Council of the European Union

PRESS

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BACKGROUND[1]
Brussels, 7 November 2016

ECONOMIC and FINANCIAL AFFAIRS COUNCIL
Tuesday 8 November in Brussels

The Council will be called on to adopt conclusions on the establishment of an EU list of **non-cooperative jurisdictions** in taxation matters.

It will discuss a package of new Commission proposals on **corporate taxation**. It will be updated as concerns a proposal to strengthen rules against **money laundering and terrorist financing**. And it is expected to approve a proposal granting access for tax authorities to information on the **beneficial ownership** of companies.

The Council is expected to adopt conclusions on improvements to the current **VAT rules** for cross-border transactions, and on fiscal sustainability challenges for **healthcare** systems. It is expected to endorse an amended fiscal governance code of conduct, clarifying the deadlines for submission by eurozone member states of their **draft budgetary plans**.

It will also take stock of developments concerning packaged retail and insurance-based **investment products**, following the European Parliament's rejection of proposed regulatory technical standards.

The Court of Auditors annual report on management of the **EU budget** is amongst other items on the agenda.

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Proceedings will start on Monday 7 November at 11.30 with a dialogue on macroeconomic issues with the **social partners**: representatives of employers, trade unions, public enterprises and SMEs at European level.

The **Eurogroup** will meet on Monday at 15.00. It will discuss banking union (activity reporting by the banking union institutions), implementation of Greece's economic adjustment programme, post-programme monitoring in Cyprus and Spain and national insolvency frameworks.

On Tuesday at 8.30, ministers will meet their **EFTA** counterparts – from Iceland, Liechtenstein, Norway and Switzerland – to discuss the economic situation and investment outlook.

They will then hold a breakfast meeting, starting at 9.30, to discuss the **economic situation**. The Commission will present an outline of its autumn economic forecast, to be issued on Wednesday 9 November, and will provide information on **state aid**. The Council is due to start at 10.30.

Press conferences:

- after the Eurogroup meeting *(Monday evening)*;
- at the end of the Council *(Tuesday lunchtime).*

Eurogroup agenda highlights
Press conferences and public events by video streaming
Video coverage in broadcast quality (MPEG4) and photo gallery

1 This note has been drawn up under the responsibility of the press office.

Corporate tax reform

The Commission will present a package of proposals aimed at reforming the manner in which companies are taxed in the EU.

The Council will hold an exchange of views.

The package, issued on 25 October 2016, is composed of a communication and four proposals:

- a communication on "building a fair, competitive and stable corporate tax system for the EU", outlining the rationale behind the proposals;
- new proposals for a common consolidated corporate tax base (CCCTB). The Commission proposes a single rulebook for calculating taxable company profits throughout the EU, with provisions to close off opportunities for corporate tax evasion. Revamping a proposal tabled in 2011, the aim is a more transparent, efficient and fair system for calculating the tax base of cross-border activities.

  To enable swifter progress than on the 2011 proposal, two directives are proposed. The Commission suggests that the common base be agreed on more rapidly, whereas consolidation of taxable income within corporate groups could be introduced subsequently;
- a new system for resolving double taxation disputes within the EU. The Commission proposes that current mechanisms be adjusted to cover a broader range of cases, with member states bound by deadlines for agreeing on binding solutions;
- measures to prevent companies exploiting loopholes – hybrid mismatches – between member states' and third countries' tax systems. An anti-tax-avoidance directive, adopted in July 2016, already addresses mismatches within the EU. The new proposal tackles mismatches with non-EU countries.

The EU's corporate taxation agenda is advancing rapidly and many measures have already been taken. These involve tax transparency, ensuring that companies pay their taxes where profits are generated, and promoting good tax governance globally.

The communication calls for a framework that fully supports the EU's broader priorities, both now and in the future. It cites analysis that shows that the CCCTB could boost investment by up to 3.4% and economic growth by 1.2%.

The four directives require unanimity for adoption by the Council, after consulting the European Parliament. (Legal basis: article 115 of the Treaty on the Functioning of the European Union.)

Work on the proposals is starting at technical level. The presidency's priority is the proposal dealing with hybrid mismatches, for which it hopes an agreement will be reached by the end of 2016.

- October 2016 corporate tax reform proposals

Money laundering and terrorist financing

The presidency will update the Council as concerns work on strengthening EU rules to prevent money laundering and terrorist financing.

The proposed directive is part of a Commission action plan against terrorist financing, on which the Council adopted conclusions on 12 February 2016. It also responds to the April 2016 Panama Papers revelations.

A first presidency negotiating text was circulated on 28 October 2016, and was discussed by a Council working group on 3 November.

The proposal addresses new means of terrorist financing such as prepaid cards and virtual currencies. It sets out to improve cooperation between the member states' financial intelligence units. It provides for full public access to beneficial ownership registers, so as to improve transparency about who really owns companies and trusts. It also provides for connecting the registers between member states.

The presidency's aim is for an agreement to be reached within the Council by the end of 2016. This will enable negotiations with the European Parliament to start early in 2017.

The directive requires a qualified majority for adoption by the Council, in agreement with the European Parliament. (Legal basis: article 114 of the Treaty on the Functioning of the European Union.)

A previous revision of the EU's rules against money laundering (a regulation and a directive) was passed in May 2015. It will apply from 26 June 2017.

- October 2016 presidency negotiating text on the prevention of money laundering
- July 2015 proposal on the prevention of money laundering and terrorist financing
- Factsheet on the February 2016 action plan on the prevention of terrorist financing
- February 2016 Commission action plan for strengthening the fight against terrorist financing
- February 2016 Council conclusions on the fight against the financing of terrorism

Statistics

The Council will discuss an annual package of governance measures for EU statistics and is expected to adopt conclusions.

The draft Council conclusions cover:

- quality assurance in statistics;
- an annual report on information requirements under EU economic and monetary union;
- statistics for the EU's excessive deficit procedure;
- structural statistics and statistics for the EU's macroeconomic imbalances procedure;
- social statistics;
- globalisation and statistics;
- statistical infrastructure;
- an annual report on implementation of a code of practice for EU statistics.

EU policies rely on a variety of statistics that require the timely submission of high quality social-economic statistical data. Since 2006, the Council has once a year taken stock of work to assess EU statistical needs and improve EU statistics. In 2009, an initiative was launched to modernise the European statistical system (ESS).

The ESS is a partnership between Eurostat, the EU's statistical authority, and national statistical institutes and authorities. Its mission is to provide reliable and comparable statistics at EU level.

More recently, Eurostat and the European Central Bank have prepared a memorandum of understanding on how to work together to improve the quality of statistics and ensure their comparability.

EU budget - Court of Auditors report

The President of the Court of Auditors, Mr Klaus-Heiner Lehne, will present the Court's annual report on management of the EU's general budget.

The Council may hold an exchange of views.

Issued on 13 October 2016, the report covers the EU's budget for 2015. It will be the basis for a discharge to be given to the Commission for implementation of the 2015 budget. The Council is scheduled to issue a recommendation on 21 February 2017, and it will then be for the European Parliament to decide if it can grant a discharge to the Commission.

The Court gave an unqualified statement of assurance on the reliability of the accounts in 2015, and found revenue to be free from error. As in previous years however, it qualified its assessment as concerns expenditure.

EU budgetary spending totalled €145.2 billion in 2015, approximately 1% of EU gross national income and 2% of total public spending in the member states.

Managing the EU budget is the responsibility of the Commission, along with other EU institutions and bodies. But for around 80% of spending – principally on agriculture and cohesion policy – that responsibility is shared with the member states.

The Court found an estimated 3.8% rate of error for expenditure, compared with 4.4% for 2014. This is not a measure of fraud, inefficiency or waste; it is an estimate of the money that should not have been paid out because it was not used fully in accordance with EU rules.

The Court found a 4.0% estimated rate of error for spending under shared management with the member states and a 3.9% rate for expenditure managed directly by the Commission.

It found a 5.2% rate of spending errors for 'reimbursement' schemes, where the EU refunds eligible costs on the basis of declarations made by beneficiaries. It found a 1.9% rate for 'entitlement' schemes, under which payments are made when specific conditions are met.

Whilst the Commission has taken steps to improve its assessment of risk and of the impact of corrective actions, the Court still found scope for improvement. It found that a significant number of errors could have been prevented, or detected and corrected, before payments were made.

Implementation of banking union

The Council will briefly take stock of implementation of the EU's banking union, as part of a regular review carried out since mid-2015.

Member states' transposition of agreed rules into national laws and regulations is almost complete. Work is continuing meanwhile on the strengthening of the banking union.

The banking union is aimed at placing Europe's banking industry on a sounder footing, whilst ensuring that non-viable banks are resolved without recourse to taxpayers' money. Launched in 2012 to address the bank-sovereign nexus in Europe, it is part of a longer-term plan for financial integration. Involving a transfer of responsibility to the EU level, it currently comprises the 19 countries of the euro area whilst 7 other member states have also indicated their intention to join.

The banking union currently consists of two main initiatives:

- the single supervisory mechanism (SSM), an EU-level supervision of banks exercised by the European Central Bank in close cooperation with national supervisory authorities;
- the single resolution mechanism (SRM), a system for the resolution of unviable banks comprising a central resolution authority and a single resolution fund (SRF).

These are based on a regulatory framework, the “single rulebook”, which applies to all 28 member states.

The SRM became operational and the SRF entered into force on 1 January 2016.

As of 27 September 2016:

- 20 member states, including all 19 current members of the banking union, had ratified an intergovernmental agreement (IGA) on the SRF;
- the transfer to the SRF of 2015 bank contributions was complete, in line with the IGA;
- 14 of the 19 banking union member states had signed a loan facility agreement on bridge financing for the SRF.
- as regards the single rulebook, 27 of the 28 member states had fully transposed directives on bank recovery and resolution and on bank deposit guarantee schemes.

  - Banking union

Packaged retail and insurance-based investment products

The Commission will brief the Council on the possible postponement of the date of application of regulation 1286/2014 on packaged retail and insurance-based investment products (PRIIPs).

It will also provide an update regarding key information documents for PRIIPs, after the European Parliament objected to proposed regulatory technical standards.

Regulation 1286/2014 is currently due to apply from 31 December 2016. It sets out to improve market transparency for retail investors and to boost consumer trust in financial markets.

The regulation is aimed at ensuring that retail investors always receive the information they need to take informed decisions, given that asymmetries of information make both risks and the cost of products difficult to assess or compare. It requires key information documents to be drawn up for all PRIIPS, specifically investment funds and structured deposits, as well as life insurance policies with an investment element.

On 14 September 2016, the Parliament objected to regulatory technical standards laid down by the Commission in an implementing regulation. The standards relate to the presentation, content, review and revision of key information documents. They were due to apply from 31 December 2016, the same date as the PRIIPs regulation itself.

As a consequence of the Parliament's objection, the Commission regulation cannot enter into force. The Council reacted accordingly on 29 September 2016.

On this occasion, 24 member states issued a statement calling on the Commission to consider postponing the application date of regulation 1286/2014 by 12 months.

- Council press release on adoption of November 2014 PRIIPs regulation
- July 2016 Commission regulation on regulatory technical standards for PRIIPs
- Note on the EP's September 2016 objection to PRIIPs regulatory technical standards
- September 2016 statements regarding PRIIPs regulatory technical standards

Taxation - Non-cooperative jurisdictions

The Council will discuss the establishment of an EU list of non-cooperative jurisdictions in taxation matters, paving the way to the adoption of conclusions.

The draft Council conclusions set out:

- criteria for the screening of third country jurisdictions;
- a process for selecting jurisdictions to be screened;
- guidelines for the screening process.

They confirm the Council's intention to finalise the EU list in 2017.

The draft conclusions are a response to a January 2016 package of Commission proposals to prevent corporate tax avoidance. They specifically respond to a communication setting out a strategy for the third country aspects.

The conclusions are also part of the Council's response to the April 2016 Panama Papers revelations.

At an April 2016 informal meeting in Amsterdam, ministers expressed support for the establishment of an EU list of non-cooperative jurisdictions. They agreed that the Council should define the EU list, as well as coordinated defensive measures.

In conclusions adopted on 25 May 2016, the Council emphasised the need to work closely with the OECD in drawing up criteria for the list. Discussions are proceeding within the OECD global forum on transparency and exchange of information for tax purposes.

Work at EU level started in July 2016 within the Council working group responsible for implementation of an EU code of conduct on business taxation. The outcome of that work is broadly supported by the member states.

Remaining issues include:

- criteria on tax transparency: whether two or all three criteria need to be fulfilled for a non-EU country to be deemed in compliance. A compromise could involve a transition period;
- criteria on fair taxation: reference to tax rates in a proposed second criterion on fair taxation;
- issues related to the screening of jurisdictions in 2017.

Screening is due to be completed by September 2017, so that the Council can endorse the list of non-cooperative jurisdictions by the end of 2017. It is intended to be a continuous and regular process.

Work on potential defensive measures is continuing meanwhile, with a view to endorsement.by the Council also in 2017.

- May 2016 Council conclusions on an external taxation strategy and tax treaty abuse
- January 2016 Commission communication on an external strategy for effective taxation
- January 2016 package of Commission proposals to tackle corporate tax avoidance

Fiscal governance rules

The Council is expected to endorse, without discussion, an amended code of conduct for implementation of the EU's fiscal governance rules.

The amendments specify that eurozone members should submit to the Eurogroup and the Commission their draft budgetary plans for the following year no earlier than 1 October and no later than 15 October each year.

The deadlines also apply to countries with a government that doesn't enjoy full budgetary powers at the time when the draft budget law is submitted to its national parliament. These member states should at a minimum submit a draft budgetary plan prepared on a no-policy-change basis.

The Economic and Financial Committee agreed on the amendments on 30 September 2016.

- October 2016 amendments to the code of conduct on EU fiscal governance rules

VAT rules

The Council is expected to adopt, without discussion, conclusions on improvements to the current EU VAT rules for cross-border transactions.

The draft conclusions relate to the following aspects of the EU's VAT system:

- the VAT identification number as an additional condition for application of an exemption in respect of an intra-EU supply;
- in order to better tackle VAT fraud, improving the quality and reliability of data used in the EU's VAT information exchange system;
- determining the VAT treatment of the transaction chain, including 'triangular transactions' (where goods are shipped from a member state other than that of the supplier and the customer);
- simplifying rules for call-off stock (where goods are sent to a supplier's storage facility in another member state);
- work concerning the exemption from VAT of intra-EU supplies.

The conclusions come in response to certain issues raised in an April 2016 Commission action plan.

The current VAT system for cross-border trade was conceived as a transitional system. It came into force in 1993. In 2017, the Commission intends to propose definitive rules for a single European VAT area.

- October 2016 draft conclusions on VAT rules for cross-border transactions
- May 2016 Council conclusions on the VAT action plan and VAT fraud
- VAT action plan, "Towards a single EU VAT area"

Health systems and fiscal sustainability

The Council is expected to adopt, without discussion, conclusions on fiscal sustainability challenges as concerns healthcare systems.

High public debt levels and the budgetary pressures that stem from population ageing make the fiscal sustainability of healthcare systems a matter of common concern. The member states' spending on healthcare and long-term care absorbs a growing share of economic resources.

The conclusions come in response to a report discussed by the Council at its meeting on 11 October 2016.

Prepared jointly by the Commission and the Economic Policy Committee, the report analyses healthcare and long-term care systems in the member states. It assesses how to contain spending pressures through efficiency gains, in order to maintain access to good quality services in a fiscally sustainable manner. It updates the findings of a report issued in 2010.

The draft conclusions highlight that healthcare contributes to higher labour market participation, longer working lives and productivity. It is thus is crucial in the context of an ageing society. Getting more value for money through policy reform is necessary, and healthcare systems in many cases face common structural challenges.

The draft Council conclusions set out key challenges to be addressed by the member states as concerns:

- improving the governance of healthcare systems;
- promoting the sustainability of healthcare financing and expenditure;
- strengthening structural efficiency, competition and transparency.

    - 2016 report on healthcare and fiscal sustainability

Tax transparency - Beneficial ownership

The Council is expected to agree, without discussion, on a proposal granting access for tax authorities to information held by authorities responsible for the prevention of money laundering.

The draft directive requires member states to enable access to information on the beneficial ownership of companies. It will apply as from 1 January 2018.

The proposal accompanied a July 2016 communication issued by the Commission in the wake of the April 2016 Panama Papers revelations.

The EU has made significant progress in recent years to enhance tax transparency and strengthen cooperation between the member states' tax authorities. And recent amendments to anti-money-laundering legislation recognise the links between money laundering and tax evasion, as well as the challenges faced in prevention.

Media leaks such as the Panama Papers, revealing large-scale concealment of offshore funds, have highlighted areas where further measures still need to be taken. The transparency framework must be further reinforced at both EU and international levels.

In particular, tax authorities need greater access to information on the beneficial ownership of intermediary entities and other relevant customer due diligence information. The directive will enable them to access that information in monitoring the proper application of rules on the automatic exchange of tax information.

Where a financial account holder is an intermediary structure, financial institutions are required by directive 2014/107/EU to look through that entity and report its beneficial ownership. Applying that provision relies on information held by authorities responsible for the prevention of money laundering, pursuant to directive 2015/849/EU.

Access to that information will ensure that tax authorities are better equipped to fulfil their monitoring obligations. It will thus help prevent tax evasion and tax fraud.

The directive requires unanimity for adoption by the Council, after consulting the European Parliament. (Legal basis: articles 113 and 115 of the Treaty on the Functioning of the European Union.)

- July 2016 Commission communication on measures to enhance tax transparency
- Directive 2014/107/EU on the mandatory automatic exchange of tax information
- Directive 2015/849/EU on the prevention of money laundering and terrorist financing

VAT fraud - EU-Norway administrative cooperation

The Council will take note, without discussion, of the state of negotiations with Norway on an agreement on administrative cooperation, on combating fraud and on the recovery of claims in the field of VAT.

The aim is to establish a common framework for cooperation between EU member states and Norway, in a manner similar to cooperation amongst the member states themselves. The framework would cover the exchange of information and best practices regarding VAT fraud, as well as cooperation in the recovery of VAT claims.

The Commission is negotiating the agreement on behalf of the EU, on the basis of a mandate agreed by the Council in December 2014. A silence procedure that was completed on 21 October 2016, all member states approving a presidency text of the draft agreement as a possible outcome to the negotiations. On the basis of this, the Commission is invited to continue and complete the negotiations.

Unanimity within the Council is required for the agreement to be signed and approved by the EU.

Other items

Under "other business", the Council will be updated as concerns:

- work on legislative proposals on **financial services**.

Without discussion, it is expected to:

- endorse an amended fiscal governance code of conduct, specifying the deadlines for submission by eurozone member states of their **draft budgetary plans** (see separate item above);
- approve a draft directive that will grant access for tax authorities to information on the **beneficial ownership** of companies (see separate item above);
- take note of a report on **patent box** regimes;
- adopt conclusions on fiscal sustainability challenges as concerns **healthcare** systems (see separate item above);
- adopt conclusions on improvements to the current EU **VAT rules** for cross-border transactions (see separate item above);
- take note of the state of negotiations with **Norway** on an agreement on administrative cooperation, on combating fraud and on the recovery of claims in the field of VAT (see separate item above);
- amend its 11 October 2016 conclusions on **climate change** to include the total of 2015 EU and member state climate-related contributions to developing countries.

* October 2016 secretariat note on progress on financial services legislative dossiers
* October 2016 report on the state of play and way forward as concerns patent boxes
* Press release on 2015 EU and member state financial contributions for climate change
* October 2016 Ecofin Council conclusions on climate change