum Healthcare applied for a Binding Tariff Information ('BTI') for the classification of the product in question, Ferroglobin liquid plus, under CN heading 2106 of the Combined Nomenclature ('CN'). The product can be described as a liquid food supplement marketed in 200 ml. plastic bottles containing nutritive substances intended to improve health and it should be taken in small quantities. On 7 July 2023, the Romanian customs authority issued a BTI decision stating that the product should be classified under CN heading 2202 as the product was to be regarded as a bottled tonic under that CN heading. Prisum Healthcare lodged a complaint against the BTI decision before that authority, which was subsequently rejected.

Prisum Healthcare brought an appeal against the decision before the *Curtea de Apel Bucureşti* (Court of Appeal, Bucharest, Romania), claiming that, given its specific technical characteristics and despite its liquid form, the product in question should be considered a food supplement within the meaning of Directive 2002/46, and consequently, it should have been classified under CN heading 2106. However, the Romanian customs authority argued that products presented in liquid form, such as the product in question, must be classified under CN heading 2202, regardless of whether they are labelled as food supplements. The Romanian customs authority referred to the CJ judgment in *Dr Ritter* (C-114/80, EU:C:1981:79). As the Court of Appeal was uncertain about the applicability of this case law to the dispute at hand, it referred a preliminary question to the CJ.

The CJ considered the wording of CN heading 2106 to refer to 'food preparations not elsewhere specified or included'. Furthermore, Additional note 5 to CN chapter 21 specifies that CN heading 2106 applies to food preparations that are, among others, presented in measured doses and which are intended for use as food supplements, unless specified or included elsewhere. Therefore, if a food preparation is covered by CN heading 2202, this food preparation is excluded from CN heading 2106 of the CN. Additionally, the CJ considered that the judgment in *Dr Ritter* remains relevant to the present case despite having been delivered before the entry into force of Regulation No 2658/87, which sets out the Combined Nomenclature.

With reference to the judgment in *Dr Ritter*, the CJ considered that tonic preparations that can be consumed in their pure form as beverages to be covered by Chapter 22 of the CN, even though these preparations are meant to be taken in small quantities. The manner in which these preparations are consumed and their purpose, such as to improving health, are not relevant. In addition, the CJ considered that a CN explanatory note to subheading 2202 99 19 indicates that food supplements which are advertised as maintaining general health and well-being that may contain nutritive substances should be classified under that CN subheading. Furthermore, the CJ disregarded the relevance of the judgment of *Swiss Caps* (C-410/08 to C-412/08), which held that food supplements in capsule form should be classified under CN heading 2106, because the product in the present case is presented in liquid form. Moreover, the CJ reaffirmed that a product that is marketed as a food supplement pursuant to Directive 2002/46 does not preclude classification of that product under CN heading 2022 as this directive seeks out objectives which are different to those of the CN. Lastly, the CJ disregarded a Classification opinion adopted by the HS Committee (Opinion 2106.90/43), as Classification opinions do not have a legally binding force. Thus, such a Classification opinion must be disregarded if it is incompatible with the wording of a CN heading.

In light of the above, the CJ ruled that food preparations in liquid form, when that liquid form enables them to be intended for human consumption by drinking, irrespective of the quantity in which they are to be consumed, are to be classified under CN heading 2202 insofar as they are not included in any other more specific heading of that CN.

Developments

Provisional political agreement reached on CBAM simplification measures

On 24 June 2025, the European Parliament and the Council reached a provisional political agreement on the Commission's proposal to simplify and strengthen the EU's Carbon Border Adjustment Mechanism (CBAM).

The agreement introduces a 50-tonne annual exemption threshold per importer, reducing CBAM obligations for SMEs and individuals importing small quantities of CBAM goods. Around 99% of emissions from CBAM-covered imports will remain subject to this regulation. Additional simplifications apply to all importers above the threshold, including streamlined authorisation, emissions reporting, verification, and recognition of carbon prices paid in third countries. The measure aims to cut compliance costs without weakening climate goals and forms part of the European Commission's Omnibus I simplification package and the Clean Industrial Deal.

The agreed CBAM regulation must now be formally adopted by the European Parliament and the Council. It will enter into force 20 days after its publication in the Official Journal of the EU. CBAM is currently in its transitional phase, with the definitive regime set to begin on 1 January 2026.

Updated guidance on the EUDR

On 15 April 2025, the European Commission published an updated guidance document and the fourth version of the European Union Deforestation Regulation (EUDR) FAQ document. These documents provide additional reference material for stakeholders such as operators and traders, who are required to comply with the EUDR, as well as for other stakeholders such as national competent authorities, who are responsible for implementing and enforcing the EUDR. Additionally, on 15 April 2025, the European Commission published a draft Delegated Act introducing targeted and limited technical fixes to the list of relevant commodities covered by the EUDR.

The EUDR sets out mandatory due diligence requirements for operators and traders dealing with certain products that are placed on the EU market, made available on the EU market or exported from the EU market to ensure that these products are deforestation-free and have been produced in accordance with the relevant legislation of the country of production. These requirements set out in the EUDR will apply starting from 30 December 2025 for medium or large-sized operators, and from 30 June 2026 for small and micro-sized operators.

The updated guidance document published by the European Commission sets out guidelines to facilitate the harmonised implementation of the EUDR. This guidance document is not legally binding and does not replace, add to or amend the provisions of the EUDR. Instead, it is intended to serve as a practical tool that clarifies specific aspects of the EUDR, such as the due diligence requirements, supply chain traceability, the product scope, and the definition of certain terms used in the EUDR. The EUDR FAQ provides information to stakeholders with regard to the implementation of the EUDR in the form of answers to frequently asked questions (FAQ). This document is also not legally binding. The updated FAQ includes additional answers to questions relating to the due diligence requirements of operators that will be affected by the EUDR.

The draft Delegated Act published by the European Commission includes amendments to Annex I of the EUDR, which contains the list of commodities and products covered by the EUDR. These changes aim to clarify which products fall within the scope of the EUDR, ensuring a straightforward application of the EUDR and providing legal certainty of EUDR stakeholders, while avoiding unnecessary administrative costs for economic operators and competent authorities in determining whether certain products are in or out of the scope of the EUDR. The amendments also address the exclusion of relevant products that do not contain relevant commodities. For example, furniture that does not contain wood, which is a relevant commodity under the EUDR, but instead, contains other commodities such as rattan or bamboo, which are not relevant commodities under the EUDR, is excluded from EUDR obligations. Additionally, the draft Delegated Act clarifies that waste (including second-hand and used products), product samples and some packing materials are excluded from the EUDR.

Get in contact

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