Council of the
European Union

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15205/16
(OR. en)

PRESSE 65
PR CO 64

OUTCOME OF THE COUNCIL MEETING

3506th Council meeting

Economic and Financial Affairs

Brussels, 6 December 2016

President **Peter Kažimír**
Minister for finance of Slovakia

P R E S S

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ITEMS DEBATED

INVESTMENT PLAN FOR EUROPE

The Council reviewed two aspects of the EU's 'investment plan for Europe'.

It agreed its stance on a proposal to extend the lifespan of the European fund for strategic investments (EFSI) beyond its initial three-year period. And it adopted conclusions addressing barriers to investment.

– ***European fund for strategic investments***

EFSI is the flagship initiative under the EU's investment plan.

The proposal involves extending the fund in terms of both its lifespan and its financial capacity, and setting an investment target of at least half a trillion euros by 2020. The proposal also introduces a number of operational improvements to take account of lessons learned from the first year of implementation.

Talks will start with the European Parliament once the Parliament has agreed its negotiating stance.

Press release on the Council's December 2016 stance on the extension of EFSI

– ***Investment bottlenecks***

The Council adopted conclusions taking stock of work to remove barriers to investment.

The Economic Policy Committee (EPC) has held thematic discussions on the subject, and the conclusions address a number of bottlenecks that have been identified.

The Council called for action at both EU and member state levels. It asked the EPC to undertake further work, drawing on the experience of the European Investment Bank.

CORPORATE TAXATION - HYBRID MISMATCHES

The Council achieved broad consensus on a draft directive aimed at closing down 'hybrid mismatches' with the tax systems of third countries.

The directive will contribute to ongoing efforts to prevent corporate tax avoidance.

After intensive discussions, the Council agreed to a stable text for most provisions, leaving just two issues to resolve:

- rules that would allow member states to apply limited exemptions;
- the date of implementation.

The directive is intended to prevent corporate taxpayers from exploiting disparities between tax jurisdictions in order to reduce their overall tax liability. Such arrangements can result in a substantial erosion of the taxable bases of corporate taxpayers in the EU.

The proposal addresses hybrid mismatches with regard to non-EU countries, given that intra-EU disparities are covered by a directive adopted in July 2016 ('anti-tax-avoidance directive'). It amends that directive accordingly, setting the same deadline for implementation: 1 January 2019.

The directive will also take into account 2015 OECD recommendations addressing corporate tax base erosion and profit shifting.

FINANCIAL TRANSACTION TAX

The Council discussed work on a proposal aimed at introducing a financial transaction tax (FTT) in 10 member states.

Austria, Belgium, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain plan to introduce an FTT by 'enhanced cooperation', an EU procedure that enables a group of member states to cooperate without the others participating.

The president of the Council called for a draft legal text to be prepared to reflect recent progress, for discussion by national experts. He noted that the result must be satisfactory to all member states, both those that will adopt an FTT and those not participating in the enhanced cooperation.

The proposal is aimed at:

– ensuring that the financial sector pays its fair share of tax;

– discouraging transactions that do not enhance the efficiency of financial markets.

The proposed directive would enable harmonised implementation of the tax in the participating member states.

Enhanced cooperation was authorised in January 2013 by Council decision 2013/52/EU after a September 2011 proposal for an EU-wide FTT failed to obtain unanimous support.

It was initially authorised for 11 member states, but Estonia withdrew in March 2016.

The directive requires the unanimous agreement of the participating countries, after consultation with the European Parliament. All member states can participate in discussions on the proposal, though only participating countries can vote. (Legal basis: article 113 and articles 326 to 334 of the Treaty on the Functioning of the European Union.)

At least 9 member states are needed to conduct enhanced cooperation.

October 2016 presidency note on the state of play on the FTT
Proposal for a Council directive on enhanced cooperation on FTT
Press release on Council decision to authorise enhanced cooperation on FTT

BANKING UNION

The Council reviewed work on the EU's banking union:

– the presidency updated the Council as concerns work on strengthening the banking union, in particular a proposed European deposit insurance scheme (EDIS);

– the Commission presented proposals for strengthening the resilience of EU banks;

– the Council briefly took stock of implementation of the banking union.

The Council held an exchange of views.

The aim of the banking union place Europe's banking industry on a more secure footing, whilst ensuring that unviable banks are resolved without recourse to taxpayers' money. Launched in 2012 to address the bank-sovereign nexus in Europe, it involves a transfer of responsibility to the EU level. The banking union 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 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.

With a view to strengthening the banking union, an ad hoc Council working group was established in January 2016. The Council adopted conclusions in June 2016, setting out priorities and milestones for work; the group met a further six times between June and December.

June 2017 Council conclusions on a roadmap to complete the banking union
Council webpage on banking union

– ***European deposit insurance scheme***

The Commission issued its proposal on EDIS in November 2015. It sets out to establish an EU-level insurance scheme to strengthen the protection of bank deposits in the member states.

Deposit guarantee schemes (DGSs) provide protection to depositors against the risk of losses in the event of a bank failure. The Commission considers that a common deposit insurance scheme would boost resilience against future crises, given that national DGSs remain vulnerable to local shocks.

Intended as a third 'pillar' of Europe's banking union, the EDIS would be mandatory for eurozone countries and voluntary for other banking union member states. Under the Commission's proposal it would apply to all banks, though riskier banks would contribute more.

It would be built in three stages.

The proposed regulation 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.)

November 2016 progress report on strengthening the banking union
Proposal for a regulation on a European deposit insurance scheme

– ***Commission banking proposals***

Issued on 23 November 2016, the Commission's banking proposals are aimed at ensuring that any outstanding challenges to financial stability are correctly addressed. They contribute to ongoing work on reducing risk in the banking sector.

The working group will start technical work on 9 December 2016.

The proposals cover:

- bank capital requirements (amendments to directive 2013/36/EU and regulation 575/2013 on the activities and supervision of banking institutions);
- the recovery and resolution of unviable banks (amendments to directive 2014/59/EU on bank recovery and resolution);
- insolvency proceedings (amendments to directive 2014/59/EU as concerns the ranking of debt instruments in insolvency proceedings);
- the EU's single resolution mechanism (amendments to regulation 806/14).

They incorporate the remaining elements of the regulatory framework agreed by the Basel Committee on Banking Supervision and the Financial Stability Board.

Press release on the Commission's November 2016 banking proposals
Basel Committee on Banking Supervision
Financial Stability Board

– ***Implementation of the banking union***

The member states' transposition of agreed rules into national laws and regulations is now almost complete. The Council has been regularly taking stock since mid-2015.

As of 30 November 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;
- 15 of the 19 banking union member states had signed a loan facility agreement on bridge financing for the SRF;
- as regards the single rulebook, all 28 member states had fully transposed the directive on bank recovery and resolution and 27 had fully transposed the directive on bank deposit guarantee schemes.

ECONOMIC AND MONETARY UNION - FIVE PRESIDENTS' REPORT

The Commission updated the Council on the follow-up to a June 2015 report on completing the EU's economic and monetary union (EMU).

The report outlined a 'roadmap' for further developing the EMU so as to ensure the smooth functioning of the currency union and its resilience against economic shocks. It was commissioned by the Euro Summit after the economic and financial crisis exposed shortcomings in the EU's economic governance framework.

Referred to as the 'five presidents' report', it was prepared by the president of the Commission in cooperation with the presidents of the European Council, the Eurogroup, the European Central Bank and the European Parliament.

In October 2015, the Commission presented a package of measures. It announced a white paper for spring 2017, setting out a long-term vision.

Commission October 2015 press release on completing economic and monetary union
Five presidents' report on completing Europe's economic and monetary union

FISCAL RULES - PREDICTABILITY AND TRANSPARENCY

The Council endorsed an agreement aimed at improving the predictability and transparency of the EU's fiscal rulebook, the Stability and Growth Pact.

On 29 November 2016, the Economic and Financial Committee reached agreement on how to simplify the assessment of compliance with the pact's rules. The agreement covers both the preventive and corrective arms of the pact as relates to the assessment of member states' fiscal policies and outcomes. No change to the legislation underlying the pact is envisaged.

Stronger focus on an expenditure-based indicator is envisaged for setting and assessing fiscal policies, reducing complexity in the fiscal surveillance framework.

The indicator involves setting an upper limit for the growth rate of government expenditure. This is considered an operational and easy-to-measure target that will guide member states in the preparation and monitoring of their budgets. The structural balance indicator will remain an essential part of the fiscal surveillance framework.

The Stability and Growth Pact is based on articles 121 and 126 of the Treaty on the Functioning of the European Union and a treaty protocol on the excessive deficit procedure. Its rules were initially developed by a resolution and two regulations adopted by the Council in 1997.

CUSTOMS

The presidency reported on strategic issues in the area of customs.

It outlined new challenges for customs authorities in the field of safety, security and risk management, in particular with regard to terrorist threats.

On 30 November 2016, the Permanent Representatives Committee agreed to establish a 'high level working party of directors-general of customs'.

An informal agreement has also been reached on a procedure to nominate a single EU candidate for senior positions within the World Customs Union.

ECONOMIC GOVERNANCE - 2017 EUROPEAN SEMESTER

The Council initiated the annual European Semester process for the monitoring of the member states' economic, employment and fiscal policies.

The Commission presented its annual growth survey, which outlines the most pressing priorities on which the EU and the member states should focus in the economic and social fields.

It presented an 'alert mechanism report', which marks the starting point of the annual macroeconomic imbalances procedure. The report calls for in-depth reviews of the macroeconomic situation in Bulgaria, Croatia, Cyprus, Finland, France, Germany, Ireland, Italy, the Netherlands, Portugal, Slovenia, Spain and Sweden. (Greece is not part of the exercise as it is subject to enhanced surveillance under its macroeconomic adjustment programme.)

The Commission also presented a draft Council recommendation on the economic policies of the euro area.

The Council held an exchange of views.

It is expected to approve the draft eurozone recommendation and conclusions on the annual growth survey and the alert mechanism report at its meeting on 27 January 2017.

The 2017 European Semester will conclude in July 2017 with the adoption of country-specific recommendations.

2017 annual growth survey
2017 alert mechanism report
2017 draft recommendation on the economic policies of the euro
2017 Commission communication "Towards a positive fiscal stance for the euro area"

PREVENTION OF TERRORIST FINANCING

The Commission reported on implementation of various initiatives set out in its action plan on the prevention of terrorist financing.

It announced legislative proposals for December 2016 on cash movements, criminal offences and sanctions for money laundering and the freezing and confiscation of criminal assets. It also announced the imminent completion of its assessment of a possible European system to complement the EU-United States terrorist finance tracking programme.

The Council confirmed its intention to make progress before the end of 2016 on a proposal to strengthen the rules against money laundering, one of the key initiatives under the plan (see page 15).

The action plan was launched in February 2016 in response to a spate of terrorist attacks in Europe. It proposed 20 actions in various areas, most of which were to be completed by the end of 2016.

In February 2016, the Council asked the Commission to report on progress at least every 6 months.

Work has also proceeded at the UN and in a number of other international bodies.

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

OTHER BUSINESS

– ***Financial services***

The Council was updated as concerns work on legislative proposals on financial services.

November 2016 secretariat note on progress on financial services legislative dossiers

– ***Money laundering***

The presidency updated the Council as concerns work on a directive to strengthen the prevention of money laundering and terrorist financing (see also page 14).

– ***VAT on digital services***

The Commission presented a package of proposals regarding VAT on digital services.

– ***Capital markets union***

The Commission updated the Council on implementation of the EU's plan to develop a fully functioning capital markets union by the end of 2019.

MEETINGS IN THE MARGINS OF THE COUNCIL

- *Eurogroup*

Ministers of the eurozone member states attended two meetings of the Eurogroup on 5 December 2016.

The first was specifically to assess eurozone member states' draft budgetary plans for 2017.

At the second meeting, ministers discussed the second review of Greece's current economic adjustment programme.

Eurogroup main results

- *Ministerial breakfast*

Ministers held a breakfast meeting to discuss the economic situation.

OTHER ITEMS APPROVED

ECONOMIC AND FINANCIAL AFFAIRS

Tax transparency – Beneficial ownership

The Council adopted a directive granting access for tax authorities to information held by authorities responsible for the prevention of money laundering.

This follows an agreement reached on 8 November 2016.

Revelations of the large-scale concealment of offshore funds have highlighted areas where further measures need to be taken to enhance tax transparency.

The directive will enable tax authorities to access information on the beneficial ownership of companies. It will apply as from 1 January 2018.

The Parliament gave its opinion on 22 November 2016.

For details, see press release.

Corporate tax reform

The Council adopted conclusions setting out how it intends to respond to a October 2016 Commission communication on corporate taxation.

The communication, on building a fair, competitive and stable corporate tax system for the EU, accompanied a package of proposals aimed at reforming the manner in which companies are taxed.

The Council endorsed a two-step approach for a common corporate tax base proposal (CCTB) and the consolidation of taxable corporate income (CCCTB). It supported the view that tax consolidation should be considered without delay once discussion of the elements of a common tax base has been concluded.

To enhance tax certainty for businesses, the Council acknowledged the need to review mechanisms for resolving double taxation disputes.

The other element of the package concerns 'hybrid mismatches' (disparities) with the tax systems of third countries (see page 5).

October 2016 corporate tax reform proposals

Code of conduct on business taxation

The Council adopted the following conclusions:

"With regard to the Code of Conduct (Business Taxation), the Council:

– welcomes the progress achieved by the Code of Conduct Group during the Slovak Presidency as set out in its report (doc. 14750/16 FISC 202 ECOFIN 1092);

– welcomes in particular the work performed on the clarification of the third and fourth criteria of the Code in the context of OECD BEPS reports on Actions 5-8-9-10;

– agrees to consider the principles of the modified nexus approach, as described in the OECD BEPS report on Action 5, as a starting point for the work of the Code of Conduct Group on preferential regimes other than patent boxes when interpreting the third criterion of the Code and to substantiate these principles on a case-by-case basis depending on the type of regime in a manner consistent with the OECD;

– endorses the OECD BEPS report on Aligning Transfer Pricing Outcomes with Value Creation (Actions 8-9-10);

– invites the European Commission, making use of its EU Joint Transfer Pricing Forum (JTPF) expert group, to investigate the need to revise past EU guidelines on transfer pricing issues in the light of this OECD BEPS report and to report to and advise the Code of Conduct Group as appropriate;

- asks the Code of Conduct Group to continue its work with a view to facilitating, through the third and fourth criteria, an effective, swift and coordinated implementation at EU level of the principles of the modified nexus approach and other internationally accepted principles such as the arms' length principle as developed by the OECD;

- agrees to take into account the changes to the OECD Transfer Pricing Guidelines for interpreting the internationally accepted arm's length principle as a key reference for the fourth criterion of the Code;

- supports also further work by the OECD on transfer pricing issues, amongst others the transactional profit split method;

- welcomes progress made following the November ECOFIN Conclusions regarding the identification of third countries to be included in the screening process and asks the Code of Conduct Group to continue this work;

- welcomes the agreement on guidelines concerning procedural issues relating to the notification of tax measures and on guidelines on the conditions and rules for the issuance of tax rulings;

- asks the Group to continue monitoring standstill and the implementation of the rollback and invites the Group to continue its work under the Work Package 2015;

- invites the Commission to continue the dialogue with Liechtenstein on the application of the principles of the Code of Conduct, as set out in the report;

- invites the Group to continue to monitor the alignment of the Patent box regimes with the agreed nexus approach;

- invites the Group to report back to the Council on its work during the Maltese Presidency."

Excise duties – Alcoholic beverages

The Council adopted conclusions on an evaluation of directive 92/83/EEC on the structures of excise duties on alcohol and alcoholic beverages.

Economic partnership programme - Portugal

The Council issued an opinion on an 'economic partnership programme' presented by Portugal.

Portugal submitted the programme after the Council stepped up the country's excessive deficit procedure in August 2016.

The programme describes policy measures and structural reforms to ensure an effective and lasting correction of the deficit.

National central banks - External auditors - Ireland and Italy

The Council approved:

– Mazars as external auditors of Banc Ceannais na hÉireann, the Central Bank of Ireland, for the financial years 2016 to 2020 (14610/1/16 REV 1 + 14550/16);

– BDO Italia S.p.A. as external auditors of the Banca d'Italia for the financial years 2016 to 2022 (14609/16 + 12962/16).

Reduced rate of taxation - Netherlands - Electric vehicles

The Council adopted a decision authorising the Netherlands to apply a reduced rate of taxation to electricity supplied to charging stations for electric vehicles (14123/16 + 14122/16).

VAT derogation - United Kingdom - Automobile leasing

The Council adopted a decision extending until 31 December 2019 a derogation granted to the United Kingdom under directive 20036/112/EC (13144/1/16 REV 1 + 13143/16).

The measure involves restricting to 50% the right of the hirer or the lessee to deduct input VAT on charges for the hire or lease of automobiles not used entirely for business purposes.

Report on tax issues

The Council approved a six-monthly report to the European Council on tax issues.

FOREIGN AFFAIRS

Sanctions against Syria

The Council adopted measures to authorise exceptions to sanctions in place against Syria to facilitate the work of humanitarian operations in Syria and assistance to the civilian population.

The measures include:

– provisions allowing certain humanitarian organisations to purchase and transport oil in Syria, in order to carry out humanitarian activities on the ground;

– measures to ease restrictions on the use of funds and economic resources for certain organisations operating in the humanitarian field.

The measures will facilitate the purchase and transport of oil and associated financing for EU member states and entities, as well as entities receiving EU public funding, in cases where the sole purpose is to provide humanitarian relief or assistance to the Syrian population. The measures will also simplify the provisions of funds or economic resources to persons and entities subject to EU restrictive measures when this is necessary for activities solely related to providing humanitarian relief or assistance to the Syrian population. These amendments also apply to the provision of funds or economic resources to diplomatic and consular missions that are to be used for official purposes.

For other organisations, the purchase or transport of petroleum products will only be allowed if a member state authorises it and informs the European Commission within two weeks of the purchase or transport. The scope and objective of the sanctions regime concerning Syria otherwise remain unchanged. There has been no alteration of these measures other than in the humanitarian field.

Council conclusions on Syria of 17 October 2016
Syria: Council response to the crisis

EU- relations with Cuba:

The Council decided to sign a Political Dialogue and Cooperation Agreement between the EU and Cuba. The Council also decided to provisionally apply parts of the agreement. The agreement will be transmitted to the European Parliament for its consent, in view of its conclusion. The Council also repealed the EU 1996 Common Position on Cuba.

See press release

EU-NATO cooperation

The Council of the EU adopted conclusions endorsing a common set of proposals for the implementation of the Joint Declaration by the President of the European Council, the President of the European Commission and the Secretary General of NATO.

See conclusions

JUSTICE AND HOME AFFAIRS

Customs risk management - Council conclusions

The Council adopted conclusions on the progress report on the implementation of the EU strategy and action plan for customs risk management (14288/16).

AGRICULTURE

Performance measurement of farmers' income - Report of European Court of Auditors

The Council adopted the following conclusions on the European Court of Auditors' special report entitled "Is the Commission's system for performance measurement in relation to farmers' incomes well designed and based on sound data?" (13321/16):

"THE COUNCIL OF THE EUROPEAN UNION

(1) WELCOMES the Court's Special Report 1/2016, which examines the Commission's tools for measuring farmers' incomes and its use of income-related data for assessing the performance of Common Agricultural Policy (CAP) measures aimed at viable food production and supporting the income of farmers;

(2) NOTES the Court's findings that the Commission's system for measuring the performance of the CAP in relation to farmers' incomes could be better designed and that the statistical data used to analyse farmers' incomes could be improved in both quantitative and qualitative terms;

(3) NOTES that almost one third of the EU budget contributes directly or indirectly to supporting farmers' incomes by supporting their agricultural and rural development activities, thus contributing, *inter alia*, to ensuring a fair standard of living for farmers and the longer-term economic viability of farming in the EU, which has been a leitmotif of the CAP since its beginnings;

(4) UNDERLINES that the overall system for performance measurement should provide the best possible balance between the information needs to assess the achievement of all CAP objectives (i.a. viable food production, including ensuring a fair standard of living for farmers, sustainable management of natural resources and climate action, balanced territorial development), with the related costs and administrative burdens;

(5) ACKNOWLEDGES the overall analytical value of statistics covering household income in different sectors in order to determine to what extent farmers are disadvantaged and why income support is needed;

(6) UNDERLINES that the evaluation of the CAP's objective of supporting farmers' income must be based on the evolution of income derived from agricultural activities;

(7) REMAINS CONCERNED that the administrative burden of developing a framework for providing information on the disposable income of farm households, comprising not only income from agricultural activities (i.e. sales of agricultural products, subsidies, and farm-related income, which is income from other gainful activities carried out using farm resources) but also income from outside sources, such as wages or salaries from other activities of the farmer or family members, may outweigh the potential benefits;

(8) TAKES NOTE of the intentions and actions of the Commission:

- to further develop the EAAs (economic accounts for agriculture), which are the main statistical source for monitoring farmers' income globally at macroeconomic level, so that their potential can be better used, e.g. for providing more detailed information on the factors impacting agricultural income and to estimate the economic value of the public goods that are produced by farmers;

- taking into account the limitations resulting from the voluntary participation of farmers in the FADN (Farm Accountancy Data Network), which already covers a significant share of EU subsidies, and in order to ensure that the analysis of farmers' incomes is based on indicators taking account of the current situation of agriculture and on sufficient and consistent data for all beneficiaries of CAP measures, to make better use of administrative data sources, including information about small holdings and beneficiaries;

- to enhance, together with the Member States, the quality assurance arrangements for the EAAs and the FADN statistics, taking also into account for the former the applicable good practice of EUROSTAT's data quality assessment and reporting guidelines;

- to define, for the next programing period, appropriate operational objectives and baselines so that the performance of CAP measures can be compared, and to also use, but without creating unwarranted administrative burdens, complementary and good-quality data to measure and assess the results achieved with regard to supporting farmers' incomes;

(9) SUPPORTS the view that, in case a change of policy objectives would require a change in data collection methods, then such change should be the result of political and legislative decision-making and should be substantiated in the basic acts, e.g. in case additional data collection and analysis requirements are agreed upon, and UNDERLINES in this regard the importance of due consideration to be given to the impact of any change in data collection methods on the administrative burden;

(10) ANTICIPATES, by 31 December 2018, the foreseen initial report by the Commission on the implementation of monitoring and evaluation of the CAP, including first results on the performance of the CAP for 2014-2020, and, by 31 December 2021, the Commission's second report, including an assessment of the performance of the CAP."