Council of the European Union

PRESS
EN

BACKGROUND BRIEF[1]
Brussels, 5 December 2022

Economic and Financial Affairs Council
Brussels, 6 December 2022

Chair: **Zbyněk Stanjura**, Minister of Finance of Czechia

European Commission representatives: Commission Vice-President Valdis Dombrovskis, Commissioner Paolo Gentiloni, Commissioner Mairead McGuinness, Commissioner Johannes Hahn

Starting time: 10.00

Press conferences:

• after the Eurogroup meeting (Monday evening, +/- 19:00)

• after the Economic and Financial Affairs Council (Tuesday afternoon, +- 15:45)

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The Council will discuss measures for the **protection of the Union budget** against breaches of the principles of the rule of law in **Hungary**.

The Council will take stock of the implementation of the **Recovery and Resilience Facility** and discuss the national plan of **Hungary**.

In public session, the Council will discuss the legislative package on regular **financial support to Ukraine** as well as the directive on ensuring a **global minimum level of taxation** for multinational enterprise groups and large-scale domestic groups in the Union ('Pillar 2').

Ministers will exchange views on the **economic governance review**, based on a recent Commission communication.

The Presidency will present the state of play as regards current legislative proposals in the field of **financial services**.

The Council will hold a policy debate on the **energy taxation directive**. It will approve its **report to the European Council on tax issues**. The Council will also aim to adopt conclusions on the progress achieved by the **Code of Conduct Group** (Business Taxation) during the Czech Presidency.

As regards the EU **budget**, the Presidency will present its report on the state of play of discussions on **new own resources**. As a follow-up to the adoption of the EU budget for 2023, the Council will prepare a statement on heading 7 which concerns **administrative expenditure of the EU institutions**. In addition, the President of the European Court of Auditors will present the **annual report on the implementation of the budget** of the European Union for the financial year 2021.

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

As regards the **European Semester 2023**, the Commission will present its annual sustainable growth survey 2023, alert mechanism report 2023 and recommendation on the economic policy of the euro area.

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The Eurogroup will meet on Monday 5 December (15.30).
In regular format, it will discuss:

- *Assessment of euro area member states' draft budgetary plans and of the budgetary situation and prospects of the euro area*
- *Euro area recommendations for 2023: presentation by the Commission*
- *Commission communication on orientations for a reform of the EU economic governance framework – draft work plan on euro area aspects*
- *Post programme surveillance reports: Cyprus, Ireland, Portugal, Spain*
- *Greece: post programme surveillance report and policy contingent debt measures*
- *Election of the President of the Eurogroup*
- *Eurogroup work programme for the first half of 2023*
- *Miscellaneous*

In inclusive format, it will discuss:

- *Macroeconomic developments and prospects*

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Economic and Financial Affairs Council - meeting page

Eurogroup - meeting page

Economic and Financial Affairs Council - video coverage in broadcast quality (MPEG4) and photo gallery

Eurogroup - video coverage in broadcast quality (MPEG4) and photo gallery

Press conferences and public events by video streaming

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Rule of law conditionality mechanism: Hungary

The Council will exchange views on the proposed **measures for the protection of the Union budget** against breaches of the principles of the rule of law in Hungary.

Background

On 18 September 2022 the Commission adopted a proposal on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary. The proposal is based on regulation 2020/2092 on a general regime of conditionality for the protection of the Union budget (the conditionality regulation).

The conditionality regulation is aimed against breaches of the principles of the rule of law that affect or seriously risk affecting the sound financial management of the budget or the protection of the financial interests of the Union. The regulation entered into force on 1 January 2021 as an additional layer of protection of the budget, complementing the already existing instruments defending the financial interests of the Union.

This regulation is an instrument intended for the protection of the Union budget, and not an instrument to oblige member states to abide to the principles of the rule of law. The EU Court of Justice has confirmed that the budget conditionality is an independent and different procedure from that of Article 7 TEU.

On 11 March 2021, Poland and Hungary challenged the regulation in the EU Court of Justice. In line with the European Council conclusions of 11 December 2020, the regulation was not applied until the CJEU, on 16 February 2022, dismissed the action for annulment brought by Poland and Hungary. Taking into account the ruling of the Court, the Commission issued the guidelines for the application of the regulation and sent the first notification to Hungary on 27 April 2022.

This notification from the Commission represented the beginning of a process of assessment and exchange of information with the member state concerned, which lasted until mid-September and led to the submission of a proposal for a Council decision on 18 September 2022.

The Commission considered that the issues identified by Commission services and notified repeatedly to Hungary still persist and they constitute systemic breaches of the principles of the rule of law, in particular of the principles of legal certainty and prohibition of arbitrariness of the executive powers. This mainly relates to:

- Systemic irregularities, deficiencies and weaknesses in public procurement, with the improper functioning of the national authorities implementing the Union budget in the context of public procurement procedures, an issue already identified since the 2007-2013 period (e.g. one single bidder participation, attribution of contracts to specific companies with large market share, serious deficiencies in the attribution of framework agreements, etc.);
- Public interest trusts: as they are not being subject to rules under the EU public procurement directives, with their recurrent issues related to conflict of interests and transparency (e.g. trust members not being subject to conflict of interest requirements or conflict of interest rules not being applicable to members of Parliament, state secretaries and other public officials of the government who may serve at the same time as board members of such trusts).

The Commission identified deficiencies, weaknesses, limits and risks that are widespread and intertwined in the Hungarian public administration system and beyond, and remedies in sectoral legislation (such as the common provisions regulation) are not sufficient vis-à-vis the breaches. Therefore, Commission considered that no other procedure under Union law would allow it to protect the Union budget more effectively than the procedure set out by the conditionality regulation.

The concerns expressed by the Commission in the case of Hungary affect a number of key areas for the implementation of the Union budget and the compliance with sound financial management principles and, cumulatively, they pose serious risks to the Union's financial interests.

On 30 November 2022, in its assessment of remedial measures taken by Hungary, the Commission confirmed that serious risks to the Union's financial interests remain.

Communication from the Commission to the Council on the remedial measures notified by Hungary for the protection of the Union budget

Commission proposal

Long-term EU budget 2021-2027 and recovery package (background information)

EU budget (background information)

Implementation of the Recovery and Resilience Facility (RRF)

Ministers will take stock of the implementation of the Recovery and Resilience Facility (RRF), following a presentation by the European Commission on the state of play. They will also discuss the recovery and resilience plan (RRP) of **Hungary** after the Commission came up with a positive assessment of this plan.

The Recovery and Resilience Facility is the EU's programme of large-scale financial support in response to the challenges the pandemic has posed to the European economy. The facility's €672.5 billion are used to support the reforms and investments outlined in the member states' recovery and resilience plans.

Assessment of the recovery and resilience plan for Hungary

A recovery plan for Europe (background information)

Legislative package on €18 billion financial support to Ukraine

In public session, ministers will discuss the legislative package on financial support to Ukraine with the aim of adopting it. The package provides for a **structural solution to financially support Ukraine in 2023**. Since the start of Russia's war against Ukraine, the EU has stepped up its financial support to Ukraine. The amount to be lent to Ukraine in 2023 will be €18 billion, and the loans will have a 10-year grace period.

It is proposed that member states cover the bulk of the interest costs via external assigned revenues, and the guarantees for that borrowing will be provided by the EU budget's headroom.

The package includes three legislative proposals: on the one hand, macro financial assistance + (MFA+) and an amendment to the financial regulation, to be adopted by qualified majority. On the other, an amendment to the multiannual financial framework, to be adopted by unanimity.

Background

Ukraine's financing needs are estimated at €38-40 billion, or over €3 billion/month. This is to maintain essential state functions, ensure macroeconomic stability and for the rehabilitation of destroyed critical infrastructure. The EU's contribution would be of around €1.5 billion/month in 2023, or €18 billion for the whole year.

The Commission published this legislative package on 9 November with the aim to finding a structural and efficient solution as opposed to the ad hoc solutions found so far during 2022.

Council Regulation amending Regulation (EU, Euratom) 2020/2093 laying down the multiannual financial framework for the years 2021 to 2027 (15179/22, 14471/1/22 REV 1 + REV 2 (de))

Regulation of the European Parliament and of the Council establishing an instrument to provide support to Ukraine (macro financial assistance +) (15232/22, PE-CONS 63/22)

Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) 2018/1046 as regards the establishment of a diversified funding strategy as a general borrowing method (15225/22, PE-CONS 62/22)

EU solidarity with Ukraine (background information)

EU response to Russia's invasion of Ukraine (background information)

Corporate taxation: fair and effective taxation for multinational groups

In public session, ministers will discuss the proposal for a Council directive on **ensuring a global minimum level of taxation for multinational groups** in the Union.

The aim of the directive is to transpose into EU law part of the agreement by the OECD/G20 Inclusive Framework (IF) on base erosion and profit shifting (BEPS), which provides for a global two-pillar reform of the rules on international corporate taxation. This international agreement, which brings together 137 countries and jurisdictions, constitutes a **major milestone on the path towards an effective and fair system of profit taxation**. The directive concerns the 'second pillar' of the reform, which precedes the 'first pillar', on which technical work is still ongoing within the OECD's Inclusive Framework on BEPS.

Once unanimously adopted by the Council, the directive would require member states to transpose the necessary elements of the globally agreed rules on the minimum effective taxation of the profits of the largest multinational corporations.

Background

On 8 October 2021, 137 countries in the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) reached a landmark agreement on international tax reform, as well as on a detailed implementation plan.

The reform of international corporate tax rules consists of two pillars:

- **Pillar 1** covers the new system of allocating taxing rights over the largest multinationals to jurisdictions where profits are earned. The key element of this pillar will be a multilateral convention.
- **Pillar 2** contains rules aimed at reducing the opportunities for base erosion and profit shifting, to ensure that companies pay a minimum rate of corporate tax. This pillar is enshrined legislatively in an EU directive which must be adopted unanimously by the 27 member states of the European Union.

On 22 December 2021, the Commission therefore presented a proposal for a directive which aims to implement Pillar 2 in a way which is consistent and compatible with EU law.

Draft Council directive on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union

Commission proposal for a Council directive

Taxation (background information)

Own resources of the EU

In public session, EU economy and finance ministers will discuss the proposed decision on the system of new own resources of the European Union. This discussion will be based on a Presidency note.

Background

The EU's expenditure is financed by revenue from different sources:

- own resources
- surplus EU revenue – what remains after payments from the previous year
- other sources: mainly fines on companies infringing EU competition law, refunds and taxes on salaries

The EU's own resources make up most of the EU's revenue. They have remained the same over the last decades and consist of:

- traditional own resources: customs duties
- value-added tax (VAT) based contributions from member states
- gross national income (GNI) based contributions from member states, which are adjusted to balance revenue and expenditure

The share of the different EU sources of revenue varies slightly from year to year. In 2018, for instance, the EU's total revenue of 144.8 billion euros was:

- 97% – own resources
- 1% – surplus
- 2% – other sources

The Council decides the maximum amount of own resources and their types at the same time as the limits for expenditure within the multiannual financial framework.

Once they have been agreed, these resources are automatically directed to the EU budget, without the need for any further decision by the national authorities.

Presidency report on new own resources

Recording of the discussion at Ecofin Council of 17 June 2022

EU budget 2021-2027 and recovery plan (infographic)

EU budget (background information)

Report to the European Council on tax issues

The Council is expected to approve its report to the European Council on tax issues. Economy and finance ministers report to the European Council on tax issues twice a year.

This report provides an overview of the progress achieved in the Council during the term of the Czech Presidency, as well as an overview of the state of play of a number of important dossiers under negotiations in the area of taxation including:

- Global minimum level of taxation for multinational groups in the EU (Pillar 2)
- Rules to prevent the misuse of shell entities for tax purposes

- Debt-Equity Bias Reduction Allowance (DEBRA): the aim of the proposal is to counter the tax incentive for companies to finance investments through debt rather than equity, due to the possibility for companies to deduct interest attached to debt financing, but not the costs associated with equity financing.
- Revision of the Energy Taxation Directive
- Financial Transaction Tax
- Vehicle Taxation
- Revision of the Code of Conduct (Business Taxation) and updates to the EU list of non-cooperative jurisdictions for tax purposes
- DAC7 – 'Switch-off' mechanism: DAC7 extends the scope of the automatic exchange of information between member states' tax authorities to the information reported by digital platforms, about income and revenues of the sellers on these platforms.
- Automatic exchange of information in the area of taxation with non-EU jurisdictions
- Administrative cooperation with other non-EU countries in the area of VAT
- Regulation on administrative cooperation in the field of excise duties
- Fiscalis programme for cooperation in the field of taxation

In addition, targeted work was carried out following **Russia's aggression against Ukraine**. The report mentions measures that member states pursue to support the implementation of EU restrictive measures and prevent their circumvention through tax cooperation instruments. Inter alia, member states decided to discontinue all exchanges of information for tax purposes with the Russian Federation and Belarus.

Member states also discussed the tax residency status of Ukrainian beneficiaries of temporary protection continuing to work remotely for Ukrainian companies. Member states agree that measures could be considered to minimize the negative income tax implications for Ukraine with regard to the large number of Ukrainian beneficiaries of temporary protection, in particular as regards employees that continue to work remotely for companies located in Ukraine, as appropriate.

Taxation (background information)

Financial services

In public session, the Presidency will present the state of play as regards current legislative proposals in the field of financial services.

Progress on financial services legislative files

Digital finance (background information)

Capital markets union (background information)

Energy taxation directive

In public session, the Council will hold a policy debate on the proposed revision of the energy taxation directive. Ministers will be invited to respond to the following questions:

- Do you agree that further work should build on the progress made so far on the energy taxation directive file, enabling the member states to comply with the long-term EU environmental targets, and at the same time providing the member states with sufficient flexibility, taking into account their national tax systems, while ensuring the smooth functioning of the internal market?
- Underlining the fact that the energy taxation directive file is a part of the Fit for 55 package, do you agree that the future work should seek to reach a compromise striking a balance between the EU minimum levels of taxation and the length of transitional periods to accommodate the member states' economic, geopolitical, geographical and social circumstances, in particular in relation to the most sensitive sectors?

Background

On 14 July 2021, the Commission submitted a proposal for a revision of the Union framework for the **taxation of energy products and electricity**. This proposal is part of the **Fit for 55 package** and therefore contributes to implement the EU targets of reducing emissions by at least 55% by 2030, as compared to 1990 levels, and to achieve climate neutrality by 2050.

The energy taxation directive proposal has the following objectives:

- Providing an adapted framework contributing to the achievement of the EU 2030 targets and to climate neutrality by 2050 in the context of the European Green Deal; this would involve aligning the taxation of energy products and electricity with EU energy, environment and climate policies, thus contributing to the EU's efforts to reduce emissions;
- Providing a framework that preserves and improves the EU's internal market by updating the scope of taxable energy products and the structure of rates and by rationalising the use of tax exemptions and reductions by Member States; and
- Preserving the capacity to generate revenue for the Member States' budgets.

Presidency note

Fit for 55 (background information)

Economic governance review

The Commission will present its communication which contains its proposed concepts for a reform of the current economic governance framework. Ministers will have a **first opportunity to exchange views** on the proposal.

Background

On 9 November, the Commission released its communication on orientations for a reform of the EU economic governance framework. The new framework should ideally be in place before the general escape clause of the Stability and Growth Pact is lifted.

Commission communication

Economic governance framework (background information)

EU budget for 2023

As a follow-up to the adoption of the EU budget for 2023, the Council will prepare a statement on heading 7 which concerns **administrative expenditure** of the EU institutions.

EU budget (background information)

Implementation of the EU budget in 2021

The new President of the European Court of Auditors, Mr Murphy, will present the annual report on the implementation of the budget of the European Union for the financial year 2021.

Background

In its annual report on the EU budget, the European Court of Auditors gives its opinion - or statement of assurance - on the reliability of the accounts and the legality and regularity of the transactions that underline them. This year, the report was issued on 13 October.

As for the last 15 years, the Court gave a clean opinion on the reliability of the 2021 accounts of the European Union. Revenue for 2021 was legal and regular and free from material error. However, the Court's opinion on legality and regularity of expenditure for the 2021 financial year is adverse, with an overall estimated level of error in expenditure at 3 %, above the materiality threshold of 2 %.

The Court's annual report will be examined in detail in 2023 by the Council's preparatory bodies in order to adopt the Council's recommendation on a discharge to be given to the Commission in respect of the implementation of the budget, as set out in Article 319 TFEU. In addition, the recommendation will include the Council's conclusions on the special reports published by the Court in the course of the year and examined in the competent Council working parties.

The Council recommendation is expected to be adopted by the Ecofin Council in March 2023. The recommendation will then be forwarded to the European Parliament, which will take it into account in its discharge decision.

Annual report of the European Court of Auditors on the implementation of the budget concerning the financial year 2021, together with the institutions' replies LINK OJ C 391, 12.10.2022, p. 6

EU budget (background information)

Conclusions on Code of Conduct Group (business taxation)

The Council will aim to adopt conclusions on the progress achieved by the Code of Conduct Group (Business Taxation) during the Czech Presidency.

Inter alia, on 8 November, EU finance ministers agreed on a revised code of conduct for business taxation: a **political, intergovernmental commitment by member states to apply reinforced screening rules when looking for and remedy tax measures that could be harmful** to the tax bases of other member states. The ultimate goal is to tackle harmful tax competition, tax evasion and tax avoidance in the EU.

Background

The code of conduct is a political commitment that has an intergovernmental nature. The Council's code of conduct group consists of high-level taxation experts of the member states. It is responsible for **monitoring possibly harmful tax measures** in the EU member states.

The code of conduct forms the basis of the work of the Council code of conduct working group. Its elected Chair is supported by the General Secretariat of the Council.

Its work also has an international dimension which aims to promote effective changes in respect of worldwide tax good governance through cooperation. The code of conduct group also carries out the technical work, screening and assessment leading to the regular revision by the Council of the

EU list of non-cooperative jurisdictions for tax purposes. This EU list is regularly revised following an in-depth review of the implementation of commitments taken by all third-country jurisdictions that are part of the process.

Taxation: Finance ministers agree to strengthen the code of conduct used to identify and curb harmful tax measures of member states (press release, 8 November 2022)

EU list of non-cooperative jurisdictions (background information)

Code of Conduct Group (Business Taxation) (background information)

European Semester 2023

The Commission will present its annual sustainable growth survey 2023, alert mechanism report 2023 and recommendation on the economic policy of the euro area. This may be followed by an exchange of views of ministers.

Recommendation on the economic policy of the euro area

Report on the euro area

Annual sustainable growth survey 2023

Alert mechanism report 2023

Statistical annex accompanying the alert mechanism report

European Semester (background information)