Council of the European Union

PRESS

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BACKGROUND[1]
Brussels, 19 May 2016

ECONOMIC and FINANCIAL AFFAIRS COUNCIL
Wednesday 25 May in Brussels

The Council will discuss ***corporate tax avoidance****. It will be called on to agree on a draft directive addressing some of the practices most commonly used by large companies to avoid paying taxes.*

Further to an agreement in March 2016, the Council is due to adopt a directive on the exchange of tax-related information on multinational companies. It is also due to adopt conclusions on the third country aspects of tax transparency.

The Council will discuss the Commission's ***VAT action plan*** *and a Court of Auditors report on* ***VAT fraud****. It will be called on to adopt conclusions.*

Banking union *will also be discussed, as well as* ***macroeconomic imbalances*** *and* ***structural reforms*** *in the member states, in the context of the European Semester monitoring process.*

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The ***Eurogroup*** *will meet on Tuesday 24 May at 15.00. It will discuss issues related to the first review of Greece's current economic adjustment programme, as well as the fifth review of post-programme surveillance for Spain. It will also discuss the economic situation in the euro area, in the light of the Commission's spring 2016 economic forecast.*

On Wednesday at 8.00, ministers will meet in their capacity as governors of the ***European Investment Bank*** *for the EIB's annual governors' meeting.*

They will then hold a breakfast meeting, scheduled for 9.00, to discuss the economic situation (in the light of the spring economic forecast). They will also discuss the reengagement of European banks and businesses in Iran. The Council meeting is scheduled to start at 11.30.

At 15.00, after the Council, the presidency and two next presidencies are scheduled to meet finance ministers from the ***Western Balkans and Turkey*** *for an economic and financial dialogue. This is expected to lead to joint conclusions.*

Press conferences:

- after the Eurogroup meeting *(Tuesday evening)*;
- at the end of the Council *(Wednesday 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 avoidance

The Council will be called on to agree its stance, pending the European Parliament's opinion, on draft directive addressing some of the practices most commonly used by large companies to avoid paying taxes.

It is due to adopt two other texts without discussion:

- a directive on the exchange of tax-related information on multinational companies, further to an agreement reached in March 2016;
- conclusions on the third country aspects of tax transparency.

All three elements relate to a package of proposals issued by the Commission in January 2016 aimed at preventing tax avoidance by large companies. The two draft directives also implement and build on recommendations approved by the OECD in autumn 2015 to address corporate tax base erosion and profit shifting (BEPS).

The OECD's anti-BEPS action plan was endorsed at a G20 summit in Antalya in November 2015, and by the Council in conclusions adopted the following month.

Anti-tax-avoidance directive

This proposal addresses situations where corporate groups take advantage of disparities between national tax systems in order to reduce their overall tax liability. Corporate taxpayers may benefit from low tax rates or double tax deductions. Or they can ensure that categories of income remain untaxed by making it deductible in one jurisdiction whilst in the other it is not included in the tax base. The outcome distorts business decisions and risks creating situations of unfair tax competition.

The draft directive covers all taxpayers that are subject to corporate tax in a member states, including subsidiaries of companies based in third countries. It lays down anti-tax-avoidance rules in six specific fields:

- Interest limitation rule. Multinational groups may finance group entities in high-tax jurisdictions through debt, and arrange that they pay back inflated interest to subsidiaries resident in low-tax jurisdictions. The outcome is a reduced tax liability for the group as a whole. The draft directive sets out to discourage this practice by limiting the amount of interest that the taxpayer is entitled to deduct in a tax year.
- Exit taxation. Taxpayers may try to reduce their tax bill by moving their tax residence and/or assets to a low-tax jurisdiction. Exit taxation prevents tax base erosion in the state of origin when assets that incorporate unrealised underlying gains are transferred, without a change of ownership, out of the taxing jurisdiction of that state.
- Switchover clause. Given the inherent difficulties in giving credit relief for taxes paid abroad, states tend increasingly to exempt foreign income from taxation. The unintended effect of this is that it may encourage untaxed or low-taxed income to enter the EU market and circulate. Switchover clauses are commonly used against such practices. The taxpayer is subjected to taxation (instead of being exempt) and given a credit for tax paid abroad.
- General anti-abuse rule. This rule is intended to cover gaps that may exist in a country's specific anti-abuse rules. Corporate tax planning schemes can be very elaborate and tax legislation doesn't usually evolve fast enough to include all the necessary defences. A general anti-abuse rule therefore enables tax authorities to deny taxpayers the benefit of abusive tax arrangements.
- Controlled foreign company (CFC) rule. In order to reduce their overall tax liability, corporate groups can shift large amounts of profits towards controlled subsidiaries in low-tax jurisdictions. A common scheme consists of first transferring ownership of intangible assets such as intellectual property to the CFC and then shifting royalty payments. CFC rules reattribute the income of a low-taxed controlled foreign subsidiary to its – usually more highly taxed – parent company.

- Hybrid mismatches. Corporate taxpayers may take advantage of disparities between national tax systems in order to reduce their overall tax liability. Such mismatches often lead to double deductions (i.e. tax deductions in both countries) or a deduction of the income in one country without its inclusion in the other.

The presidency aims for agreement to be reached on a legally-binding minimum standard for preferably all six of these anti-BEPS provisions. A timetable was supported by most member states at the Council's meeting on 12 February 2016.

The directive will ensure that the OECD anti-BEPS measures are transposed in a coordinated manner, including by 7 member states that are not members of the OECD. Furthermore, pending a revised proposal from the Commission for a common consolidated corporate tax base (CCCTB), it takes account of discussions on the existing CCCTB proposal within the Council.

Adoption of the directive requires 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.) The Parliament's opinion is expected at the beginning of June 2016.

Directive on the exchange of tax information

The Council is expected to adopt this directive without discussion, further to an agreement reached on 8 March. A timetable for work was supported by most member states at the Council's meeting on 12 February.

The directive will require multinationals to report tax-related information, detailed country-by-country, and require national tax authorities to exchange that information automatically.

It will ensure that OECD anti-BEPS measures, which most member states have committed to implement, are transposed in a coherent and coordinated manner.

Adoption of 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.) The European Parliament gave its opinion on 12 May 2016.

Conclusions on third country aspects of tax transparency

The Council is expected to adopt, without discussion, conclusions related to two elements of the Commission's anti-tax-avoidance package:

- a communication on an external strategy for effective taxation;
- a recommendation on the implementation of OECD measures against tax treaty abuse.

The communication identifies measures which, according to the Commission, could help the EU to promote good governance in tax matters globally, tackle external base erosion threats and ensure a level playing field or all businesses. It examines how good governance in tax matters could be better integrated into the EU's external relations policies. It includes proposals for inserting good tax governance clauses in agreements with third countries and regions.

The Council is expected to agree to the establishment of an EU list of third country non-cooperative jurisdictions, and to consider coordinated defensive measures. Finance ministers discussed these measures on 22 April at an informal meeting in Amsterdam. Work would start in September 2016 with a view to endorsement in 2017. The draft conclusions additionally highlight the importance of assisting developing countries in meeting good tax governance standards.

The recommendation covers bilateral tax treaties between member states, and between them and third countries. It encourages them to insert in their tax treaties a general anti-tax-avoidance rule, and to make use of OECD model provisions to address artificial avoidance by companies of permanent establishment status.

The draft conclusions highlight the need to take action against tax avoidance aimed at double non-taxation via the operation of double tax conventions.

Other recent initiatives

The January 2016 anti-tax-avoidance package follows on from a number of EU initiatives the previous year. These include a directive, adopted in December 2015, on cross-border tax rulings.

In December 2014, the European Council cited “an urgent need to advance efforts in the fight against tax avoidance and aggressive tax planning, both at the global and EU levels”.

- May 2016 draft directive on corporate tax avoidance (9431/16)
- May 2016 report to Council on the draft directive on corporate tax avoidance (9432/16)
- May 2016 draft conclusions on an external taxation strategy and tax treaty abuse
- May 2016 draft directive on the exchange of tax-related information on multinationals
- Press release on March 2016 Council stance on tax-related information on multinationals
- Anti tax avoidance proposals by the European Commission
- December 2015 Council conclusions on corporate tax base erosion and profit shifting
- Press release on December 2015 adoption of the directive on cross-border tax rulings

Implementation of banking union

The Commission will provide a brief update on implementation of the EU's banking union, as part of a review made regularly at Council meetings since mid-2015.

The banking union is aimed at ensuring a resilient banking industry and that non-viable banks are resolved without recourse to taxpayers’ money. Launched in 2012 in response to the eurozone crisis, it involves the transfer of responsibility from the national to the EU level. It comprises the 19 countries of the euro area, whilst 7 other member states have indicated their intention to join.

The banking union currently consists of two main initiatives, the single supervisory mechanism (SSM) and the single resolution mechanism (SRM). These are based on a regulatory framework, the “single rulebook”, which applies to all 28 member states.

On 1 January 2016, the SRM became operational and the single resolution fund (SRF), a component of the SRM, entered into force.

As of 11 May 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 contributions raised in 2015 under a directive on bank recovery and resolution was almost complete;

– 8 of the 19 banking union member states had signed a loan facility agreement on bridge financing for the SRF.

As concerns the single rulebook, on 11 May 2016:

– 25 of the 28 member states had fully transposed the directive on bank recovery and resolution, whilst the three others had partially transposed it;

– 25 of the 28 member states had fully transposed a directive on deposit guarantee schemes (DGSs), and two others had partially transposed it.

- Banking union

VAT action plan

The Council will discuss:

- the Commission's VAT action plan, "Towards a single EU VAT area";
- a special report by the Court of Auditors, "Tackling intra-Community VAT fraud: more action needed".

It will be called on to adopt conclusions.

Commission VAT action plan

The action plan, issued on 7 April 2016, sets out the Commission’s ideas for making the EU’s VAT system simpler, more fraud-proof and more business-friendly. The Commission sees an urgent need to update VAT rules so they can better support the single market, facilitate cross-border trade and keep pace with today’s digital and more mobile economy.

The “VAT gap”, which is the difference between expected VAT revenue and VAT actually collected in the member states, was almost €170 billion in 2013. Cross-border fraud is estimated to be responsible for around €50 billion of that figure. At the same time, the VAT system remains fragmented and creates significant administrative burdens, especially for SMEs and online companies.

The action plan sets out:

- principles for a future single VAT system;
- short-term measures to tackle VAT fraud;
- an updated framework for VAT rates and options for granting member states greater flexibility in setting VAT rates;
- plans to simplify VAT rules for e-commerce and for SMEs.

The Commission announces that it will make a proposal in 2017 to put into place definitive rules for a single European VAT area. The current VAT system for cross-border trade came into force in 1993 and was conceived as a transitional system.

Under the new rules, cross-border transactions would continue to be taxed at the rates of the member state of destination. However, the manner in which taxes are collected would be gradually changed for a more fraud-proof system. Taxation rules whereby the supplier of goods collects VAT from the customer would be extended to cross-border transactions.

In the shorter term, the Commission will make proposals to improve administrative cooperation and reinforce the instruments used by member states to exchange information related to VAT fraud, fraud schemes and good practices.

As concerns VAT rates, member states are currently limited to a predefined list of goods and services when applying reduced rates or zero rates. In order to give member states more flexibility, the Commission outlines two options. The first would be to maintain the 15% minimum standard rate, to review regularly the list of goods and services that can benefit from reduced rates, and to provide for equal treatment on existing derogations for certain member states. The second option would be to abolish the predefined list of goods and services, and allow the member states greater freedom in setting reduced rates. Safeguards would be put into place, as well as rules to frame the cases in which reduced rates could be applied; the 15% minimum standard rate would be removed.

Regarding tax collection, the Commission suggests that an EU-wide web portal should ensure simple VAT collection for businesses. Additionally, as part of its digital single market strategy, it will present at the end of 2016 a proposal to modernise and simplify VAT for cross-border e-commerce. In 2017, it will present VAT simplification measures to make it easier for SMEs to engage in cross-border trade.

Court of Auditors special report on VAT fraud

The Court's report, issued on 3 March 2016, finds the EU's system for preventing cross-border VAT fraud to be hampered by a lack of comparable data and indicators. Some of the instruments used need to be strengthened or more consistently applied. Because exports of goods and services from one member state to another are exempt from VAT, criminals can fraudulently evade taxes in both countries. And neither Europol nor the EU's anti-fraud office OLAF can access data from the member states' anti-fraud network or from their VAT information exchange.

The Court recommends that the Commission:

- makes legislative proposals to enable effective crosschecks between customs and tax data;
- focuses its monitoring on member states improving the timeliness of their replies to information requests and on the reliability of the VAT information exchange system;
- takes the lead in establishing a common system for collecting statistics on intra-EU VAT fraud. The Commission should encourage member states to address weaknesses in the EU's anti-tax-fraud network Eurofisc, and to better coordinate the so-called reverse charge, where customers account for VAT rather than suppliers.

To deter illegal activities more effectively, the Court recommends that the Council approves a Commission proposal on the joint and several liability of suppliers for VAT losses. It should authorise the Commission to negotiate mutual assistance arrangements with the countries where most digital service providers are established.

Council conclusions on the VAT action plan and on VAT fraud

The Council is expected to agree that improved administrative cooperation is important for preventing VAT fraud. It will undertake to pursue discussion on the means to achieve this, and to improve the exchange of information between tax administrations.

The draft conclusions recall a discussion by finance ministers on 23 April, at an informal meeting in Amsterdam, on the automatic exchange of information as an anti-fraud measure. The Commission will be called on to present measures enabling member states that so wish to implement Transaction Network Analysis, a risk assessment instrument.

The draft conclusions welcome the Commission's call to reduce VAT compliance burdens for businesses, particularly for SMEs, for transactions both within member states and across borders. It will also highlight the need to simplify cross-border e-commerce.

The Council is expected to welcome the Commission's intention to propose increased flexibility for member states on VAT rates, whilst emphasising the need to maintain a sufficient level of harmonisation.

- VAT action plan, "Towards a single EU VAT area"
- Special report no 24/2015: "Tackling intra-Community VAT fraud: More action needed"

Economic governance

- **Macroeconomic imbalances: In-depth reviews**
- **Implementation of structural reforms**

The Council will discuss in-depth reviews published by the Commission in March 2016 of macroeconomic imbalances in 19 member states.

It will review implementation of its 2015 country-specific recommendations on economic and fiscal policies in the member states.

It is expected to adopt conclusions.

The in-depth reviews and country-specific recommendations are part of the "European Semester", the EU's annual policy monitoring process. The 2016 European Semester will conclude with the adoption of new country-specific recommendations in July.

The in-depth reviews determine whether a macroeconomic imbalance exists and whether it can be considered excessive. They cover Austria, Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, the Netherlands, Portugal, Romania, Slovenia, Spain, Sweden and the United Kingdom. Greece is not covered, as it is subject to enhanced surveillance under its macroeconomic adjustment programme.

The main findings are as follows:

- Bulgaria, Croatia, Cyprus, France, Italy and Portugal are considered to have excessive imbalances but without triggering the excessive imbalances procedure. They will be subject to specific monitoring, adapted to the degree and nature of the imbalance;
- Finland, Germany, Ireland, the Netherlands, Slovenia, Spain and Sweden are found to have imbalances, though not excessive. They too will be subject to specific monitoring, adapted to the degree and nature of the imbalance;
- Austria and Estonia, which were subject to in-depth reviews for the first time in 2016, are deemed not to have imbalances;
- For Belgium, Hungary, Romania and the UK, the procedure has been closed as the risks from imbalances have been reduced.

The Council is expected to underscore the need for policy action and strong commitment to structural reforms in all member states. This is particularly the case when facing macroeconomic imbalances that affect the smooth functioning of the euro area. The draft conclusions emphasise that imbalances should be addressed in a durable manner. The focus should be on key challenges, reducing risks, facilitating economic rebalancing and creating the conditions for sustainable growth and jobs.

Reform implementation has been uneven across policy areas and between member states. Only in a few cases has substantial progress been made in addressing the country-specific recommendations issued in 2015. The Council will therefore highlight the need for implementation to be stepped up to address the policy challenges.

- Draft conclusions on 2016 in-depth reviews and country-specific recommendations
- Country reports under the 2016 European Semester

Other items

Under "other business", the Council will be updated as concerns work on legislative proposals on financial services;

Without discussion, the Council is expected to adopt:

- a directive on the exchange of **tax-related information on multinational companies** (see separate item above under “corporate tax avoidance”);
- conclusions on the third country aspects of **tax transparency** (see separate item under “corporate tax avoidance”);
- a directive maintaining the **minimum standard VAT rate** at 15% until the end of 2017, pending discussions on definitive VAT rules (see separate item above on “VAT action plan”).