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Summaries and brief updates

Free Trade: Bilateral and multilateral negotiations dangerous for financial regulation and taxation

Liberalisation of financial services is part of the negotiations for a bilateral EU-US trade and investment agreement (TTIP) as well as a multilateral Trade in Services Agreement (TiSA). These negotiations are proceeding quickly and intend to give more rights and protection to the financial industry, while protection of financial stability and of consumers would be much weaker. The negotiations happen in the context of disputes between the EU and US about each other’s regulation affecting their (financial industry’s) interests. There is currently insufficient awareness about the risks that these new agreements can pose to regulation, taxation and the fight against illicit financial flows.

For full detailed article see below.

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Contact us:

visit the SOMO website
m.vander.stichele@somo.nl
+31 (0)20 639 12 91

visit the WEED website
peter.wahl@weed-online.org
+49 (0)30 2758 2616
G20 Summit: closing the gaps in global financial regulation and taxation?

At the G20 summit on 5/6 September, the heads of state will deal with a long list of finance and tax issues, of which we cover only a few in this article. While past decisions such as on banks’ capital or on derivatives move forward slowly, new regulations for global systemically important insurers have just entered into force. Some reforms such as on shadow banking and rescue mechanisms for banks need still to be taken or finalized but it does not seem that the G20 will agree on strong measures. A major issue is also tackling tax evasion, particularly tax avoidance by multinational enterprises. To tackle it, a positive but overall weak OECD Action Plan will be endorsed. NGOs urge the G20 heads of state to move forward more quickly and ambitiously with appropriate global financial regulation and taxation.

For the full detailed article see below.

Brief update: Council agreement on bank recovery and resolution

The Council of EU Finance Minsters agreed on 27 June 2013 on its position on a bank recovery and resolution draft law. The Council, Parliament and Commission are now engaged in the triilogue negotiations on the final law text, supposed to last at least till the end of the year.

The Council’s aim is first to prevent bank crises and therefore banks would have to draw up plans to recover from a crisis. In the event of bank failure, the directive would give national authorities the powers to resolve any bank in an orderly manner, whilst preserving essential bank operations and minimizing taxpayers’ exposure to losses. National authorities would have to prepare resolution plans for each bank and could apply various measures if a failure occurs, for instance selling parts of the bank’s business, separate assets and write down or convert into equity claims from shareholders and unsecured creditors (‘bail-in’). A list of liabilities would be excluded from a bail-in. Member states should set up resolution funds covering at least 0,8 per cent of savings in a country, which are covered by the deposit guarantee system (100,000 Euro per client). Finally, the authorities should set requirements for the “loss absorbing capacity” of a bank.

The approach of the above directive will be the basis for a Single Resolution Mechanism that was proposed by the European Commission on 10 July 2013. The single resolution mechanism would establish a single institution and process to deal with failing banks that operate under the single supervisory mechanism, namely within the Banking Union. A single deposit guarantee mechanism still needs to be dealt with to complete the Banking Union structure proposals.

Brief update: Parliament on the structure of the EU-banking sector

Following the high level expert report on how to reform the structure of the EU banks (‘Liikanen report’) in order to deal with too-big-to-fail banks, the European Parliament (EP) took a (non-legislative) resolution on this issue on 3 July 2013. Amongst others, the resolution sets out the principles that “excessive risks must be reduced, competition ensured, complexity reduced and interconnectedness limited”. It generally supports a separation of banking activities and says that “the separated entities must have different sources of funding, with no undue or unnecessary shifting of capital and liquidity between these activities”. It calls for rules so that banks have levels of borrowing (‘leverage’) and available
liquidity that are adapted to the business models of the activities, including separate balance sheets. Finally, it aims to limit banking services to non-essential trading and investment activities, in or outside a banking group.

The EP’s resolution came ahead of the Commission’s expected release of a draft law, after a public consultation closed in July.

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**Free Trade: Bilateral and multilateral negotiations dangerous for financial regulation and taxation**

By Markus Henn, WEED, and Myriam Vander Stichele, SOMO

Negotiations on some important bilateral and multilateral treaties to further liberalise trade and investment are moving forward, most importantly the planned bilateral EU-US trade and investment agreement (called the Transatlantic Trade and Investment Partnership or TTIP) and the planned multilateral Trade in Services Agreement (TiSA). As already explained in the December 2012 Newsletter, financial services is one of the key areas addressed in the negotiations. Issues relating to financial services are major stumbling blocs in the lingering negotiations between the EU and Canada, and the EU and India.

**EU-US trade agreement (TTIP): will it bust financial regulation?**

After protests from France against liberalisation of cultural services, EU-US conflicts about financial regulation and data monitoring by the US’ National Security Agency (NSA) of EU institutions, the European Commission was given a mandate (by the Council) to start the trade negotiations with the US in July 2013. The European Parliament has no power to decide on the negotiation mandate but on 23 May 2013 overwhelmingly approved a resolution in favour (a majority of 460 yes-votes against 105

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**Brief update: Final negotiations on Food Speculation and High Frequency Trading**

The revision of the Markets in Financial Instruments Directive (MiFID II-MiFIR) (for an overview see October 2012 Newsletter), covering amongst others new regulation of high frequency trading and commodity price speculation, is reaching the final stage of the law-making process. After the Council reached its final position on 17 June 2013, the trialogue process started between Council, Parliament and Commission to arrive at a final legal text. On 4 September, an important trialogue meeting will take place in Brussels – accompanied by an NGO action calling for strong measures against food price speculation. The law text should be finalized at the end of 2013 or beginning of 2014.

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From Flickr by Downing Street
no-votes, and 28 abstentions), ignoring amendments e.g. regarding transparency.

‘Financial services’ is a key area of interest for EU negotiators as the EU financial industry aggressively lobbies for more open markets in other countries. The US financial sector has also already been very active in raising its demands towards the EU. Indeed, the ambition is to have a more open market that allows more cross border trade and investment in many financial products and services.

The EU wants the financial services liberalisation to happen partly according to the same rules as those in the World Trade Organisation’s General Agreement on Trade in Services (GATS). This includes that no service provider should be treated worse than a national provider (‘national treatment’). And that governments cannot impose limitations or restrictive measures on those (financial) services sectors that are liberalised in the agreement (‘commitments’), e.g. regarding the number of market participants, outputs, transactions, foreign capital and many more (‘market access’ rules). One of the contentious issues between US and EU is, whether all financial services will be liberalised unless an exception is made (‘negative list’) or whether financial services are only liberalised when a commitment is listed in the agreement (positive list). It seems that the US aims for a negative list.

There are very likely to be some articles that go beyond the GATS. For instance, the EU and the US might automatically grant each other those liberalisation measures that each gives to other countries.

A controversial clause in the draft says that a country (‘party’) “shall permit a financial service supplier of the other party to provide any new financial service”. However, a country may demand that authorisation is needed for providing the service.

The above mentioned measures reflect the EU’s proclaimed ambition to include a high level of ‘discipline’ on what measures countries can take as these are assumed to harm the services industry. Because services do not have tariff barriers, regulations are seen as trade barriers. For instance, EU’s commissioner for the internal market, Michel Barnier, insisted on disciplines, e.g. national treatment, when he stressed in July that he would “not accept a trans-Atlantic trade deal that (...) fails to address ‘discrimination’ of foreign institutions in U.S. prudential regulations”. As these disciplines undermine regulation, there is a ‘prudential carve-out’ clause that would allow countries to adopt or maintain measures for prudential reasons, e.g. for the stability of the financial system and to protect depositors. Contrary to GATS and other services agreements, the first draft TTIP text does not have a clause that weakens the prudential carve out.

It is likely that an agreement to cooperate towards coordination of financial regulation will be part of the treaty, which is totally new in a services trade agreement. The EU wants a US-EU mechanism that would aim at a “common regulatory framework” with a “Joint EU/U.S. Financial Regulatory Forum”, and – as the EU Council documents put it – “mutual reliance on each other’s rules, based on equivalence / substituted compliance”. This was originally intended to avoid that the financial industry would have to implement two different sets of rules or would exploit the weakest legislation. However, it also relates to recent harsh transatlantic conflicts about financial regulation. The EU opposed US proposals that would result in the application of domestic regulation on derivatives trade outside of the US, for example to the London branches of US banks (where a lot of problems occurred that resulted in the financial crisis in 2008). The EU, instead, insisted that the US have to acknowledge EU rules as equal to US ones. The quarrel was officially settled in July with a compromise which however leaves important decisions for future negotiations. Given that
cooperation on regulation affects the regulatory authorities legislative powers, there seem to be conflicts between member states, as the French and the British governments have proposed large amendments to the first Council documents and suggest scaling down the ‘common regulatory framework’ to a ‘framework for regulatory cooperation’. Also US officials seem to reject this EU attempt to limit the US regulatory power. As US Trade Representative Michael Froman said in July, the US support the inclusion of market access but “nothing we do in a trade agreement should undermine the ability of regulators on both sides to regulate in the public interest”.

There are many question marks concerning to what degree TTIP will protect the regulatory capacity or will lead to the lowest common denominator in financial regulation. Already, NGOs have warned that new EU financial regulations are in contradiction with the GATS rules that are likely to be included in the TTIP. There might be rules that demand proof that a financial regulation is not more burdensome than necessary, which contradicts the lesson of the crisis that not all problems can be known beforehand. As Michael S. Barr, Professor of Law at the University of Michigan, explains in Keep Financial Regulation Out of US-EU Trade Talks, the talks pose a risk to what has been achieved with financial market regulation in the last years: “The last thing we need is another process, particularly one not focused on how to prevent another financial meltdown like the one from which the U.S. and Europe are still trying to recover.”

Another controversial issue in TTIP negotiations is the attempt to grant far-reaching protection rights to (financial) investors. This would allow investors to bring a request for compensation before a dispute settlement mechanism for expropriations and damages to their interests e.g. due to new regulations or because ‘legitimate expectations’ of an investor were not upheld. As TNI and CEO explain, this would be tantamount to a ‘transatlantic corporate bill of rights’.

Trade in Services Agreement (TiSA): ‘GATS plus’ through the backdoor?

In the first half of 2013, more than 20 WTO members started negotiations on the Trade in Services Agreement (TiSA). Since the current WTO negotiations (Doha Round) are stalled, this initiative aims to go beyond the existing GATS rules. Although the European Commission’s mandate to negotiate the TiSA was already approved by the Council in March, the Commission is only now holding a Public Consultation – deadline for comments is 6 September 2013. The Parliament, in its resolution, urged on the one hand to promote “an ambitious agenda for the EU's offensive interests”, in particular as regards ‘financial and legal services’, and on the other hand to prevent “commitments and rules regarding financial services that would contradict recent measures to regulate financial markets and products”. However, the EU mandate has the ambition of wide ranging liberalisation of financial services and disciplines on rule making.

Business associations, such as the US Coalition of services industries, lobby for TiSA. The US coalition sees it as “opportunity to address major and fundamental barriers to trade in services affecting the United States and the globe. Some barriers to services trade include limited movement of data across borders”, and “unfair competition from state-owned enterprises.” Such attacks on (local) public services and data protection have been answered by civil society. An open letter that warns against the TiSA, has already attracted dozens of signatories but is still looking for more – deadline is 11 September.

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G20 Summit: closing the gaps in global financial regulation and taxation?

By Markus Henn, WEED

From Flickr by DonkeyHotey

On 5-6 September 2013, the G20 heads of state summit will take place in St. Petersburg under the presidency of Russia. Although the G-20 agenda is getting ever broader, the core issue of financial market regulation is still high on the agenda. Following the last Finance Ministers’ meeting on 20 July 2013 (see communiqué), the heads of state will deal with a long list of financial market regulation, monetary policy, financial institutions and taxation issues, of which we cover only a few in this article. In preparation, the Financial Stability Board (FSB) has just published different progress reports and recommendations for the G-20.

Banks, banks, and shadow banks
Bank reforms are still a major G20 issue. The G-20 monitors the implementation of the new international standards for the capital requirements for banks (Basel III), decided in 2010 and which are still in the process of being implemented. According to a recently published Basel III implementation review many countries now have a law in place, including the EU in May 2013 and even the US in July 2013, despite strong resistance by US banks. Some undecided details of the Basel III implementation are being looked at, for instance on the disclosure of the Liquidity Coverage Ratio, which should ensure that banks always have enough money available to pay their ongoing expenses (see the Basel Committee on Banking Supervision proposals). In Cannes (November 2011) the G20 had agreed on standards for dealing with banks that are in crisis (‘recovery’) or have failed (‘resolution’). On 16 July 2013, the FSB published three papers with guidance on how to implement those standards for consideration by the G20. One of the papers deals with how to maintain basic financial services and functions when a bank is in crisis. The FSB is now developing a Methodology on how to assess and monitor the implementation of recovery and resolution mechanisms and consultation on its draft is open for comment until 31 October 2013.

However, the question is how these initiatives are integrated with or are a reflection of, existing initiatives. The EU, for example, has already started a process on such measures independently (see the Brief Update in this Newsletter) and Germany has already had a respective law in place for three years. The biggest challenges for all these measures are the ability to handle the risk of a bank run and avoiding that tax payers do not have to pay for unaccountable failing banks.

Still in its infancy is G20 regulation of shadow banking, a set of bank-like activities which are often based in tax havens and have not been regulated in the same manner as banks, although they were at the core of the financial crisis. One year ago, at the request of the G20, the FSB published its first report on shadow banking, estimating its size around $67 trillion (for details see December 2012 Newsletter). Based on this report, the FSB published its proposals for regulation on 29 August 2013. The proposed measures vary from addressing the interrelation of banks and shadow banks, money market funds and securitisation. In separate papers, the FSB proposes measures regarding supervision, the lending of securities (e.g. by large insurers who do currently not need them) and so-called ‘repos’ (agreements to repurchase the security at a later date).

The proposals do not seem really ambitious and are often only preliminary. According to Reuters, the weak approach taken now by the G20 is due to
the role shadow banking plays in currently providing liquidity to the still fragile banking sector, but also due to intense lobby activities by the financial industry. The European Commission is to present its draft law on 4 September 2013 dealing with one aspect of shadow banking, the so-called money market funds. As there are big differences between the EU and the US in the use and importance of such funds, this law might lead to a transatlantic regulatory debate.

**Insurers: the next ‘too-big-to fail’ institutions**

Despite the 150 billion dollar bail-out that the then world’s largest insurer AIG caused back in 2008, the FSB released a list with nine global [systematically important insurers](#) only on 18 July 2013, based on work by the International Association of Insurance Supervisors (IAIS) and for approval by the G20. The list includes four European insurers: Allianz, Assicurazioni Generali, Aviva and Axa. These insurers now face specific rules, for instance regarding recovery and resolution planning. While some of the measures, such as the enhanced group-wide supervision, will apply immediately, other important ones, such as the loss absorbency requirements (i.e. having capital available for possible losses), will be developed over the next year and will not fully apply until January 2019. Furthermore, the G20 measures do not really address the basic structural problem of the insurers: that they are not able anymore to generate the predicted returns due to low global interest rates.

**G20 and OECD on tax evasion: small steps forward**

Tax issues are still relatively new on the G20 agenda. The G20 is mainly dealing with the [OECD Action Plan on corporate tax avoidance (“base erosion and profit shifting”)](#) that appeared in July 2013. The Plan is based on former OECD work demonstrating that corporations currently do not always pay taxes where they are really active but shift its profits to low- or no- tax jurisdictions which leads to huge tax savings. To stop this, the OECD Plan recommends various measures which can be summarised as follows:

- The use of artificial ‘letter-box’ companies shall be stopped.
- Non-taxation shall be prevented, for example through safeguard clauses in tax agreements where in case of the non-taxation by one country the other will tax.
- The buying and selling of goods within a corporation shall be brought in line with value creation and real activity to prevent tax avoidance (transfer pricing).
- The practice to pretend the independence of an affiliate company to avoid taxation shall be stopped.
- Intra-corporate lending, which also allows profit shifting, shall be restricted.
- Harmful tax avoidance or evasion in general and specifically in relation to complex financial arrangements shall be addressed by counter-rules and information exchange.
- The digital economy, which is difficult to locate and tax, will be investigated.

The plan contains good elements but remains too weak and often only points to further investigations. Most importantly, the plan does not seriously discuss a system change for corporate taxation. The current OECD system relies on the separate taxation of a corporation’s sub-entities. It could be replaced by a so-called unitary taxation that would distribute the profits of the whole corporation amongst the countries of production. One pre-condition for this is a Country-by-Country reporting for companies and the swift creation of a public register of the owners and beneficiaries of companies, foundations and trusts, which was missing in the last Communiqué of G20 Finance Ministers. At least, the automatic exchange of information between tax authorities is now
obviously seen as the future global standard. But it remains unclear how developing countries will be involved.

**Civil20 Summit and Civil Society Response**
Civil society has not only been monitoring and criticising the G20 process. Some organisations also took part in the first ever Civil20 summit (C20) in Moscow on 13-14 June 2013. Before this summit, a long working group process took place to develop recommendations. However, the Russian presidency decided to allow business representatives into the C20 process – even though business also has its own summit (B20). For example, the Working Group on Financial Architecture, Market Regulation and Sovereign Debt was co-chaired by an international NGO representative and one from “Business Russia”. This led to so many conflicts that this group finally ended up with two sets of recommendations in the official text for the G20 leaders (for the short NGO position paper see [here](#)). Ahead of the official G20 heads of states summit, a Counter Summit takes place on 3-4 September 2013 in St. Petersburg, organized by Our World is not for sale, Post Globalization Initiative, Attac France, Via Campesina, and others.

### Calendar of official events

For more background to the official agenda of European institutions, see the following websites:

- The European Commission (EC)
- The Economic and Financial Affairs Council (ECOFIN)
- The Economics and Monetary Affairs Committee (ECON) of the European Parliament

The links made in the following calendar refer to the procedure files on which you can find the dates of the different stages (past and future) of decisions by the EC, EP and Council on the particular draft EU law.

#### 2013

**September**

- **4**, European Commission (Brussels): Expected release of draft law on shadow banking (money market funds)
- **5**, ECON (Brussels): Meeting
- **5-6**, G20 (St. Petersburg): Heads of State summit chaired by Russia
- **9**, ECON (Strasbourg): Extraordinary meeting
- **10**, EP (Strasbourg): Plenary, vote scheduled on Prudential supervision of credit institutions: conferral of specific tasks on the European Central Bank (ECB)
- **11**, EP (Strasbourg): Plenary, vote scheduled on Residential property credit agreements
- **16-17**, ECON (Brussels): Meeting
- **23-24**, ECON (Brussels): Meeting
- **30**, ECON (Brussels): Meeting

**October**

- **4-6**, NGOs (Amsterdam): European Strategy Meeting on Economic Governance, the Troika and the struggles against European neoliberalism
November

- 9-10, G20 (Washington): Finance Ministers’ and Central Bank Governors’ deputies meet
- 10-11, G20 (Washington): Finance Ministers and Central Bank Governors meet
- 11-13, IMF/World Bank (Washington): Annual meetings
- 12, FSB (Basel): Consultation on Key Attributes of Effective Resolution Regimes ends
- 14, ECON (Brussels): Meeting, vote scheduled on Recovery and resolution framework for non-bank institutions
- 15, Council (Brussels): Finance Ministers meet
- 22/23, EP (Strasbourg): plenary sitting
- 24-25, European Council (Brussels): Heads of State summit

- 18, EP (Strasbourg): Plenary, indicative 1st reading on Key information documents for investment products
- 19, EP (Strasbourg): Plenary, indicative 1st reading on Framework for recovery and resolution of credit institutions and investment firms
- 25-26, ECON (Brussels): Meeting

December

- 2, ECON (Brussels): Meeting
- 5, ECON (Brussels): Meeting
- 9, EP (Strasbourg): Plenary, indicative 1st reading on Securities settlement and central securities depositories (CSDs) and on Insider dealing and market manipulation (market abuse)
- 10, Council (Brussels): Finance Ministers meet
- 10, EP (Strasbourg): Plenary, scheduled vote on Mandatory automatic exchange of information (taxation), and on Markets in Financial Instruments Directive and Markets in Financial Instruments Regulation
- 16-17, ECON (Brussels): Meeting
- 19, European Council (Brussels): Heads of State summit
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This newsletter is produced by SOMO and WEED and is intended for wide circulation to interested parties. We appreciate receiving feedback as well as announcements of research reports, campaign actions, and meetings, which can be sent to m.vander.stichele@somo.nl.