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European Union

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## DRAFT MINUTES

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Subject: **3582nd** meeting of the Council of the European Union  
**(Economic and Financial Affairs)**, held in Brussels on 5 December 2017

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## PUBLIC DELIBERATION ITEMS<sup>1</sup>

Page

### "A" ITEMS

- 2. Approval of the list of "A" items
  - a) Non-legislative list ..... 3
  - b) Legislative list ..... 3
  - Economic and Financial Affairs** ..... 3
    - 1. VAT e-commerce
    - General Affairs** ..... 5
    - 2. IFS Regulation

### "B" ITEMS

#### Legislative deliberations

- 3. Strengthening of the Banking Union ..... 6
  - a) European Deposit Insurance Scheme
  - b) Banking package (CRR/CRD/BRRD/SRMR)
  - c) Non-performing loans
- 4. Any other business ..... 6
  - a) Current financial services legislative proposals
  - b) VAT Administrative cooperation

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<sup>1</sup> Deliberations on Union legislative acts (Article 16(8) of the Treaty on European Union), other deliberations open to the public and public debates (Article 8 of the Council's Rules of Procedure).

## "A" ITEMS

### 2. Approval of "A" items a) Non-legislative list

14907/17

The Council adopted the "A" items listed in 14907/17.

A statement was made related to item 3 (EU-Norway agreement - Decision on signing - *Adoption*).

#### Statement by the Council

"The Council recognises that the European Union and the Kingdom of Norway are neighbours, dynamic trade partners and are also parties to the Agreement on the European Economic Area, which aims to promote a continuous and balanced strengthening of trade and economic relations between the Contracting Parties. Due to these close relations, the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax must be regarded as specific and hence the Council declares that this Agreement will not constitute a precedent for future agreements in this area between the European Union and third countries. In particular, in any possible future agreement concerning exchange of targeted information through the Eurofisc network established under Chapter X of Council Regulation (EU) No. 904/2010 should be limited to what is strictly necessary and possible to combat cross-border fraud between the Union and the third country."

### b) Legislative list (Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

14908/17

#### Economic and Financial Affairs

### 1. VAT e-commerce package Council Directive as regards certain VAT obligations for supplies of services and distance sales of goods Council Implementing Regulation laying down implementing measures Council Regulation on administrative cooperation and combating fraud in the field of VAT

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14769/1/17 REV 1  
14126/17  
+ COR 1  
+ REV 1 (fr, de, nl, es, pt, hu, pl, sl)  
14127/17  
+ COR 1  
+ REV 1 (de, nl, hu, pl, sl)  
14128/17  
+ COR 1  
+ REV 1 (fr, de, nl, hu, pl, sl)

*Adoption*

approved by Coreper, Part 2, on 29.11.2017

The Council adopted the Directive, Implementing Regulation and Regulation, as finalised by legal/linguistic experts and set out respectively in 14126/17, 14127/17 and 14128/17.

## **Statement by the Council regarding article 2 of the amending Directive**

"The Council and the Commission acknowledge the need to lay down detailed implementation rules for the application of Article 2 in an Implementing Regulation of the Council to support the amendments to Directive 2006/112/EC which apply from 1 January 2021. The Council acknowledges the need for a timely adoption of such an Implementing Regulation before 1 January 2020 to ensure its application as from 2021.

The Council therefore calls upon the Commission to start preparing such implementation rules without delay and, taking into account the principles of Better Regulation, to consult businesses concerned and Member States in the preparation of these rules.

As regards, in particular, the provisions relating to electronic interfaces such as a market place, platform, portal or similar means, the following elements should, amongst others, be considered in the implementation rules:

- Definition of the situation in which a taxable person is considered to facilitate sales of goods through the use of an electronic interface;
- Specific provisions on deeming the dispatch or transport of the goods to be linked to the supply by the electronic interface to the customer where an electronic interface is used to facilitate sales of goods;
- Specific provisions on the conditions for determining when the payment is accepted, and the general obligations for electronic interfaces, where an electronic interface is used to facilitate sales of goods and is deemed to have received and supplied the goods himself;
- The type of information to be kept in the records of taxable persons facilitating supplies of goods and services to non-taxable persons in the Community through the use of an electronic interface, taking account of what information is available to such taxable persons, is relevant to tax administrations and is proportionate to the purpose of the provision, as well as taking into account the need to comply with the General Data Protection Regulation (EU) 2016/679.

The Council acknowledges the need to ensure that the implementation of the new rules, including in respect of compliance, should not disadvantage EU established businesses.

The Council calls on the Commission to provide the necessary framework for the implementation of the relevant Customs systems and monitor their implementation with a view to ensuring that these essential systems are in place by 2021 to support the implementation of the import One Stop Shop from that date.

The Council and Commission will do their utmost to ensure that:

- the implementing provisions necessary for the correct application of Article 2 of the amending Directive are adopted by the end of 2019, and
- the UCC National Import Systems Upgrade referred to in row 14 of the Table in point II of the Annex to the Commission Implementing Decision (EU) 2016/578 of 11 April 2016 establishing the Work Programme relating to the development and deployment of the electronic systems provided for in the Union Customs Code, including the necessary amendments to the data model for the messages, are timely in place.

If it does not seem probable that the adoption of detailed implementation rules for the implementation of Article 2 of the amending Directive can be achieved within a reasonable period of time or that the necessary VAT and Customs IT systems will timely be in place, the Commission will, at the latest by the end of 2019, assess whether this Article can still be correctly applied from 1 January 2021.

Depending on this assessment of the Commission, the Council may invite the Commission to submit to it, as a matter of urgency, a proposal for an amendment of Directive 2006/112/EC, with a view to a full or partial postponement of the application of Articles 2 and 3 of the amending Directive.

The Commission acknowledges the Council's concern and will take utmost account of it in order to take appropriate actions as a matter of urgency.

The Council stresses the need to strengthen cooperation between Member States in order to tackle VAT fraud and welcomes in this respect the intention of the Commission, expressed in its communication "On the follow-up to the Action Plan on VAT. Towards a single EU VAT area – Time to act", to table before the end of 2017 a legislative proposal to strengthen the legal and operational means in the area of administrative cooperation, including administrative enquiries, to fight more effectively against VAT fraud. The Council recalls in this respect the Council Conclusions of 25 May 2016."

### **Statement by Malta and Cyprus**

"Reference is made to the Council Statement regarding Article 2 of the draft Directive, in particular, the last paragraph thereof dealing with administrative cooperation between Member States.

Malta and Cyprus fully support the strengthening of administrative cooperation and invite the Commission to positively consider in any future proposals on the matter, to cater for adequate compensation in cases of a disproportionate burden on a member state; as already enunciated in the original proposal of 1st December 2016 (wherein the strengthened proposed rules on administrative enquiries routed through the Member States of identification were accompanied by an adequate retention fee from the Member States of consumption; compensating for the costs of collection and control)."

### **General Affairs**

#### **2. IFS Regulation**

*General approach*

approved by Coreper, Part 2, on 15.11.2017



13336/17

The Council endorsed its general approach to the Commission's proposal as set out in the annex to 13336/17, which shall be the basis for the Presidency's mandate to start the negotiations with the European Parliament.

## "B" ITEMS

### Legislative deliberations

(Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

- |   |                         |
|---|-------------------------|
| <b>3. Strengthening of the Banking Union</b>  | <b>14932/1/17 REV 1</b> |
| a) <b>European Deposit Insurance Scheme</b>   | 14896/1/17 REV 1        |
| <i>Progress report</i>                        | 14891/17 + COR 1        |
| b) <b>Banking package (CRR/CRD/BRRD/SRMR)</b> | 14892/17 + COR 1        |
| <i>Progress report</i>                        | 14894/17 + COR 1        |
| c) <b>Non-performing loans</b>                | 14895/1/17 REV 1        |
| <i>State of play</i>                          | 14808/17 + COR 1        |

The Council took note of the Presidency Progress Reports as set out in 14808/17, 14896/1/17 REV 1 and 14894/1/17 REV 1 concerning the European Deposit Insurance Scheme and the Banking Package. The Council also took note of an update by the Commission on the state of play of implementation of the Action Plan to tackle non-performing loans in Europe.

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|--|----------|
| <b>4. Any other business</b>                               |          |
| a) <b>Current financial services legislative proposals</b> | 14832/17 |
| <i>Information from the Presidency</i>                     |          |
| b) <b>VAT Administrative cooperation</b>                   | 14893/17 |
| <i>Information from the Commission</i>                     |          |

The Council took note of the state of play in relation to financial services' legislative proposals.

The Commission presented a proposal on enhancing the administrative cooperation between tax authorities.