



5936/16

(OR. en)

PRESSE 4  
PR CO 4

## OUTCOME OF THE COUNCIL MEETING

3445th Council meeting

### Economic and Financial Affairs

Brussels, 12 February 2016

President **Jeroen Dijsselbloem**  
Minister for Finance of Netherlands

# P R E S S

---

Rue de la Loi 175 B – 1048 BRUSSELS Tel.: +32 (0)2 281 6319 / 6319 Fax: +32 (0)2 281 8026  
[press.office@consilium.europa.eu](mailto:press.office@consilium.europa.eu) <http://www.consilium.europa.eu/press>

5936/16

1  
**EN**

**CONTENTS**<sup>1</sup>**ITEMS DEBATED**

MEASURES TO PREVENT CORPORATE TAX AVOIDANCE .....	5
IMPLEMENTATION OF BANKING UNION .....	6
MEASURES TO PREVENT TERRORIST FINANCING .....	8
PREPARATION OF G20 MEETING IN SHANGHAI .....	9
EU BUDGET .....	10
Discharge for 2014 .....	10
Guidelines for 2017 .....	10
Own resources .....	11
OTHER BUSINESS .....	12
– Progress on financial services .....	12
EVENTS IN THE MARGINS OF THE COUNCIL .....	13

**OTHER ITEMS APPROVED***ECONOMIC AND FINANCIAL AFFAIRS*

– EU-Andorra taxation agreement .....	14
– Stability and Growth Pact - Flexibility .....	14
– Central bank of Slovakia .....	15
– Insurance/Bermuda and Japan - Securities/depositaries - Banking/single resolution fund .....	15

*ENLARGEMENT*

– Kosovo .....	16
----------------	----

<sup>1</sup>

- 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>).
- Acts adopted with statements for the Council minutes which may be released to the public are indicated by an asterisk; these statements are available on the Council's Internet site or may be obtained from the Press Office.

*JUSTICE AND HOME AFFAIRS*

– Schengen evaluation of Greece .....	16
– Presumption of innocence .....	17
– Data protection reform .....	17
– Eurojust - OHIM .....	17
– EU-China agreement on short-stay visa waiver for diplomatic passports .....	18
– Automated data exchange with Latvia .....	18
– Short-stay visa waiver agreements .....	18

*FOREIGN AFFAIRS*

– EU-Kyrgyz Republic Cooperation Council .....	18
– EU-Tajikistan Cooperation Council .....	19
– Economic partnership agreement with the Central Africa Party .....	19
– European Development Funds - Discharge .....	19

*TRADE POLICY*

– EU-China trade relations - GATT - Croatia .....	19
---	----

*EUROPEAN ECONOMIC AREA*

– Electronic communication and audiovisual services .....	20
– Statistics .....	20

*TRANSPORT*

– Airspace usage and airborne collision avoidance .....	20
– Road transport - classification of serious infringements.....	21

*INTERNAL MARKET*

– Personal protective equipment - Gas appliances - Cableways: new safety rules.....	21
---	----

*RESEARCH*

– Nuclear energy systems - International collaboration .....	21
--	----

*REGIONAL DEVELOPMENT*

– Public procurement - EU cohesion policy .....	22
---	----

*ENERGY*

– Grid connection of generators .....	26
---------------------------------------	----

*ENVIRONMENT*

– Organic pollutants .....	27
– Ecolabel - Paints and Varnishes .....	27
– Eco-management for the tourism sector .....	27
– Air quality: real driving emission tests* .....	28

*FOOD LAW*

– Food additives - conditions of use .....	28
--	----

*WRITTEN PROCEDURE*

– Safety features for medicines .....	29
---------------------------------------	----

## **ITEMS DEBATED**

### **MEASURES TO PREVENT CORPORATE TAX AVOIDANCE**

The Commission presented a package of proposals aimed at strengthening EU rules to prevent corporate tax avoidance.

The Council held a first exchange of views.

The package is intended as a coordinated EU response to aggressive tax practices deployed by large companies. It sets out to ensure that companies are effectively taxed where they make their profits, improve the exchange of information between member states, and ensure fairer competition for all businesses.

It also sets out to implement standards approved by the OECD in autumn 2015, particularly to address tax base erosion and profit shifting (BEPS).

The presidency has set an ambitious timetable for work on the package. It foresees political agreement before June 2016 on:

- a proposal to boost the exchange of tax-related information, on a country-by-country basis, on the activities of multinational companies;
- proposed rules to tackle some of the most prevalent tax avoidance practices.

Work will be carried out in phases, the aim being to reach an agreement on the first directive in March and to move as rapidly as possible on the other elements. Work will be taken forward rapidly at technical level in order to enable this.

Presentation by the Commission of its proposals follow a number of initiatives taken in 2015, including adoption by the Council of a directive on the exchange of information on cross-border tax rulings.

Adoption of the two directives 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.)

[Anti tax avoidance proposals by the European Commission](#)

[Press release on December 2015 adoption of the directive on cross-border tax rulings](#)

## **IMPLEMENTATION OF BANKING UNION**

The Commission provided a brief update on implementation of the EU's banking union.

The Council has regularly reviewed the situation since mid-2015, as member states ran up delays in implementing common rules, and it will continue to do so during 2016.

Implementation has improved, enabling the EU's single resolution mechanism (SRM) for banks to become operational on 1 January 2016. The single resolution fund (SRF), into which national resolution funds of the participating countries will gradually merge part of their funds, entered into force at the same time.

However not all member states have yet fully transposed two key banking union directives, and loan facility agreements with the single resolution board are now being signed.

As of 11 February 2016:

- 20 member states, including all of the current 19 members of the banking union, had deposited their instruments of ratification of an intergovernmental agreement IGA on the SRF;
- three of the 19 member states of the banking union had signed a loan facility agreement on bridge financing for the SRF. The SRB was in the process of collecting the signatures of another two member states;

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 two directives apply to all 28 member states.

The IGA contains provisions on the transfer of contributions to the SRF and the mutualisation of those contributions over an eight-year period. A sufficient number of member states had ratified the IGA by the agreed deadline of 30 November 2015, enabling it to enter into force on 1 January 2016, as scheduled.

The bank recovery and resolution directive identifies the powers and instruments at the disposal of national authorities to resolve failing banks. It sets out to preserve essential bank operations and minimise taxpayers' exposure to losses in the event of a bank being resolved.

The directive on deposit guarantee schemes (DGSs) establishes harmonised EU rules. It requires all banks to join a DGS in order that deposits of up to €100 000 are protected. It introduces requirements for the supervision of DGSs and regular stress tests, and includes provisions to better accommodate retail depositors' needs.

[Press release on the adoption of the regulation establishing the SRM](#)

[Press release on the signature of the intergovernmental agreement on the SRF](#)

[Press release on SRF contributions and the appointment of members of the SRB](#)

[Press release on the adoption of the bank recovery and resolution directive](#)

[Press release on the Council's approval of the directive on deposit guarantee schemes](#)

## **MEASURES TO PREVENT TERRORIST FINANCING**

The Commission presented an action plan aimed at strengthening efforts to prevent the financing of terrorism.

The Council discussed the plan and adopted conclusions setting out its priorities.

The action plan is intended as a strong and swift response to current challenges, following recent terrorist attacks. It builds on existing EU rules and practices, adapting them to new threats and in line with international standards.

The plan complements the Commission's "European agenda on security", published in April 2015, and other recent measures. These include a December 2015 proposal for a directive on terrorism, which provides for criminal sanctions for terrorist financing.

In its conclusions, the Council calls for rapid progress in particular in, but not limited to:

- the field of virtual currencies;
- strengthening access to information by financial intelligence units (FIUs), such as access to bank and payment account information;
- appropriate measures on prepaid payment instruments;
- measures against illicit cash movements.

The conclusions specify in detail a number of other legislative and non-legislative initiatives to be taken, and establish deadlines for action. They commit the Council and the member states to a number of urgent steps, and to carry out reviews at future meetings.

The Council will return to the issue at its meeting on 17 June 2016.

[Council conclusions of February 2016 on the prevention of terrorist financing](#)

[Documents related to the action plan for strengthening the fight against terrorist financing](#)



## **PREPARATION OF G20 MEETING IN SHANGHAI**

The Council endorsed EU terms of reference for a meeting of G20 finance ministers and central bank governors in Shanghai on 26-27 February 2016.

The terms of reference are intended as a common position for EU representatives and those member states that participate in the G20. The presidency participates on behalf of the EU, together with the Commission and the European Central Bank.

The Shanghai meeting, the first to be held under Chinese presidency at the level of finance ministers, is expected to cover:

- the global economy;
- the G20 framework for growth;
- investment and infrastructure;
- international financial architecture;
- financial regulation;
- taxation issues;
- terrorist financing;
- green finance and climate finance.

A G20 summit will take place in Hangzhou on 1-5 September 2016.

## **EU BUDGET**

### **Discharge for 2014**

The Council adopted a recommendation to the European Parliament on the discharge to be given to the Commission for implementation of the EU's general budget for 2014.

The recommendation has been prepared in the light of the annual report from the Court of Auditors.

The Council also adopted recommendations on the discharge to be given to the directors of 32 EU agencies, six EU executive agencies and eight joint undertakings for implementation of their 2014 budgets.

The recommendations also refer to Council comments on a series of Court of Auditors special reports.

[Draft Council recommendation on the 2014 budget discharge](#)

[Court of auditors annual report on management of the EU's general budget in 2014](#)

[Draft Council 2014 discharge recommendation to the agencies](#)

[Draft Council 2014 discharge recommendation to the executive agencies](#)

[Draft Council 2014 discharge recommendation to the joint undertakings](#)

### **Guidelines for 2017**

The Council adopted conclusions setting its priorities for the EU's general budget for 2017.

The conclusions will be used by the presidency as a reference for budgetary negotiations with the European Parliament. They will also be forwarded to the Parliament and the Commission and the other EU institutions.

The conclusions call for a realistic 2017 EU budget in which the level of both commitments and payments are kept under strict control. Sufficient margins should be left under the ceilings of the EU's multiannual financial framework (MFF) for 2014-2020 to allow it to react to unforeseen events.

The conclusions:

- state that the successive crises that the EU faced in 2015 have put its budget under strong pressure;
- forecast that similar constraints and uncertainties can be expected for the budgetary year 2016;
- predict that the budgetary procedure for 2017 will take place in a context of budget constraints for several member states;
- assert that the EU budget should notably seek to boost growth, promote employment and create jobs.

The Council therefore called for the right balance to be struck between fiscal consolidation and investments to boost growth. This could be achieved in particular through the prioritisation of objectives. Care should be taken to provide the necessary resources to respect commitments already made.

The conclusions note that the backlog of unpaid bills are decreasing faster than expected. The level of unpaid payment applications amounted to €24.7 billion at the end of 2014. According to the Commission, the backlog of unpaid bills amounted to €8.2 billion at the end of 2015, compared to an expected amount of around €20.0 billion.

The Council called for the EU's administrative expenditure to be further rationalised. It urged all institutions, bodies and agencies to reduce or freeze their administrative expenditure as much as possible.

#### [Draft Council conclusions on priorities for the 2017 budget](#)

### **Own resources**

The chairman of a high-level group reviewing the EU's budgetary own resources, Mario Monti, updated the Council on the group's work. He expressed the view that for drafting viable proposals on own resources consideration needed to be given also to the expenditure side. Several ministers shared his view.

The group was set up as part of a political agreement on the multiannual framework for the EU's financial resources for the 2014-20 period. It is undertaking a general review of the EU's system of own resources, guided by the overall objectives of simplicity, transparency, equity and democratic accountability. The group meets at least once every 6 months.

National parliaments will be invited to an interinstitutional conference provisionally scheduled for mid June 2016 to assess the outcome of the group's work. The Commission will then assess whether new own resources initiatives are warranted for the period after 2020.

**OTHER BUSINESS**

– *Progress on financial services*

The Council took note of ongoing work on legislative proposals on financial services.

[February 2016 secretariat note on progress on financial services legislative dossiers](#)

## **EVENTS IN THE MARGINS OF THE COUNCIL**

### **- Macroeconomic dialogue with the social partners**

A dialogue on macroeconomic issues was held on 11 February 2016 between:

- the social partners: employers and trade unions at EU level and representatives of public enterprises and SMEs;
- the Council presidency troika (current and two future presidencies), the Commission and the European Central Bank.

The dialogue focused on the general economic outlook and the coordination of national economic and fiscal policies under the 2016 European Semester.

### **- Eurogroup**

The Eurogroup met on 11 February 2016. It discussed the economic situation in the euro area, in the light of the Commission's winter economic forecast. It reviewed implementation of Greece's economic adjustment programme and post-programme surveillance in Portugal, and issued a statement on Portugal's draft budgetary plan for 2016. It held a thematic discussion on the quality of public finances. It also discussed the international role of the euro, and transparency in Eurogroup proceedings.

#### [Eurogroup main results](#)

#### [Eurogroup statement on Portugal's draft budgetary plan for 2016](#)

### **- Ministerial breakfast**

Ministers held a breakfast meeting to discuss the economic situation, in the light of the Commission's winter economic forecast.

### **- Taxation agreement with Andorra**

The EU and Andorra signed a taxation agreement aimed at improving tax compliance by private savers.

The agreement will contribute to efforts to clamp down on tax evasion, requiring the EU member states and Andorra to automatically exchange tax information. This will enable tax administrations improved cross-border access to information on financial accounts held by each other's residents.

#### [Press release on the signing of the 2016 EU-Andorra taxation agreement](#)

## **OTHER ITEMS APPROVED**

### **ECONOMIC AND FINANCIAL AFFAIRS**

#### **EU-Andorra taxation agreement**

The Council adopted a decision approving the signing of an agreement with Andorra aimed at improving tax compliance by private savers.

The agreement will require EU member states and Andorra to automatically exchange information on financial accounts held by each other's residents.

It upgrades a 2004 agreement that ensured that Andorra applied measures equivalent to an EU directive on the taxation of savings income. That directive (2003/48/EC) has since been repealed to eliminate an overlap with directive 2014/107/EU, which includes strengthened provisions to prevent tax evasion.

The agreement was signed in the margins of the Council (see page 13).

#### **Stability and Growth Pact - Flexibility**

The Council endorsed a commonly agreed position on flexibility under the Stability and Growth Pact, the EU's fiscal rulebook.

The position was agreed by the Economic and Financial Committee (EFC) in November 2015, in the light of a communication issued by the Commission in January 2015.

Under the commonly agreed position, flexibility may be envisaged under specified conditions without changing the rules of the pact. The document clarifies how flexibility may relate to:

- cyclical economic conditions;
- structural reforms;
- government investments aimed at, ancillary to, and economically equivalent to major structural reforms.

The concession of flexibility is without prejudice to the requirement for member states to reduce their government debt at a satisfactory pace, and thereby contributes to the long-term sustainability of their public finances.

The Stability and Growth Pact is aimed at ensuring that fiscal discipline is maintained in the member states. It sets reference values of 3% of GDP for annual budget deficits and 60% of GDP for public debt.

The commonly agreed position is intended as the basis for an update of the code of conduct on implementation of the Stability and Growth Pact.

### [EFC commonly agreed position on flexibility in the Stability and Growth Pact](#)

#### **Central bank of Slovakia**

The Council adopted a decision approving Ernst & Young Slovakia, spol. s.r.o. as external auditors of Národná banka Slovenska, the national central bank of Slovakia, for the 2015 and 2016 financial years ([5660/16](#) + [5416/16](#)).

#### **Insurance/Bermuda and Japan - Securities/depositaries - Banking/single resolution fund**

The Council decided not to object to the following Commission regulations and decisions:

- decision on the equivalence of Bermuda's supervisory regime for insurance and reinsurance undertakings to the EU regime laid down in directive 2009/138/EC ([5610/16](#) + [14764/15](#));
- decision on the equivalence of Japan's solvency regime for insurance and reinsurance undertakings to the EU regime laid down in directive 2009/138/EC ([5617/16](#) + [14766/15](#));
- regulation supplementing directive 2009/65/EC on undertakings for collective investment in transferable securities (UCITS), as concerns depositaries' obligations ([5628/16](#) + [15490/15](#));
- regulation on the investment strategy and rules for the EU's single resolution fund for banks ([5645/16](#) + [15414/15](#)).

The regulations and decisions are delegated acts pursuant to article 290 of the Treaty on the Functioning of the European Union. They can now enter into force, unless the European Parliament objects.

## **ENLARGEMENT**

### **Kosovo**

The Council adopted a decision on the conclusion of a stabilisation and association agreement with Kosovo.

The agreement was signed in Strasbourg on 27 October 2015. The European Parliament gave its consent on 21 January 2016.

The agreement is aimed at:

- supporting Kosovo's efforts to strengthen democracy and the rule of law;
- contributing to political, economic and institutional stability in Kosovo, as well as the stabilisation of the region;
- providing a framework for political dialogue, allowing the development of close political relations between the parties;
- supporting Kosovo's efforts to develop economic and international cooperation, should objective circumstances so permit, including through the approximation of its legislation to that of the EU;
- supporting Kosovo's efforts to complete its transition to a functioning market economy;
- promoting harmonious economic relations and gradually developing an EU-Kosovo free trade area;
- promoting regional cooperation.

Cyprus, Romania and Spain abstained from the Council decision.

## **JUSTICE AND HOME AFFAIRS**

### **Schengen evaluation of Greece**

The Council adopted a recommendation addressing serious deficiencies identified during an evaluation of Greece's application of the Schengen acquis with regard to the management of external borders.



The recommendation covers areas such as registration procedures, sea border surveillance, border check procedures, risk analyses, human resources and training, infrastructure and equipment and international cooperation.

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

### **Presumption of innocence**

The Council adopted a directive strengthening certain aspects of the presumption of innocence and the right to be present at trial in criminal proceedings.

The directive is aimed at enhancing a person's right to a fair trial by laying down minimum rules in these areas. It will complement the legal framework provided by the European Convention of Human Rights and the Charter of Fundamental Rights. It sets out to strengthen mutual trust and confidence between the judicial authorities of the member states, and to facilitate the mutual recognition of decisions in criminal matters.

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

### **Data protection reform**

The Council reached agreement on a regulation ([5455/16](#)) and a directive on data protection ([5463/16](#)).

This follows approval by the Permanent Representatives Committee, on 18 December 2015, of compromise texts agreed with the European Parliament (see [press release](#))

Once finalised in all languages, the texts will be adopted by the Council and the Parliament. The regulation and the directive are expected to enter into force in spring 2016 and will be applicable as of spring 2018.

More information: [Data protection reform](#)

### **Eurojust - OHIM**

The Council adopted an implementing decision ([11595/15](#)) approving the conclusion by Eurojust of the Memorandum of Understanding between Eurojust and the Office for Harmonisation in the Internal Market (OHIM) ([5641/16](#)).

### **EU-China agreement on short-stay visa waiver for diplomatic passports**

The Council adopted a decision on the signing, on behalf of the EU, and provisional application of an agreement with the People's Republic of China on the short-stay visa waiver for holders of diplomatic passports. ([15466/15](#) and [15469/15](#)).

It also decided to forward a draft decision on the conclusion of the agreement to the European Parliament for its consent, following the signature. ([15470/15](#)).

### **Automated data exchange with Latvia**

The Council adopted an implementing decision on the launch of automated data exchange concerning Vehicle Registration Data (VRD) in Latvia ([13060/15](#)).

The evaluation procedure concluded that the general provisions on data protection are fully implemented by Latvia and this country is therefore entitled to receive and supply personal data for the purpose of prevention and investigation of criminal offences, as from the date of the entry into force of this decision.

### **Short-stay visa waiver agreements**

The Council adopted decisions on the conclusion of the agreements between the European Union and the United Arab Emirates, Saint Lucia, the Commonwealth of Dominica, Grenada, Saint Vincent and the Grenadines, the Republic of Vanuatu, the Democratic Republic of Timor-Leste, the Independent State of Samoa and the Republic of Trinidad and Tobago on the short-stay visa waiver ([5631/16](#)).

## **FOREIGN AFFAIRS**

### **EU-Kyrgyz Republic Cooperation Council**

The Council approved the EU's position regarding the agenda set for the 14th meeting of the EU-Kyrgyz Republic Cooperation Council.

The Cooperation Council will discuss key aspects of the EU-Kyrgyz Republic partnership and cooperation agreement and the means to enhance the agreement. It will also address political issues concerning internal reforms, human rights and democracy, economic issues, as well as regional cooperation and international issues.

## **EU-Tajikistan Cooperation Council**

The Council approved the EU's position concerning the agenda set for the 5th meeting of the EU-Tajikistan Cooperation Council.

The Cooperation Council will discuss political developments in Tajikistan, notably in the area of the rule of law, fundamental freedoms and the implementation of a democratic reform agenda. It will address economic developments and regional cooperation, and exchange views on security issues such as increasing domestic radicalisation.

## **Economic partnership agreement with the Central Africa Party**

The Council adopted a decision establishing the EU's position on the adoption of rules of procedure of the committee set up under its interim economic partnership agreement with the Central Africa Party.

The rules of procedure should be based on the draft decision of the committee annexed to the decision.

## **European Development Funds - Discharge**

The Council adopted the recommendations regarding the discharge to be given by the European Parliament to the Commission concerning the implementation of operations under the 8th, 9th, 10th and 11th European Development Funds (EDF) for the financial year 2014.

The Council recommends that the European Parliament give the Commission a discharge in respect of the implementation of the operations of the eighth, ninth, tenth and eleventh EDF for the financial year 2014.

## **TRADE POLICY**

### **EU-China trade relations - GATT - Croatia**

The Council adopted a decision allowing an agreement to be signed with China on the modification of Croatia's concessions under the General Agreement on Tariffs and Trade in the course of its accession to the EU.

It also agreed to forward to the European Parliament, for its consent, a draft decision on the conclusion of this agreement, which takes the form of an exchange of letters ([15559/15](#), [15560/15](#), [15562/15](#) + [15561/15](#)).

## **EUROPEAN ECONOMIC AREA**

### **Electronic communication and audiovisual services**

The Council adopted a decision on the position to be adopted, on behalf of the EU, in the EEA joint committee concerning an amendment to annex XI (electronic communication, audiovisual services and information society) to the EEA agreement ([15443/15](#)).

This amendment is necessary in order to incorporate Commission implementing decision 2014/702/EU (use of the radio spectrum for equipment using ultra-wideband technology in a harmonised manner in the Community) into the EEA agreement.

### **Statistics**

The Council adopted a decision on the position to be adopted, on behalf of the EU, in the EEA joint committee concerning an amendment to annex XXI (Statistics) to the EEA agreement ([15439/15](#)).

This amendment is necessary in order to incorporate Commission regulation 2015/359 on statistics on healthcare expenditure and financing into the EEA agreement ([15439/15](#)).

## **TRANSPORT**

### **Airspace usage and airborne collision avoidance**

The Council decided not to oppose the adoption by the Commission of a regulation amending regulation 1332/2011 laying down common airspace usage requirements and operating procedures for airborne collision avoidance.

The Commission regulation is subject to the regulatory procedure with scrutiny. This means that now that the Council has given its consent, the Commission may adopt the regulation, unless the European Parliament objects.

[Draft Commission regulation amending regulation 1332/2011](#)

[Annex to the draft Commission regulation amending regulation 1332/2011](#)

## **Road transport - classification of serious infringements**

The Council decided not to oppose adoption by the Commission of a regulation which updates the classification of serious infringements of EU rules in commercial road transport. Member states must take these provisions into account when they carry out the national procedure on assessing the good repute of a road transport operator. The draft regulation supplements regulation 1071/2009 and amends Annex III to directive 2006/22.

The Commission regulation is subject to the regulatory procedure with scrutiny. This means that now that the Council has given its consent, the Commission may adopt the regulation, unless the European Parliament objects.

[Draft Commission regulation supplementing regulation 1071/2009 and amending Annex III to directive 2006/22](#)

[Annexes to draft Commission regulation supplementing regulation 1071/2009 and amending Annex III to directive 2006/22](#)

[Statement](#)

## **INTERNAL MARKET**

### **Personal protective equipment - Gas appliances - Cableways: new safety rules**

The Council updated internal market rules for [personal protective equipment](#), [gas appliances](#) and [cableway installations](#) to further enhance consumer safety and ensure a level playing field for companies.

The new rules are also intended to improve market surveillance by public authorities without imposing unnecessary burdens and costs on industry.

For more information see [press release](#).

## **RESEARCH**

### **Nuclear energy systems - International collaboration**

The Council approved the renewal of the participation of the Euratom, the European Atomic Energy Community, in the framework agreement for international collaboration on research and development of "generation IV" nuclear energy systems ([5297/16](#)).

The objective of the [framework agreement](#) is to support international collaboration for the development of "generation IV" systems for the supply of nuclear energy, while addressing nuclear safety, waste, proliferation and public perception concerns.

In February 2015, the framework agreement was extended for a further period of ten years.

## **REGIONAL DEVELOPMENT**

### **Public procurement - EU cohesion policy**

The Council adopted the following conclusions on the European Court of Auditors' special report on "Efforts to address problems with public procurement in EU cohesion policy expenditure should be intensified" ([5058/16](#)):

"THE COUNCIL OF THE EUROPEAN UNION:

- (1) WELCOMES the special report from the European Court of Auditors (hereinafter referred to as "the Court") and TAKES NOTE of its observations;
- (2) ACKNOWLEDGES that EU public procurement rules are essential to the good functioning of the Single Market, contributing to the efficiency of public spending and achieving value for money;
- (3) HIGHLIGHTS that public procurement rules have a significant impact on the delivery of cohesion policy, especially with regard to infrastructure and equipment investments;
- (4) NOTES that the audit focused on the period from 2009 to 2013 and took account of actions taken to address the problem of non-compliance with public procurement rules by the Commission and Member States until 2014, whereas the new EU legal frameworks for European Structural and Investment Funds (ESIF) and Public Procurement are expected to considerably improve the situation for the programming period 2014-2020;
- (5) NOTES furthermore that the audit results are based notably on a survey of 115 national audit authorities in 27 Member States (not including Croatia) responsible for structural and cohesion funds' operational programmes, 69 of which replied, visits to four Member States (the Czech Republic, Spain, Italy and the United Kingdom), a visit to Cyprus focusing on the use of e-procurement, and a short survey sent to the 28 Supreme Audit Authorities, 18 of which replied;

*Court's findings*

- (6) TAKES NOTE of the finding that errors relating to public procurement were detected in around 40% of the 700 projects audited by the Court in the area of cohesion policy and that serious errors accounted for an average of 29% of these errors;
- (7) AGREES with the finding that the level of complexity of EU public procurement rules, high volume of legislation and/or guidelines and differences in their interpretation can account for a large part of the errors observed by the Court;
- (8) HIGHLIGHTS that only a marginal share of errors affecting public procurement rules were reported to be linked to fraud, which should be taken into consideration by the competent audit authorities; though SUPPORTS a zero tolerance towards fraud and CONSIDERS that any level of fraud should be robustly dealt with by the relevant authorities;
- (9) CONCURS that the share of serious errors is particularly high in the case of:
  - a. the European Regional Development Fund (ERDF), where the nature of projects frequently requires public procurement,
  - b. the pre-tendering phase;
- (10) QUESTIONS the terminology used by the Court for assessing the level of seriousness of public procurement errors;
- (11) NOTES the finding that most errors in the pre-tendering phase concerned incorrect direct award procedures or the artificial split of contracts into smaller tenders to avoid exceeding thresholds, whilst most errors in the tendering phase concerned the specification and application of selection and award criteria, and in the contract management phase modifications or extensions of scope of contracts without using public procurement;
- (12) REGRETS the finding that the lack of sufficiently detailed, robust and coherent data on the nature and extent of public procurement errors has precluded a comprehensive analysis by Member States' authorities, as well as the Court, of the underlying causes for these public procurement errors;
- (13) WELCOMES the finding that Member States have started to address the problem through a variety of measures and that some Member States have in particular started to collect data in a more systematic way;
- (14) HIGHLIGHTS the finding that most preventive actions by audited Member States started to be implemented towards the end of the 2007-2013 programming period and could therefore not fully be taken into account in the Court's observations;

- (15) UNDERLINES that the EU public procurement directives stipulate minimum value thresholds below which contracts are subject to national rules, which however must comply with the Treaty principles;
- (16) NOTES the finding that only 40% of the 69 audit authorities which responded to the survey expressed the view that the new public procurement directives could help to reduce the errors;
- (17) WELCOMES the Court's assessment that the revised EU public procurement directives, which have to be transposed by Member States by 18 April 2016, will provide more legal certainty, make public procurement more accessible for practitioners and provide for a better monitoring of irregularities, but that some new provisions such as the introduction of a new regime for certain services such as health, education and social services may on the other hand bring new elements of complexity;
- (18) IS CONCERNED by the finding that the extent to which EU public procurement rules are used differs significantly across Member States, with an average total value of tenders falling within the scope of EU directives found at 3.1% of the EU's GDP in 2012, whilst in some Member States this value is considerably lower, and CONSIDERS that this aspect merits further analysis;
- (19) NOTES furthermore the finding that about 38% of the irregularities reported by Member States to OLAF relate to public procurement, whilst some Member States do not report to OLAF any public procurement irregularities, which should also be further analysed;

*Court's recommendations*

- (20) Following the Court's recommendations, CALLS on the Commission to:
- a. develop a database on irregularities capable of providing data for a meaningful analysis of public procurement errors and analyse in a comprehensive way the frequency, seriousness and causes of public procurement errors in the area of cohesion policy,
  - b. use its powers to suspend payments to Member States concerned by public-procurement-related ex-ante conditionalities unfulfilled by the end of 2016, until they have rectified the shortcomings,
  - c. update and publish its internal action plan on public procurement,
  - d. improve coordination across its departments dealing with related public procurement issues,



- e. set up an internal group at political level to provide leadership in tackling the problem of public procurement errors,
  - f. impose financial corrections wherever it finds that Member States' first-level checks are insufficiently effective and, where necessary, pursue infringement procedures,
  - g. exploit further the opportunities provided by e-procurement and data mining tools and good practices;
- (21) REITERATES that preventive measures by the Commission and Member States (capacity building, early warning mechanism, sharing of information on interpretations and repetitive errors, etc.) are a very important part of simplification;
- (22) EMPHASIZES that the Commission, auditors at European and national level, as well as managing authorities and other coordinating bodies, are well positioned to contribute to the simplification effort and better implementation of cohesion policy by detecting redundant processes and procedures, whether or not resulting from the regulation, and suggesting more effective solutions based on good practices;
- (23) Following the Court's recommendations, CALLS on the relevant authorities in Member States to:
- a. analyse their own irregularities in the area of cohesion policy in order to identify where and how public procurement errors are occurring,
  - b. consider how to exploit further the opportunities provided by e-procurement and data-mining tools in order to reduce the number of these errors;

#### *Policy actions*

- (24) SUPPORTS the Court's call for further simplification of public procurement rules and strengthening of the administrative capacity of both the contracting and control authorities, and NOTES that the Commission's "Better Regulation" initiative inter alia covers public procurement related issues;
- (25) ASKS the Commission, following the "only once" principle, to ensure that the design of reporting and information systems enable an effective use of the public procurement data already submitted by Member States, as far as their quality and completeness allows it, and to provide for a homogeneous and reliable representation of the situation across Member States;

- (26) ENCOURAGES the Commission, where certain public procurement errors occur repetitively across most Member States, to analyse to what extent the source can be traced back to the lack of clarity of the corresponding EU rules and inform the Council about its assessment;
- (27) RECALLS at the same time that the new 2014-2020 ESIF legal framework introduces ex ante conditionalities of direct relevance for limiting the amount of public procurement errors and thereby leading to a better implementation of cohesion policy, REITERATES its commitment towards the strict implementation of these ex ante conditionalities, CALLS on the Commission to actively monitor progress and support Member States in the process of fulfilling their related obligations by the end of 2016, and therefore INVITES the Court to update its assessment by mid-2019 in the light of these changes;
- (28) STRESSSES that preventive measures should be intensified in order to avoid ambiguous interpretations of the new rules and procedures and ASKS the Commission to play a more active role in this area, ensure full coordination across its services during all phases of the management of funds, and guarantee transparency with regard to the method for choosing Member States to be audited, the actions undertaken in the field of public procurement, and their results;
- (29) RECALLS the Council Conclusions on Simplification: Priorities and expectations of Member States with respect to European Structural and Investment Funds<sup>1</sup>; and
- (30) INVITES in this regard the High Level Group of Independent Experts on 'Monitoring Simplification for Beneficiaries of the European Structural and Investment Funds' to provide support in tackling the public procurement errors that result from overly complex legislation and/or guidelines."

## **ENERGY**

### **Grid connection of generators**

The Council decided not to oppose adoption by the Commission of a regulation establishing a network code on requirements for grid connection of generators ([14274/15](#)).

The draft regulation is aimed at ensuring competition in the internal electricity market, strengthening system security and the integration of renewable electricity sources, and to facilitating EU-wide trade in electricity. It also lays down obligations for ensuring that system operators make appropriate use of power generating facilities' capabilities in a transparent and non-discriminatory manner.

The draft regulation is subject to the regulatory procedure with scrutiny<sup>1</sup>. The Commission may now adopt it, unless the European Parliament objects.

---

<sup>1</sup> Doc. 14266/15.

## **ENVIRONMENT**

### **Organic pollutants**

The Council decided not to oppose adoption by the Commission of a regulation ([14472/15](#) + [ADD 1](#)) amending regulation 850/2004 on persistent organic pollutants.

The draft regulation introduces changes to annexes IV and V of regulation 850/2004.

It is subject to the regulatory procedure with scrutiny. The Commission may now adopt it, unless the European Parliament objects.

### **Ecolabel - Paints and Varnishes**

The Council decided not to oppose adoption by the Commission of a decision ([14490/15](#) + [ADD1](#)) introducing changes in criteria for awarding the EU Ecolabel to indoor and outdoor paints and varnishes.

The draft decision amends decision 2014/312/EU, which establishes these criteria.

It is subject to the regulatory procedure with scrutiny. The Commission may now adopt it, unless the *European Parliament objects*.

### **Eco-management for the tourism sector**

The Council decided not to oppose adoption by the Commission of a decision ([15088/15](#) + [ADD1](#)) on a reference document on eco-management for the tourism sector.

The reference document has been developed within the context of regulation 1221/2009 on the voluntary participation by organisations in an eco-management and audit scheme.

---

<sup>1</sup> Council decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23), as amended by decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11)

Sectoral reference documents are intended to help organisations to better focus on the most important environmental aspects in a given sector. They allow the organisations' environmental performance to be evaluated, reported and improved.

The annex to the draft decision sets out the reference document for the tourism sector and includes best environmental management practice, sector environmental performance indicators and benchmarks of excellence.

The draft decision is subject to the regulatory procedure with scrutiny. The Commission may now adopt it, unless the European Parliament objects.

### **Air quality: real driving emission tests\***

The Council decided not to oppose adoption by the Commission of a second package of rules for real driving emission tests ([14506/15](#) + [ADD1](#) + \*[5334/16 REV1 ADD1](#)).

The new tests are intended to measure more accurately pollutant emissions from cars and other light vehicles.

The draft regulation is subject to the regulatory procedure with scrutiny. The Parliament voted against a resolution to block it on 3 February 2016, giving its go-ahead to the package. Following the Council's decision not to oppose it, the Commission may adopt the regulation.

For more information, see the [press release](#).

## **FOOD LAW**

### **Food additives - conditions of use**

The Council decided not to oppose adoption by the Commission of a regulation clarifying the conditions of use of food additives permitted in all categories of foods ([5023/16](#)).

The draft regulation is subject to the regulatory procedure with scrutiny. The Commission may now adopt it, unless the European Parliament objects.

**WRITTEN PROCEDURE**

**Safety features for medicines**

In a written procedure ending on 25 January 2016, the Council decided not to object to a Commission regulation on safety features that appear on the packaging of medicinal products for human use ([11804/15](#)).

The regulation is a delegated act pursuant to article 290 of the Treaty on the Functioning of the European Union. It can now enter into force, unless the European Parliament objects.

---