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Neo-liberalism with a human face?
What to expect from the new European Commission

By Peter Wahl, WEED

Summary: The new European Commission (EC) will introduce a new level of hierarchy among the commissioners. The motive behind the changes is threefold: more centralisation and power for the EC President, an increase in efficiency and strengthening the Commission’s position in the power triangle with the Council and the Parliament, and the sophistication of neo-liberal policies and austerity. However, these changes and the Commission’s composition will make no substantial changes to the neo-liberal policies in Brussels.

Jean-Claude Juncker, the new President of the European Commission and former Prime Minister of the small state and fiscal paradise Luxemburg (500,000 inhabitants) has presented his “winning team” for the new Commission. He is trying to spread the sentiment of breaking new ground for the EU after five years of financial, economic, and increasingly, political, crisis. Unlike his predecessor, Juncker made some self-critical remarks and admitted what critics had been saying for years: There ‘was a lack of social fairness’ and ‘democratic legitimacy had suffered’ in the EU. Hence, he promised ‘a new start’ as well as ‘jobs, growth, fairness and democratic change.’
Of course, it is too early to judge whether this is more than a rhetorical facelift, or neo-liberalism with a human face, given that the new Commission will only start to work officially on 1 November 2014. But looking more closely into the selection of commissioners and the structural changes in the Commission, there is little reason for optimism.

Setting a fox to keep the geese

For those interested in financial regulation, the most spectacular case is, of course, the nomination of Jonathan Hill as Commissioner for Financial Stability, Financial Services and Capital Markets Union. The mere fact that Juncker has appointed (for political reasons) a Brit to take over this directorate is a provocation for all those who advocate serious financial regulation. In the past, the UK has done everything it could to block and water down stricter EU laws for the finance industry, or shape them according to their interests (e.g. on banking). It was at the service of the City of London that any regulation that could harm the City’s interests was prevented. In the case of the Financial Transaction Tax, the UK government even filed a complaint at the European Court of Justice.

Officially, the commissioners have to refrain from representing the interests of their home country. The purpose of this choice goes beyond financial regulation as such: the UK is at the brink of leaving the EU. In the European Parliament elections in May 2014, the United Kingdom Independence Party (UKIP), which wants to exit the EU, became the strongest British party. A large section of the conservative party of Premier Cameron also takes the same line. However, Juncker wants to keep the UK inside. By accepting Cameron’s nomination of Hill, the message is obvious: look, you can take an important influence on decision-making; the UK can shape the profile of the Union’s policies if you stay on the inside.

This can only work if Hill is able to present success back home, i.e. preventing strict regulation of the finance industry. The City of London has well understood the message. The speaker of the City of London Corporation said: ‘The City welcomes the appointment of Jonathan Hill as the Commissioner for Financial Stability, Financial Services and Capital Markets Union – a top economic portfolio that rightly reflects the UK’s role as Europe’s financial and professional services capital.’

To top it all off, Hill has worked as co-founder of the lobby firm Quiller Consultants, which during this period (2010) had five out of nine declared financial clients that were either banks or finance firms: HSBC, Bank of America, Citadel, Marwyn and Brewin Dolphin (asset managers). However, Hill himself refused to reveal his clients when he was questioned at the European Parliament. As the firm’s homepage proudly states: ‘Since 1998 Quiller has been advising clients involved in some of the biggest stories and public policy issues around, helping them get their case across in the most effective way, as well as counselling those wanting to stay out of the glare of publicity and media scrutiny.’

A side effect for Juncker will be that Hill will also defend the interests of Luxembourg’s finance sector. Juncker always succeeded in conveying the impression of being 150 per cent European. But behind the scenes, the shirt of the banks of his country was always nearer to him than the coat of common interest to regulate finance. Luxembourg was always hiding behind the UK; recently in the case of the FTT, when the country planned to go to court if London had not already done so.

During the first hearing as Commissioner-designate, Hill failed to satisfactorily answer questions by the Parliament (the Committee on Economic and Monetary Affairs – ECON), especially as regards Eurobonds, a single deposit guarantee scheme, and the capital markets union. Problematic were also his answers regarding so-called high-quality securitisation markets (though securitisation was a cause of the crisis) and shadow banking. He was requested to come for a second hearing to answer a list of 23 additional written questions, e.g. which non-banking sector he deemed “too big to fail”.

The nomination of former French Minister of Finance Moscovici as Commissioner for Economic and Financial Affairs, the Euro, Customs and Taxation was also controversial. Although Moscovici is a New Labour-type of socialist and had strongly supported Hollande’s U-turn towards austerity, Berlin and some other governments of the hard-core neoliberal camp initially opposed Moscovici’s candidature, because he had not maintained the 3% threshold for the French budget, as required in the stability pact. But as France insisted on Moscovici, Merkel finally refrained from escalating the conflict. Now, they have at least staged a show in the Parliament, where Moscovici was “grilled”, but in the end, was accepted in a political deal between the Christian Democrats (EPP) and Social Democrats.
(S&D): the Social Democrats “swallowed” Hill and the Christian Democrats Moscovici.

All in all, Juncker has proposed candidates who are particularly friendly to business. The Commissioner for Energy, Miguel Cañete, a Spanish conservative, was president of a branch of the oil company Mercantil Petrolífera Ducar before entering the Spanish Parliament. He continued to hold shares of the firm for a long time, but kept this secret (Le Monde, 11.09.2014). Two other core directorates, Trade and Competition, remain in the hands of reliable Nordic neo-liberals, Cecilia Malmström (Sweden) and Margrethe Vestager (Denmark). Both belong to liberal parties.

Centralisation of power

As a new level in the formal hierarchy of the Commission, Juncker introduces vice-presidents, who are charged with steering and coordinating thematic task forces. Officially this is meant to improve interaction between Members of the Commission as a move away from ‘static structures’. But it is also useful for Juncker to have easier insight and access to the different directorates and to better initiate or block certain projects. This strengthens his position and the role of the Commission as a whole vis-à-vis the body of national governments, the Council, which is still the decisive component of the Brussels power structure.

As an example of how the model works, Valdis Dombrowski, former Latvian Prime Minister and market fundamentalist, will head a group in charge of social dialogue, reforming the economic and currency union, or the stability of the EURO, which includes the above-mentioned Commissioners Jonathan Hill and Pierre Moscovici, and others such as Marianna Thyssen, in charge of labour (Christian Democrat from Belgium). Hill and Moscovici will also fall under the team ensuring ‘a new boost for jobs, growth and investment’, and competitiveness, headed by Vice-president Jyrki Katainen, who was a hardliner in the Euro crisis. In addition, “super vice-president” Timmermans (a Dutch Social Democrat) will have an overall veto right over the other commissioners. One would have to believe in miracles to expect a substantial change in the core areas of the crisis from such a team.

Triple dip as reality check

Instead, there is also the risk that the complexity of the new structure will increase frictions inside the Commission and lead to a muddle of competencies, particularly as the crisis is sharpening again, and tensions between Germany on the one side and France and Italy on the other over the correct form of crisis management are increasing. The recession continues in Italy, and French growth is stagnating at near zero; debt rates in all crisis countries are increasing; unemployment remains at high levels, while deflation is looming. A triple dip is forming on the horizon. But what is particularly relevant: the German growth engine is running out of steam. The IMF’s recent World Economic Outlook has adjusted the German growth rate from 1.9% to 1.4%. In August, exports plummeted by 5.8%, the highest rate since 2009. Also, industrial output is shrinking by 1.8% and orders have fallen by 5.7%. These developments, which are not unexpected for critics of German economic policies, will weaken the German position and might encourage France and Italy to fight openly for a softening of the austerity policies in the Eurozone. Under these circumstances, Juncker’s belief that ‘economic growth and confidence are now returning to Europe’ and the capacities of his new Commission will soon be exposed to an interesting reality check.

The tenacious struggle of the states against tax avoidance of companies

By Markus Henn, WEED

Summary: Last year, the G20 announced plans to put an end to the tax avoidance of multinational companies. But interim results of the work led by the OECD for the G20 show that national governments, despite advancement, have achieved very little progress, particularly on corporate transparency and on harmful tax laws granting inappropriate benefits to corporations. Furthermore, the interests of developing countries are not duly served.

In November 2013, the G20 supported an action plan of the OECD against the ‘[tax] base erosion and profit shifting’ (BEPS), i.e. tax avoidance, by multinational companies (background see December 2013 Newsletter). This plan is now being worked out by the members of the OECD and
the G20 – a total of 44 states – till the end of 2015. In addition, the OECD has made efforts to encourage the participation of developing countries. However, this was limited to regional consultations. What is more, the action plan itself was, from the outset, rather focused on the problems of richer states. It does not seriously discuss how corporate profits – and thus taxes – can be distributed more equitably between the less and more developed countries where corporations operate. This is not surprising, since the previous OECD tax standards were tailored to their members, especially the model for tax treaties. For that reason, the United Nations has now developed its own standards for tax treaties and for taxing multinational corporations, taking into account the interests of the poorer states. However, the United Nations was sidelined again by the G20 and the OECD, and the UN does not play a big role in the BEPS process.

The interim results

In September 2014, the OECD published interim results for one half of the Action Plan, namely proposals regarding the following action points:

- **Mismatch arrangements** (Action 2): This action point attempts to deal with differences between national tax rules. Companies can exploit these differences so that the same cost factor reduces the tax base in two states or is not taxed. The most common case is the different treatment of a transaction by one state as equity and by another as a credit. This enables the company to deduct interest from income in one country and have a tax-free dividend in another country. Against such structures, the OECD recommends eliminating tax benefits for a transaction if another state also provides an advantage for the same transaction. If a state fails to cooperate, the other state should act unilaterally. In the EU and Germany, rules have recently been adopted in this sense.

- **Harmful tax practices** (Action 5): This action point proposes to assess whether national tax rules are granting tax benefits (e.g. exemptions from tax payments) beyond what is justified by economic substance. What ‘substance’ means here is hard to explain, as it is already part of the problem: Some countries, for example, would like to allow for benefits that are related to research on a patent. The OECD began screening such benefits 15 years ago, but so far has virtually not intervened in any structure they found. The only additional proposal now made is a vague call for more transparency and a complex proposal for testing the substance, but this is not yet the consensus. The OECD therefore openly admits that they could not agree on one of the most harmful practices, namely, when revenue from patents or licenses is not taxed at all, or if so, only very little. The United Kingdom, Luxembourg, the Netherlands and Spain are said to have opposed it.

- **Abuse of tax treaties** (Action 6): So far, as their main purpose, tax treaties only act to avoid double taxation, but are known in practice to also facilitate tax avoidance and non-taxation. Since tax treaties are often not designed in the interests of developing countries, because they are based on the OECD tax treaty model, developing countries identified this issue as one of their BEPS priorities in a special report by the OECD. In its interim proposals, the OECD proposes adding the prevention of non-taxation as a general aim of their tax treaty model, and recommends having certain clauses against non-taxation in any tax agreement as a minimum standard. This is useful, but not entirely new, since many bilateral agreements already contain such clauses.

- **Transfer pricing of intangibles** (Action 8): Transfer prices are used for avoiding tax payments during trans-border transactions within a company. To put a stop to complete arbitrariness of the company on which prices goods or services should be taxed as well as unlimited shifting of where the income to be taxed is based, the OECD so far has relied on the so-called arm’s length principle. It means that an intra-company cross-border transaction must be calculated at the same price as an external one. This approach very often reaches its limits, because it is very difficult to make a comparison of internal and external prices. This is particularly difficult for intangible goods such as patents and licenses, as these goods are by definition unique. The OECD has already been aware of the problem for decades. Nevertheless, its proposals continue to rely on the arm’s length principle for taxing intangibles. Proposals that go somewhat beyond this were also raised, but were postponed for a decision in 2015.

- **Country-by-country documentation** (Action 13): Transparency concerning the business operations of a company is a prerequisite for the recognition of tax avoidance. The OECD is now proposing to make important country-by-country information of a company’s operations accessible to the authorities. This means that the country-by-country reports will not be public, as has long
been demanded by civil society. As a result, authorities will lack the complementary critical examination of the public and academics to detect tax evasion, and public pressure on avoiding taxes will be lacking.

- **Digital Economy** (Action 1): The OECD considers that using modern communication and means of production and the digitalisation of the entire economy does not create entirely new problems concerning taxation, but worsens existing ones, e.g. with regard to the tax allocation of assets and economic activities. Thus the OECD proposes measures that mainly take digitalisation into account for other actions of the action plan.

- **Multilateral agreement** (Action 15): So far, international tax law is characterized by bilateral tax treaties that are only moderately similar, based on the above-mentioned models of the OECD and the United Nations. Tax treaties have often resulted in no tax payments. However, it is difficult to change and adjust thousands of tax treaties. Thus the OECD has examined the need for a multilateral agreement on cross-border taxation – superseding existing treaties – and its feasibility. It has come to the conclusion that this is both desirable and possible. However, whether the states will become involved in this system overhaul is unclear. Although the agreement shall be open to all countries later, they would have no say in the design.

**Further Work**

The OECD is now trying to solve the outstanding aspects of the above actions. But above all, it will work on the remaining actions of the plan. Some are about taxation of intra-company financial services and risk transfers (Actions 4, 9 and 10), which have also been identified by developing countries as a priority in the special report. The same applies to the item ‘artificial avoidance of permanent establishment status’ (Action 7): Taxes are only collected from a permanent establishment, which requires an economic activity of some importance. However, the OECD seems not to be addressing the aspects of the permanent establishment definition that are more important for developing countries. Furthermore, measures against shell/mailbox companies will be dealt with (Action 3), where similar resistance as against harmful tax practices is to be expected. To increase transparency, the OECD will consider methodologies to collect BEPS data for the authorities (Action 11), and to oblige companies to disclose their tax avoidance strategies (Action 12). Finally, discussions will cover the strengthening of dispute settlement mechanisms (Action 14).

In conclusion, it does not look as if the efforts of the G20 and the OECD will strongly push back tax avoidance. Wider problems such as tax competition among countries to attract (foreign) investment that lead to ever lower taxation rates, and important disadvantages for developing countries, have even not yet been addressed.

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**Brief Update: Financial services in CETA, TTIP and TiSA**

The end of the negotiations for a Comprehensive Economic Trade Agreement (CETA) between Canada and the EU was officially announced in Ottawa (Canada) on 26 September and the negotiated text finally made public (63 MB!). However, Germany raised objections, amongst others because government bonds could be subject to the investor-to-state dispute settlement (ISDS) if not well specified in the “Annex of the Financial Services Chapter”. This could prevent bond restructuring or non-payment, which is needed during a financial crisis to avoid a tax payers’ bail-out. Also controversial is that financial regulation will be subject to ISDS if no consensus has been reached in two committees that regulation is ‘prudential’. Moreover, there are many other limitations on how the financial sector can be regulated as explained in a well document NGO analysis (see page 18).

During the last round of negotiations between the United States and the EU on a trade and investment agreement (TTIP), negotiations on financial services were brought to a standstill, since the United States refuses to include regulatory cooperation on financial services (see also July 2014 Newsletter) and therefore the EU refused to discuss further liberalisation of (non-discriminatory measures in) financial services. What both sides are arguing for is undermining strict financial regu-
lation, EU and U.S. NGOs have warned in an open letter and Finance Watch in a new position paper.

In the meantime, negotiations continue in secret between the EU and 22 other WTO members, including Canada and the United States, for an agreement on trade in services (TiSA), including on financial services and financial regulation. Interestingly, it seems that the CETA text is more specific on protecting prudential financial regulation than a leaked TiSA text (see July 2014 Newsletter). The latter is also different from a leaked TTIP text, so which treaty will prevail to protect financial regulation? Civil society organisations and trade unions are very actively protesting against the many deregulatory aspects of TiSA (see a new OWINFS briefing on financial services and a new trade union report).

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**Brief Update: Negotiations on Financial Transaction Tax Continue**

In spite of some rumours spread by media with vested interests, the negotiations for the Financial Transaction Tax (FTT) in the framework of Enhanced Cooperation continue among the eleven participating countries (see March 2013 Newsletter).

After France had asked – to the surprise of its partners – to exempt all derivatives last summer, when the then new Finance Minister Pierre Moscovici came into office, many people believed that the FTT would be dead. However, under pressure from Germany, Austria and others, Paris has meanwhile changed its position once again. France now accepts tax derivatives that are considered to be “speculative”, while arguing that derivatives that are viewed as serving hedging purposes in the real economy should be exempted. However, it is still controversial which derivatives fall precisely under which category.

In May, finance ministers of the eleven countries declared that they wanted to reach an agreement by the end of the year. Given the many technical issues, there is consensus that negotiations will take time. This is why there will be several stages for the FTT implementation. During the first stage, transactions of shares and derivatives on shares will be taxed. Governments say that a respective agreement can be reached by the end of December 2014.

As of early October 2014, the debate has focused on two issues: which other classes of derivatives should also be included, and how binding a second and perhaps a third stage would be. Most countries are in favour of a binding agreement on the subsequent stages, but legal arguments have been made against it. One model under discussion is for a tax rate of zero to be set for all derivatives, which after agreement at a later stage, could be expanded to different classes of derivatives.

While it is quite sure that a financial transaction tax will come, the question now is what the design will look like in detail. Therefore, the political battle against watering down the project continues between supportive governments and civil society on the one hand and more sceptical governments, like in France, on the other.

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**Calendar**

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

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

The links below give the website with updates and overviews of documents and dates related to the EU decision making process.

**October**

- **21-23, EP (Strasbourg):** Plenary, Vote on new Commission
- **23-24, European Council (Brussels):** Meeting
- **20, EBA (London):** Deadline for consultation on supervisory review and evaluation process (SREP)
- **22, ESMA (Paris):** Deadline for consultation on counterparty risk by UCITS for OTC financial
derivative transactions subject to clearing obligations.

- 24, EBA (London): Deadline for consultation on risk concentration and intra-group transactions under the Financial Conglomerates Directive
- 31, ESMA (Paris): Deadline for consultation on information to be submitted to ESMA by Credit Rating Agencies

November

- 1, EC (Brussels): Beginning of new European Commission mandate
- 1, ESMA (Paris): Deadline for consultation on main indices and recognised exchanges under the Capital Requirements Regulation
- 3-4, ECON (Brussels): Meeting
- 4, EC (Brussels): Deadline for consultation on Insurance Block Exemption Regulation
- 5, Finance Watch (Brussels): Conference: "What finance for what growth?"
- 5, Housing Europe (Brussels): Conference: "Housing Finance: Property Bubbles or Social & Ecological Resilience?"
- 6, ESMA (Paris): Deadline for consultation on clearing obligation under EMIR
- 6 EC (Brussels): Conference "Finance for Growth – Towards a Capital Markets Union"
- 9, Eurogroup (Brussels): Meeting
- 10, ECOFIN (Brussels): Meeting
- 10, EBA (London): Hearing on triggers for resolution.
- 10, EBA (London): Hearing on triggers for early intervention
- 11, ECON (Brussels): Meeting
- 13-15, G20 (Brisbane, Australia): Deputy Finance Ministers and Central Banks meeting
- 15-16, G20 (Brisbane, Australia): Heads of State Summit
- 17, ECON (Brussels): Meeting
- 18, EC (Brussels): Conference on emerging challenges in retail finance and consumer policy
- 21, EBA (London): Hearing on payment commitments
- 25, EBA (London): Hearing on recovery Plan Indicators
- 24-27, EP (Strasbourg): Plenary
- 28, EBA (London): Hearing on resolution tools
- 28, EBA (London): Hearing on treatment of liabilities

December

- 1-2, ECON (Brussels): Meeting
- 1, (Turkey): Turkey begins G20 Presidency
- 8, ECON (Brussels): Meeting
- 8, EBA (London): Hearing on group financial support
- 10, ESMA (Paris): Deadline for consultation on implementation of the Regulations on EuSEF and EuVECA
- 13, Eurogroup (Brussels): Meeting
- 14, ECOFIN (Brussels): Meeting
- 15-18, EP (Strasbourg): Plenary
- 18-19, European Council (Brussels): Meeting
- 19, ESMA (Paris): Deadline for consultation on prospectus related issues under the Omnibus II Directive
- 22, EBA (London): Deadline for consultation on minimum list of services and facilities
- 22, EBA (London): Deadline for consultation on asset separation tool and on the sale of business tool
- 22, EBA (London): Deadline for consultation on triggers for use of early intervention measures
- 22, EBA (London): Deadline for consultation on circumstances when an institution shall be considered as failing or likely to fail

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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 reports, campaigns, and meetings, which can be sent to markus.henn@weed-online.org.