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THE EUROPEAN UNION**



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Economic and Financial Affairs

Brussels, 10 December 2013

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Main results of the Council

*The Council updated its position on **bank recovery and resolution and deposit guarantee schemes** in the light of on-going negotiations with the European Parliament.*

*It adopted a decision deeming action taken by **Poland** to correct its excessive deficit to be insufficient. It issued a new recommendation, extending the deadline for correction of Poland's deficit by one year, to 2015.*

*The Council reviewed excessive deficit procedures for **Spain, France, Malta, the Netherlands and Slovenia**, adopting opinions on their economic partnership programmes.*

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- Where declarations, conclusions or resolutions have been formally adopted by the Council, this is indicated in the heading for the item concerned and the text is placed between quotation marks.
- Documents for which references are given in the text are available on the Council's Internet site (<http://www.consilium.europa.eu>).
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Mr Michel BARNIER

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Board Member of the European Central Bank

Mr Werner HOYER

President of the European Investment Bank

Mr Thomas WIESER

President of the Economic and Financial Committee

Mr Hans VIJLBRIEF

President of the Economic Policy Committee

ITEMS DEBATED

TAXATION OF SAVINGS INTEREST

The Council discussed a draft directive aimed at strengthening EU rules on the taxation of savings income ([17096/13](#)).

The amendments to directive 2003/48/EC are intended to prevent the directive's circumvention, reflecting changes to savings products and developments in investor behaviour since it came into force in 2005.

The aim is to enlarge the directive's scope to include all types of savings income, and products that generate interest or equivalent income. It would include life insurance contracts, as well as a broader coverage of investment funds. And using a "look-through" approach, tax authorities would be required to take reasonable steps to establish the identity of beneficial owners.

The European Council in May called for the amended directive to be adopted before the end of the year.

The Council's discussion confirmed broad support for the text. However, Luxembourg and Austria maintained reservations. Taking note of the comments made, the presidency will report to the European Council that the amended directive could not be adopted within the deadline set.

Directive 2003/48/EC requires the member states to exchange information automatically so as to enable interest payments made in one country to residents of other member states to be taxed in accordance with the laws of the state of tax residence. During a transitional period, Luxembourg and Austria can impose a withholding tax on interest paid to savers resident in other member states, instead of providing information on savers¹.

Based on article 115 of the Treaty on the Functioning of the European Union, the directive requires unanimity for adoption by the Council, after consulting the European Parliament.

¹ Luxembourg has announced that as from 1 January 2015, it will no longer make use of the transitional arrangements and will exchange information automatically under directive 2003/48/EC.

Under agreements with the EU signed in 2004, Switzerland, Liechtenstein, Monaco, Andorra and San Marino apply measures *equivalent* to those provided for in the directive. Guernsey, Jersey, the Isle of Man and seven Caribbean territories¹ do likewise, under bilateral agreements concluded with each of the member states.

Equivalent measures in those agreements involve either automatic exchange of information or a withholding tax on interest paid to savers resident in the EU. A proportion of the revenue accrued from the withholding tax is transferred to the country of the saver's tax residence.

In May, the Council mandated the Commission to negotiate updated agreements with Switzerland, Liechtenstein, Monaco, Andorra and San Marino to reflect the changes to the EU directive.

¹ Dependent and associated territories of the Netherlands and the United Kingdom.

BANK RECOVERY AND RESOLUTION - DEPOSIT GUARANTEE SCHEMES

The Council adjusted its position in the light of negotiations with the European Parliament on proposed legislation harmonising national rules on bank recovery and resolution and deposit guarantee schemes.

On this basis, the presidency will aim to reach agreement with the Parliament at a trilogue on 11 December.

The two dossiers are linked by a number of issues, such as funding arrangements and the use of funds, and trilogue negotiations have been held in parallel since July 2013.

Bank recovery and resolution

The proposed directive is aimed at providing national authorities with common powers and instruments to pre-empt bank crises and to resolve any financial institution in an orderly manner in the event of failure, whilst preserving essential bank operations and minimising taxpayers' exposure to losses.

The directive would establish a range of instruments to tackle potential bank crises at three stages: preparatory and preventative, early intervention, and resolution. It would require member states, as a general rule, to set up *ex-ante* resolution funds to ensure that the resolution tools can be applied effectively.

Institutions would be required to draw up recovery plans, and update them annually, setting out the measures they would take to restore their financial position in the event of significant deterioration. Resolution authorities would have to prepare resolution plans for each institution, laying out the actions they might take if an institution were to meet the conditions for resolution.

Authorities would also have the power to appoint "temporary administrators" or special managers to an institution if its financial situation were to deteriorate significantly or if there were serious violations of the law.

The main resolution measures would include:

- the sale of (part of a) business;
- establishment of a bridge institution (the temporary transfer of good bank assets to a publicly controlled entity);

- asset separation (the transfer of impaired assets to an asset management vehicle)
- bail-in measures (the imposition of losses, with an order of seniority, on shareholders and unsecured creditors).

Bail-in provisions would enable resolution authorities to write down or convert into equity the claims of the shareholders and creditors of institutions which are failing or likely to fail. Certain types of liabilities would be permanently excluded from bail-in. Under the Council's general approach, a minimum level of losses equal to 8% of total liabilities including own funds would have to be imposed on an institution's shareholders and creditors before access could be granted to the resolution fund. Eligible deposits from natural persons and micro, small and medium-sized enterprises would have preference over the claims of ordinary unsecured, non-preferred creditors and depositors from large corporations. The deposit guarantee scheme, which would always step in for covered deposits (i.e. deposits below EUR 100 000), would have a higher ranking than eligible deposits.

Under the Council's general approach, a contribution of the resolution fund would be capped at 5% of an institution's total liabilities. In extraordinary circumstances, where this limit has been reached, and after all unsecured, non-preferred liabilities other than eligible deposits have been bailed in, the resolution authority could seek funding from alternative financing sources.

The proposed directive is aimed at transposing into EU law commitments made at the G20 summit in Washington DC in November 2008, when leaders called for a review of resolution regimes and bankruptcy laws "to ensure that they permit an orderly wind-down of large complex cross-border financial institutions."

Based on article 114 of the Treaty on the Functioning of the European Union, the directive requires a qualified majority for adoption by the Council, in agreement with the European Parliament.

Deposit guarantee schemes (DGSs)

The draft directive recasts legislation currently in place in order to improve the protection of depositors' savings. The main elements are:

- Simplification and harmonisation, in particular relating to coverage and payout arrangements;
- Further reduction of the time limit for paying out depositors, and better access for DGSs to information about their members (i.e. banks);
- Financing requirements for DGSs, with the introduction of *ex ante* financing as a fixed percentage of deposits;
- Borrowing between DGSs on a voluntary basis.

Under the proposed directive, all banks would be required to join a DGS, and all DGSs would be supervised on an ongoing basis and would have to perform regular stress tests of their systems. Depositors would not have to submit an application and their eligibility would be simplified and harmonised.

The proposed directive would repeal and replace directive 94/19/EC and its successive amendments. Following the near-collapse of Northern Rock in 2007, and to prevent future bank runs, the Parliament and Council in 2009 raised guarantee levels and reduced pay-out delays in the event that deposits of a bank would become unavailable. Specifically, the minimum coverage level was increased from EUR 20 000 to EUR 100 000 and the pay-out deadline reduced to 20 working days.

Based on article 53(1) of the Treaty on the Functioning of the European Union, the directive requires a qualified majority for adoption by the Council, in agreement with the European Parliament.

FINANCIAL ASSISTANCE TO NON-EUROZONE MEMBER STATES

The Council discussed a draft regulation updating the EU's facility for providing financial assistance in the event of a non-eurozone member state being in serious difficulties with its balance of payments ([16686/13](#)).

The aim is to make the rules for granting and monitoring assistance to non-eurozone member states more consistent with those applicable to countries of the euro area.

The Council's discussion confirmed broad support for the text. However, the Germany, the Netherlands and the United Kingdom maintained reservations. The presidency indicated that the Council could return to the matter at a forthcoming meeting.

The balance of payments facility was used for the first time in 2008 to provide support to Hungary, and again subsequently for Latvia and Romania. In 2008, the ceiling for lending was raised from EUR 12 billion to EUR 25 billion, and in 2009 it was again raised, to EUR 50 billion.

Instruments have meanwhile been created to provide financial assistance to member states of the euro area: the European Financial Stability Facility (EFSF), the European Financial Stabilisation Mechanism (EFSM) and the European Stability Mechanism (ESM). In putting to use those instruments, the rules for the provision of assistance and the types of mechanism available have been refined, for instance with the creation of precautionary instruments. Furthermore, the rules for economic and budgetary coordination have been strengthened.

The balance of payments facility for non-eurozone member states has not kept pace with these developments.

The draft regulation, repealing and replacing regulation 332/2002, would redefine the instruments available under the facility and the corresponding procedures and requirements for using them. It would redefine the procedures for surveillance and post-programme surveillance in line with strengthened rules on economic and budgetary coordination¹. It would provide for the possibility of more cost-efficient financial management by allowing the Commission to borrow on capital markets at the most appropriate time. And it would enhance the dialogue with the European Parliament and with national parliaments in implementation of the assistance.

Based on article 352 of the Treaty on the Functioning of the European Union, the regulation requires unanimity for adoption by the Council, with the consent of the European Parliament.

¹ "Two-pack" governance legislation, Stability and Growth Pact, macroeconomic imbalances procedure, European Semester for economic, employment and fiscal policy coordination.

MACROECONOMIC IMBALANCES - ANNUAL GROWTH SURVEY

The Council took note of the presentation by the Commission of its "alert mechanism report", marking the starting point of the annual macroeconomic imbalances procedure, as well as its annual growth survey.

It took note also of a report from the Economic and Financial Committee (EFC) on the coordination of economic policies and reforms ([17155/13](#)). The European Council will assess the main areas for coordination at its meeting on 19 and 20 December.

The Council was briefed by the chairman of the EFC on a pilot project carried out recently on the ex-ante coordination of major economic reform plans.

It will again discuss the alert mechanism report and the annual growth survey at its meetings on 18 February and 11 March respectively. As concerns the coordination of economic policies and reforms and the pilot project, the presidency will write to the president of the European Council concerning the outcome of the Council's discussion.

Macroeconomic imbalances: Alert mechanism report

The Commission's report ([15808/13](#)) identifies, on the basis of a scoreboard of economic indicators¹, member states that may have an imbalance that could hinder the smooth functioning of the European economy and the EU's monetary union.

The report, published by the Commission on 13 November, calls for in-depth reviews of the situation in 16 member states, two more than last year. These are: Belgium, Bulgaria, Denmark, Germany, Spain, France, Croatia, Italy, Hungary, Luxembourg, Malta, the Netherlands, Slovenia, Finland, Sweden and the United Kingdom².

¹ Current account balance; net international investment position; export market shares; nominal unit labour costs; real effective exchange rates; evolution of unemployment; private sector debt; private sector credit flow; house prices; general government sector debt; growth rate of financial sector liabilities.

² The report does not examine macroeconomic imbalances in countries subject to an adjustment programme – Cyprus, Greece, Ireland, Portugal and Romania – as they are already under enhanced economic surveillance.

In the previous macroeconomic imbalances procedure:

- Spain and Slovenia were found to be experiencing excessive imbalances. The forthcoming in-depth review will therefore assess the persistence or unwinding of these imbalances, and the contribution made by the two countries' policies;
- France, Italy and Hungary were found to be experiencing imbalances and the Commission recommended decisive policy actions. The in-depth review will assess the persistence of these imbalances;
- Belgium, Bulgaria, Denmark, Malta, the Netherlands, Finland, Sweden and the UK were found to be experiencing imbalances. The review will therefore assess the extent to which those imbalances persist or have been overcome.

For Germany and Luxembourg, the in-depth reviews will examine their external position and internal developments, and conclude whether they are experiencing excessive imbalances.

For Croatia, the review will examine the nature of and potential risks related to its external position, trade performance and competitiveness, as well as internal developments.

This is the third annual report on application of regulation 1176/11 on the prevention and correction of macroeconomic imbalances. Regulation 1176/11 is one of the "six-pack" of economic governance measures adopted in November 2011 to ensure a smoother functioning of the EU's monetary union. It introduced the possibility of imposing fines if euro area member states are found to be in an "excessive imbalance position" and repeatedly fail to comply with the Council's recommendations.

Annual growth survey

The Commission's survey ([15803/13](#)) outlines priority actions to be taken by member states in order to ensure better-coordinated and more effective policies for fostering sustainable economic growth.

The challenge for Europe's economy is to sustain the recovery that is now underway. With growth beginning to return and member states making progress in correcting the imbalances that developed before the crisis, the survey maintains its focus on the following five priorities:

- Pursuing differentiated, growth-friendly fiscal consolidation;
- Restoring bank lending to the economy;
- Promoting growth and competitiveness for today and tomorrow;
- Tackling unemployment and the social consequences of the crisis;
- Modernising public administration.

The annual growth survey constitutes the starting point for the *European Semester*, which involves simultaneous monitoring of the member states' economic, employment and fiscal policies during a six-month period every year.

The *European Semester* was organised for the first time in 2011, introduced as part of a reform of economic governance with the aim of ensuring a smoother functioning of the EU's monetary union.

In March, the European Council will assess implementation of country-specific recommendations made under the 2013 *European Semester* and will provide guidance for 2014.

ECONOMIC PARTNERSHIP PROGRAMMES

The Council adopted opinions on economic partnership programmes presented by Spain, France, Malta, the Netherlands and Slovenia, describing policy measures and structural reforms that are planned to ensure an effective and lasting correction of their excessive deficits.

Malta submitted an economic partnership programme after the Council opened an excessive deficit procedure in June¹. Spain, France, the Netherlands and Slovenia submitted programmes after the Council extended the deadlines for correcting their deficits, also in June².

The presentation of economic partnership programmes stems from a new requirement for euro area countries introduced in May 2013 under the "two-pack" economic governance legislation.

It stems from the recognition that excessive government deficits may be partially rooted in structural weaknesses, and that budgetary measures alone might be insufficient to ensure a lasting correction of an excessive deficit.

Under the new rules, a euro area member state must present an economic partnership programme upon entering an excessive deficit procedure or undertaking a new step in an existing procedure.

¹ See press release [11193/13](#).

² Press release [11232/13](#).

EXCESSIVE DEFICIT PROCEDURE - POLAND

The Council adopted a decision¹ establishing that Poland has failed to comply with its June 2013 recommendation on measures to bring its government deficit back below the EU's reference value of 3% of GDP.

It issued a new recommendation² to Poland on action to be taken to correct its deficit, extending the deadline for correction by one year, to 2015 ([16852/13](#)).

For details, see press release [17549/13](#).

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Separately, the Commission announced that it would present a draft decision and recommendation³ for the opening of an excessive deficit procedure for Croatia.

¹ Under article 126(8) of the Treaty on the Functioning of the European Union (TFEU).

² Under TFEU article 126(7).

³ Under TFEU articles 126(6) and (7).

EU BUDGET – COURT OF AUDITORS ANNUAL REPORT

The Council took note of the presentation by the president of the Court of Auditors, Mr Vitor Caldeira, of the Court's annual report on management of the EU's general budget¹.

The report, which covers the budget for 2012, gives an unqualified statement of assurance as regards the reliability of the accounts, but qualifies its assessment – as in previous years – for a large part of the underlying transactions in a number of policy areas, including agriculture, cohesion policy and research.

Roughly 80% of EU expenditure is implemented by the member states, under joint management with the Commission.

The Council regretted that the statement of assurance remains qualified for such important policy areas. It called on all parties involved in the management of the EU budget to persist in their efforts to improve controls and address the weaknesses observed.

It asked the Permanent Representatives Committee to examine the report and to oversee the preparation of a recommendation to the European Parliament on the discharge to be given to the Commission for implementation of the 2012 budget.

The Council is expected to adopt the recommendation at its meeting on 18 February.

¹ http://www.eca.europa.eu/Lists/ECADocuments/PRAR12/a13_36.EN.pdf

MEETINGS IN THE MARGINS OF THE COUNCIL

The following meetings were held in the margins of the Council:

– **Eurogroup**

Ministers of the euro area member states attended a meeting of the Eurogroup on 9 December.

– **Breakfast meeting**

Ministers held a breakfast meeting to discuss the economic situation. They were debriefed on the Eurogroup meetings of 22 November and 9 December, including as concerns the assessment of euro area member states' draft budgetary plans for 2014.

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In the margins of the Council, ministers discussed a draft regulation aimed at establishing a single decision-making authority and a single fund for the resolution of failing banks.

OTHER ITEMS APPROVED

ECONOMIC AND FINANCIAL AFFAIRS

Taxation - Reports to the European Council

The Council endorsed two sixth-monthly reports to the European Council:

- a report on tax issues; and
- a report on tax issues by finance ministers of countries participating in the *Euro Plus Pact*¹.

Code of Conduct (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 Group during the Lithuanian Presidency as set out in its report;
- asks the Group to continue monitoring standstill and the implementation of the rollback as well as its work under the Work Package 2011;
- invites the Commission to continue and conclude the dialogue with Switzerland by 30 June 2014, as set out in the report;
- invites the Group to continue its consideration of the draft guidance on Hybrid Entity and Hybrid Permanent Establishment Mismatches;
- invites the Group to analyse the third criterion of the Code of Conduct as contained in the existing mandate by the end of June 2014;

¹ Concluded in March 2011 by 23 of the 27 member states, the *Euro Plus Pact* is aimed at strengthening economic policy coordination with a view to improving competitiveness and enabling a greater degree of convergence.

- invites the Group to assess or consider all patent boxes in the EU, including those already assessed or considered before, by the end of 2014, ensuring consistency with the principle of equal treatment, also against the background of international developments, including those in relation to the OECD BEPS initiative;
- invites the Group to report back on its work to the Council by the end of the Greek Presidency."

BUDGETS

EU structural measures

The Council adopted conclusions on a special report of the European Court of Auditors entitled "Have EU Structural Measures Successfully Supported the Regeneration of Industrial and Military Brownfield Sites?". The conclusions are set out in [16734/13](#).

Rules for the implementation of the EU budget

The Council decided not to object a Commission regulation containing essential rules for the implementation of the EU budget by the Union bodies ([14341/13](#) + [COR 1](#)).

The regulation is a delegated act pursuant to article 290 of the Treaty on the Functioning of the European Union. Now that the Council has given its consent, the regulation can enter into force unless the European Parliament objects.

GENERAL AFFAIRS

Amendment of the Council's rules of procedure - update of EU population figure

The Council adopted a decision amending annex III to its rules of procedure in order to update the population figures of each member state for the period from 1 January 2014 to 31 October 2014 ([16003/13](#)).

In line with data supplied by Eurostat the EU counts currently a total population of around 505.6 million, meaning that the 62% threshold amounts to around 313.5 million. When an act is to be adopted by the Council by a qualified majority, and if a member state so requests, it must be verified that the qualified majority represents at least 62% of the population of the EU, in accordance with protocol 36 annexed to the EU treaties.

In line with the EU treaties, the rules will change as of 1 November 2014. Thereafter, a qualified majority will be reached if a draft decision is supported by at least 55% of the member states (i.e. 16 member states) representing at least 65% of the EU population.

JUSTICE AND HOME AFFAIRS

Europol work programme

The Council endorsed Europol's work programme for 2014 ([15202/13](#)), in the framework of the implementation of Europol's Strategy 2010-2014, and will forward it to the European Parliament for information.

The report is prepared each year by Europol's management board, as required by Council decision establishing the European Police Office ¹, taking into account member states' operational requirements and budgetary and staffing implications for Europol.

Illicit trade in tobacco products

The Council adopted conclusions on stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products in the EU ([16644/13](#)), as a follow-up to the Commission communication "Stepping up the fight against cigarette smuggling - A comprehensive EU Strategy", accompanied by the anti-smuggling action plan ([11014/13](#) + [ADD 1](#) + [COR1](#)).

Illicit trade in cigarettes causes annual financial losses of over EUR 10 billion in the budgets of the EU and its member states.

¹ [OJ L 121, 15.5.2009](#).