Newsletter - EU Financial Reforms

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Editorial

Dear readers,

As you will have realised, the release of the previous issue of this newsletter dates back to July 2015. There are two linked reasons why it took five months to edit the current issue: first, the funding for our work on financial market reforms has expired, and second, there are no real financial reforms taking place any more at the EU level. The momentum has run out. On the contrary, with the Capital Market Union project, counter-reform has been launched and the voice of the financial industry lobby dominates EU financial policies.

However, SOMO and WEED will continue to issue this newsletter. Because in contrast to the EU's official opinion that most financial reforms have been achieved and that the system is now safe, we are convinced that the basic problems have not been solved. The financial system is still too big and too complex, and the financial sector is too interconnected to be efficiently regulated and controlled by democratic politics. In the event of a new financial crash, which will inevitably come sooner or later, the backstops of the reforms will not be sufficient.

In addition to inadequate reforms comes the pressure of further critical factors, such as the unresolved debt crisis in Greece, Italy, Spain, Portugal and other countries, economic growth rates in the Euro-zone which are hardly above stagnation, a currency that is structurally hampering a substantial improvement to the economic situation and a crisis management that, at best, can buy some time, as the rescue package for Greece from last summer has shown. Although the European Central Bank is desperately trying to trigger growth by flooding the financial markets with money while protecting indebted countries through interest rates close to zero, it has not been possible to turn the tide. Except for bubbles on the stock markets and some real estate markets, there has been no real result. It seems that even the instruments of the central bank are failing to keep the challenges under control.

Even if the UK does not exit the EU, centrifugal tendencies and decline will be accelerated. As a condition to remain in the EU, the UK intends to block all financial reforms that threaten the profitability of London as a financial centre.

The problem-solving capacity of the EU in general is already totally overstretched. With terrorism, war and civil war in its immediate neighbourhood, as well as migration and rising right wing forces in almost all member countries, governments will be even more absorbed by managing chaos. In other words, we have to prepare ourselves for a long period of multiple crises in Europe.

We shall continue to accompany the political economy of the EU with short background information and critical comments about ongoing financial decisions at EU and G20 level. We think that civil society has to continue to warn about the continuing risks and deficiencies in financial policies, something that this newsletter intends to be instrumental in. We plan to edit at least one edition of this newsletter per trimester. In extraordinary situations, we shall increase the output.

We hope that we can continue to provide a useful publication to you, and donations to SOMO or WEED are welcome.

Your editorial team: Myriam Vander Stichele, Markus Henn, Peter Wahl

Tackling too-big-to fail banks and other measures: are banks being reformed?

By Myriam Vander Stichele, SOMO

Photo by Flickr / Alexander Johmann / Creative Commons 2.0

Summary: *The European Parliament still has not made a decision on a new law that would prevent exceedingly risky activities from being undertaken by too-big-to-fail banks. Many attempts are being undertaken to make new bank reforms as weak as possible. Some other measures to deal with unstable banks are being implemented or proposed at EU level. At the international level, extra standards have been agreed that would prevent taxpayer money from being used for saving systemically important banks. In the meantime, shadow banking is growing and becoming more acceptable, but is only very slowly being regulated. According to the European Banking Authority, all these measures still have not resulted in very stable European banks, nor in a stable financial system, according to UNCTAD. Interestingly, the G20 has requested that more work be done on the impact on climate change on the financial sector, e.g. on investments in real estate that can be destroyed by heavier storms, or investments in the coal industry.*

After the Economic and Monetary Affairs Committee (ECON) of the European Parliament had exceptionally rejected a draft legal proposal on diminishing the risks of too-big-to fail (TBTF) banks by restructuring them (see July 2015 Newsletter), a compromise was reached at the end of October 2015 between two large parties, the Social Democrat (S&D) and Centre Right (EPP) parties. The compromise proposal would result in not having a decision that investment and retail banking should be separated at globally systemically important credit institutions, as defined by EU law, or at banking institutions that have had total assets of at least €30 billion over the last three years and trading activities of at least €70 billion (or 10% of their total assets). Many conditions would apply before a competent authority could decide whether a bank's non-loan activities have become too risky for TBTF banks, for financial stability or for depositors, e.g. the bank first has the opportunity to prove that these risks do not exist. If there were such risks, the supervisors would have the discretion, under conditions that take time, to require a risky bank to increase its capital buffers or to stop certain trading activities. The other element of the compromise is that trading at the risk of the TBTF bank itself ("proprietary trading") and some financial connections with hedge funds or private equity funds will be forbidden. Since disagreements were raised again in late November, it is unlikely that ECON will vote on a new text in December 2015. The draft ECON texts have weakened the possibility that and when competent authorities can make decisions to restrict a TBTF bank, a far cry from the original call to split TBTF banks, and whether these decisions will even be useful. Once ECON has agreed, negotiations will need to find a compromise with the different position of the Council of Finance Ministers to arrive at a final legal text.

The banking industry has been fiercely lobbying against any bank structural reform, arguing that their competitiveness as compared to US investment banks will further diminish and that they will be less able to serve large corporate clients or be strong players on financial markets. There is a growing rhetoric in the EU that banks have been over-regulated, which has led to a consultation by the EC until 6 January 2016 and a Financial Stability Board report about the impact of the regulation so far. It is argued that bank restructuring is not needed because the following additional measures are being taken to strengthen the European banks.

Second pillar

In order to be prepared for times of crisis, the second pillar of the Banking Union has already resulted in a Single Resolution Mechanism that has a separate decision-making body (Single Resolution Board) and a Single Resolution Fund. From January 2016 onwards, the Single Resolution Board will be responsible when a bank that is part of the Banking Union (in the Euro-zone or other) is in serious difficulty and needs funds to recover or to be resolved with minimal costs to the tax payer. The EU's Bank Recovery and Resolution Directive stipulated that since January 2015 that national resolution funds are available, but some EU members states failed to implement the directive. In addition, banks have plans that enable basic banking functions to continue when a bank is to orderly recover in times of financial distress or to be orderly resolved when a bank goes bankrupt.

Third pillar

In order to finalise the third pillar of the Banking Union for Euro area banks and to increase the trust in banks, the European Commission made a proposal on 24 November 2015 on how to establish a European Deposit Insurance Scheme (EDIS) by 2024 in three successive stages. This would allow all savers in Euro countries to have their deposits guaranteed for up to EUR 100,000 in the event that a bank in the Euro-zone becomes insolvent. EDIS would gradually replace national deposit guarantee systems (DGSs) for up to EUR 100,000 in savings, which are obligatory under EU law and have to cover at least 0.8 per cent of the value of guaranteed deposits by 2024, but whose implementation is lagging. The new proposals would require a slow build-up of a Euro-zone guarantee fund (EDIS) with bank contributions: During the first three years, EDIS would only contribute to a certain extend if the money at DGSs were to be exhausted (i.e. a reinsurance scheme); for a second period of four years, EDIS could contribute a small amount needed for savers in case of a bank collapse (co-insurance scheme), apart from payments by DGSs; and by 2024, there should be a full insurance system in place providing deposit guarantees for all countries with national DGSs. To avoid funding from countries with stable banks having to pay for weak banks, conditions have been built in before access to EDIS is allowed – for instance, riskier banks will pay higher contributions to EDIS than safer banks. The proposal is already meeting strong opposition, e.g. by Germany.

Loss absorbing capacity

The updated list of 30 global TBTF banks, called global systemically important banks (G-SIBs), is being published by the Financial Stability Board (FSB) in November 2015. In order to avoid a situation in which the tax payer has to pay for all the losses in the event that a bank goes bankrupt, the G-SIBs are subject to more risk management requirements and mechanisms. Moreover, from January 2016 onwards, G-SIBs have to acquire more financial means to deal with situations when they face financial problems. This so-called higher "loss absorbency capacity" is complementary to reforms that increase capital buffers for banks to absorb especially loss-making loans or activities. The loss absorbency instruments only provide extra capital when certain crisis situations occur, and are often "bail-in" instruments (e.g. continent convertible bonds – CoCos – become shares so that banks do not have to pay the bonds' debt to the bond holders). They have to be easily available or convertible (i.e. to be "liquid"). Other new minimum standards for total loss-absorbing capacity" (TLAC), agreed at the G20 mid November 2015, require that the resolution entities of the G-SIBs, which are responsible for resolving a G-SIB when it goes bankrupt, have loss absorbing instruments that are 16 per cent of their risk-weighted assets by 2019 and 18 per cent by 2022.

Shadow banking

On shadow banking, progress is still scarce. Efforts are being made to make shadow banking acceptable as "resilient market based finance". The G20 Summit in mid-November 2015 did not issue specific decisions. The FSB has continued to monitor shadow banking and has made attempts to deal with particular issues, such as simplifying securitisation and additional standards to avoid the financial risks of "securities financing transactions". At EU level, one of the two legislations proposed in 2014 (see March 2014 Newsletter), which covers a small but important aspect of shadow banking, was adopted on 29 October 2015, namely the Regulation on Transparency of Securities Financing Transactions (SFTR). It should allow the risks to be monitored and assessed when assets, such as shares or bonds, are used as collateral to finance activities in the real economy or transactions in financial markets, e.g. when borrowing securities, or for repurchase transactions (repos).

The G20 is also enabling better transparency and stability in the financial sector, through a new "Legal Entity Identifier" system (LEI) that has already registered 390,000 entities, with the cross-border bank resolution, and with better control of misconduct in the banking sector.

Research EBA

In the meantime, the European Banking Authority (EBA) has published its research on the stability and transparency of big banks in 21 EU countries and Norway. It concludes that European banks, with important differences among countries, are more stable due to increased capital buffers and are more able to lend to the economy. However, they still have quite a high level of bad debts on their books and are still quite exposed to governmental bonds ("sovereign debt"). EBA also reported on the leverage ratio which each bank has to disclose from 1 January 2015 onwards. A new leverage ratio requirement will become binding from 1 January 2018, ensuring that banks build up financial buffers in relation to the total balance sheet of the bank, and not according to weighing the risks of their activities. Until that date, banks are required to individually disclose their leverage ratio data. The leverage ratio aims at avoiding a situation in which banks are lending too much without their own reserves, and in which they are assessing, or "weighing", the risks of the loans they provide too lightly.

Notwithstanding all these financial reform measures, after having made a thorough assessment of financial reforms, the 2015 UNCTAD Trade and Development Report concluded that "so far these [measures] have failed to get to grips with the systemic frailties and fragilities of a financialized world."

Climate change risks

In light of the increased attention on the link between the financial sector and sustainable development with a focus on climate change (see for instance SOMO's recent report), the FSB was asked by the G20 Leaders to continue activities on how the financial sector can take climate change risks into account. This is a theme that the Chinese Presidency of the G20 which started in December 2015 is likely to actively support, given China has done comprehensive work in this area, e.g. with many reports in cooperation with UNEP Inquiry into the Design of a Sustainable Financial System. The FSB has proposed to set up a voluntary industry-led disclosure task force enabling the financial industry's efficient assessment of climate change risks and the transition to a low-carbon economy. In the meantime, many banks have given in to civil society campaigning to stop financing the coal industry and coal energy plants, since coal is the number one source of carbon emissions.

Capital Markets Union – now it's serious!

By Julian Müller, SOMO

Photo by „Spiegelneuronen“ CC

Summary: *With the recent release of the Capital Market (CMU) Action Plan, an ambitious and detailed work agenda for the next four years, the European Commission's "flagship project" creating a Capital Markets Union, has entered the phase of serious and detailed work. Some legislative proposals are already on the table and three consultations have been launched. The Commission is clearly intent on wasting no time and feels empowered by what it says is "universal support" for CMU. However, civil society has already voiced disagreement and will have to try hard in the coming weeks and months to bring its concerns to the public's attention in order to undermine the Commission's claim of universal support and open up space for discussion at the EU and national levels.*

Capital Markets Union (CMU) – the Commission's project for creating an integrated and expanded or "deeper" capital market across all EU Member States by 2019 (e.g. for increased issuing and trading of shares, for background see February 2015 Newsletter) – has entered a new phase with the release of the CMU Action Plan on 30 September 2015. This plan sets the agenda for the next four years in detail, including a comprehensive timetable. That the CMU is in fact an umbrella term for an agenda comprising a wide range of regulatory measures in a disparate range of areas was always clear, but it has been made more obvious by this release, which lists 33 different work streams, grouped under 20 different detailed objectives to be achieved, which are in turn grouped into six overarching goals. Some of these may even become more differentiated as work progresses.

Two legislative proposals

Work has already started in a number of areas. Together with the Action Plan, the Commission also released two legislative proposals: (1) A proposal for a regulation for "simple, transparent and standardised" (STS) securitisation (converting illiquid assets into tradable securities – which was at the core of the 2008 financial crisis), along with an accompanying proposal to amend the Capital Requirements Regulation. The idea behind the latter is that more favourable capital requirements would make it more attractive to invest in securitisations that qualify for the STS label. (2) An amendment to the delegated Act on Solvency II, the EU's most important law on insurances. Similar to the suggested amendment of the Capital Requirements Regulation, this amendment primarily aims to make investment into a newly defined asset class of "infrastructure investments" more attractive for insurers by lowering capital buffer requirements. However, it also extends preferential treatment to investments in a number of other assets, including the planned European Long-Term Investment Funds, a mix between risky hedge funds and public funds that are supposed to invest cautiously for the long term (for background, see February 2014 Newsletter).

In addition, the Commission released reference documents for three public consultations (all with the deadline 6 January 2016): on the already existing venture capital and social entrepreneurship funds, which is meant to result in a proposal for a package of measures to support venture capital financing and on a possible pan-European framework for covered bonds (bonds that are backed by high quality collateral).

Third consultation

A third consultation relates to the state of the regulatory framework for financial services and is particularly important, because it calls on the public and the financial sector to provide the Commission with information on the cumulative impact of financial regulation in recent years. The underlying assumption seems to be that regulation that was introduced after the crisis to improve financial stability has created barriers to economic growth and "unnecessary regulatory burdens". While this consultation is unrelated to CMU in terms of substance – it is not about capital markets as such – it also seems based on the assumption that there is a trade-off between growth and stability and that the scales need to be tilted in favour of the former again. This raises fears that this consultation could inaugurate a process of financial deregulation or a reversal of the already unambitious post-crisis reforms.

Legislative releases

Apart from these work streams, there are two more legislative releases before the end of 2015: (1) a proposal was published on 30 November 2015 to change the Prospectus Directive, which will make the production of prospectuses – frequently large documents that issuers of shares or other tradeable financial instruments must publish to give potential investors the information they need to make their investment decisions – less cumbersome for SMEs, and (2) a Green Paper on "retail financial services and insurance"; in other words: the financial services that regular people buy to save for old age or secure themselves against life risks.

Concerns

The Commission appears to be intent on wasting no time, and it clearly feels empowered by what it describes as "universal support" for CMU (Action Plan, p. 4). However, many NGOs have expressed concerns about the Commission's plans, including the World Future Council, Reseau Financite, SOMO, Non Con I Miei Soldi and Finance Watch. Among these concerns is a point that has been made by many economists since as early as the 1980s, and which has recently been confirmed in studies by, amongst others, the OECD, the IMF and the Bank for International Settlements: that the growth and increasing importance of the financial sector (and capital markets in particular) in recent decades is negatively related to investment, innovation and growth. Moreover, on the occasion of the release of the Action Plan, a group of NGOs and trade unions also published a joint statement. They conclude that "CMU revives pre-crisis trends without adequately integrating the lessons from the crisis. It also marks a shift in the political momentum towards short-term growth and competitiveness at all costs, when what is needed is long-term sustainable development of the economy". In the weeks and months ahead, the task of those who are not part of the non-existent consensus will be to make their voices heard in public to make the claim of universal support for CMU untenable.

G20's measures against corporate tax avoidance raise doubts

By Markus Henn, WEED

Summary: *The G20 have agreed on a large package of measures against corporate tax avoidance. The final measures include the refining of how transnational corporations are required to price their internal business transactions (like payments for goods, intellectual property or loans), an abolishment of some very harmful tax breaks, several anti-avoidance rules and more transparency, particularly for country-by-country reporting of business and tax figures. While the package has some real merits, the G20 have not effectively abolished all important tax avoidance channels, transparency is limited to authorities, and an important systematic solution to the problem was neglected. There are also some open issues which need to be resolved in the next year or even beyond.*

After two years of work, the G20 heads of state, at their summit in Antalya in mid-November, have approved measures against corporate tax avoidance, known as the "BEPS" project ("base erosion and profit shifting" – for background, see Newsletter December 2014). According to the G20 and the OECD (as the organization appointed by the G20 to work out their action plan from 2013), a consensus on BEPS was reached. However, many of the measures are only "recommendations" and only some are obligatory "minimum standards". In addition, work on some important details will continue, meaning that the current agreement is still an interim result.

Tinkering the old system

The most important work of BEPS was on transfer pricing (Action 8-10), which defines the prices for the many trans-border transactions within a multinational company. To put a stop to complete arbitrariness in a company's transfer prices, which can be used to shift profits and evade taxes, the OECD long ago developed the so-called arm's length principle. This means that an intra-company transaction must be calculated at the same price as an external one. But such comparison of internal and external prices is often difficult, particularly for intellectual property rights such as patents, as they are by definition unique. Nevertheless, BEPS is sticking to the arm's length principle and only refines the rules. For example, it shall now no longer be sufficient if a subsidiary company based in a tax haven just holds an intangible and then claims high profits in other parts of the overall company. Instead, the subsidiary needs to have real activities or bear real risks. With this change, transfer prices shall also be able to better capture the activities of the hard-to-catch digital economy (Action 1). However, it is not sure how effective this will be. BEPS also missed the chance to thoroughly explore alternative systems of taxation to end problems with transfer pricing and the arm's length approach. For example, corporations could be treated as one single entity and the profit could be distributed through a formula based on real economic activity and assets, a system called unitary taxation.

Similar to intangibles, profits can be shifted within a company through loans and financial services (Action 4) and the respective interest payments, resulting in less tax. In this case, however, BEPS qualifies the arm's length principle as useless and instead proposes to cap the cross-border interest payments that a company can deduct from its tax base. A company shall only be allowed to deduct a net interest of 10-30% of its profits – which is a step in the right direction even though a fixed cap might not prevent the entire tax avoidance.

BEPS anti-tax avoidance measures

BEPS has worked out measures against various specific tax avoidance techniques. The most important work here was on harmful tax practices (Action 5), which mainly refers to national rules granting tax benefits (e.g. exemptions) for certain income (e.g. from licenses or patents). BEPS now introduces as a minimum standard a complex rule which requires a certain economic "substance" for such tax benefits, i.e. activities such as research. BEPS also identifies (as the OECD did in previous similar work) some tax benefits in various G20 and OECD countries that are not in line with this new standard. This result is a compromise between countries that grant such benefits, like the Netherlands and the United Kingdom, and the ones that do not have them (yet), like Germany. While it is good that certain very harmful tax benefits will be prohibited, the legalization of the remaining ones is a big problem. It will very likely trigger a wave of new benefit regimes, giving companies a huge overall tax reduction for a large part of their corporate income.

Other work dealt with hybrid mismatches (Action 2), i.e. if companies exploit law differences between two countries to minimize taxes. The most common case is the treatment of a transaction by one state as equity and by another as a loan. This enables the company to deduct interest from income in one country and have a tax-free dividend in the other. Against such structures, BEPS now recommends rules which – if needed, also unilaterally – eliminate tax benefits for a transaction in one country if the other country also provides an advantage for the same transaction.

Next to transfer prices, tax treaties (Action 6) are the backbone of the current international tax system. Currently, they only aim at avoiding double taxation, but are known in practice to also facilitate tax avoidance and non-taxation. BEPS thus recommends adding the prevention of non-taxation as a general aim of the OECD model tax treaty. Furthermore, it recommends having certain clauses against non-taxation as a minimum standard in any tax agreement. This is useful, but not entirely new, since at least some bilateral tax agreements already contain such clauses.

Taxes in an international context are only collected from a so-called permanent establishment (Action 7), which is an entity with a certain level of economic activity. Given various avoidance practices, BEPS recommends changing the definition of a permanent establishment so that auxiliary activities (e.g. Amazon warehouses) are not regularly excluded anymore, as is currently the case, but only if they are truly auxiliary (which is not the case in Amazon's warehouses, because they constitute Amazon's business model). Furthermore, rules against the splitting of activities are refined so that a company cannot hide the total amount of its activity in one country.

Also important are rules on so-called controlled foreign companies (Action 3), which can be translated as mailbox companies without any real economic activity of their own. Many countries already have rules stipulating that the income of a controlled foreign company can be added to the controlling parent company's income. The problem, however, is that even countries which have these rules, like the United States, have massive loopholes in them. BEPS only contains weak recommendations to improve this kind of defense rule, obviously due to U.S. pressure. This will probably not improve the situation and can be seen as one of the biggest failures of BEPS.

More transparency, but not enough

Transparency on the business of a company is a prerequisite for the recognition of tax avoidance. BEPS will thus introduce country-by-country reporting (Action 13) as a new minimum standard, whereby important information on a company's activity in each country will be made accessible to the tax authorities. This is one of the biggest successes of BEPS. However, the reports will not be made public. As a result, authorities will lack complementary critical examination on the part of the public and academics to detect tax evasion and avoidance, and public pressure will be absent. Furthermore, there are concerns that the data will not reach all affected tax authorities, because the information is initially only transmitted to the country of the company headquarters, which must then send the data to other countries – but can also refuse to do so in some cases, e.g. for confidentiality reasons. This might be abused by many (industrial) countries in order not to comprehensively share the data. To improve transparency, there will also be further collection of BEPS data (Action 11) and recommendations were made on the disclosure of tax planning structures (Action 12) by companies to authorities, which is common in some countries.

The implementation game

The BEPS measures – regardless if they are recommendations or minimum standards – will have to be implemented into national law in most cases. The impact of BEPS will depend massively on how quickly and comprehensively this will be done. Furthermore, bilateral tax treaties for cross-border tax issues would have to be changed. Currently, there are over 3,500 of these. Given that changing all of them would be a huge task, BEPS has also looked into a multilateral instrument (Action 15). However, BEPS only came to a general conclusion that such an instrument is both desirable and technically feasible. Whether the states will finally become involved in this system overhaul is unclear. The details on the instrument will now be negotiated and shall be ready for signature at the end of 2016. Another implementation aspect is dispute settlement (Action 14) between two tax authorities on how to tax a company which both would like to tax. This carries the risk that tax authorities from poorer countries will lack the capacities to ensure a fair settlement. Therefore, only industrial countries have agreed to a binding settlement procedure, but not emerging or developing countries, which have only agreed to some weak minimum standards.

Developing countries still marginalized

BEPS has made some efforts to allow developing countries to participate. Initially, the OECD held regional consultations and produced a low-income country BEPS special report. Later on, a handful of countries were at least invited to the negotiations in Paris. However, there was no real inclusion of developing countries, and the action plan itself focused on the problems of richer states. Therefore, BEPS did not seriously discuss how corporate profits – and thus taxes – can be distributed more equitably between lesser developed and more developed countries, or how harmful tax competition between countries can be stopped.

While BEPS contains some real progress, it will not be sufficient to truly counter all current tax avoidance problems (for further analysis, see the evaluation of the BEPS Monitoring Group).

Brief Updates

Brief update: FTT: Light at the end of the tunnel

As reported in our last newsletter, negotiations on the Financial Transaction Tax among the eleven EU countries under the *Enhanced Cooperation Procedure* had entered the decision-making phase. Coordinated by Austria, solutions have been found on the so-called "core engine". There is cautious optimism that the cornerstones of an agreement can be announced at the 8 December 2015 ECOFIN meeting. This would also fit into the strategy of French President Hollande to announce a result at the current UN Climate Summit in Paris. France wants a share of the revenues of the FTT to be channelled into climate and development finance.

The major conflicts have been settled. As for the FTT on derivatives trading transactions, there will only be one minor exemption: Derivatives whose underlying bases are 100% public bonds will not be taxed. Ideas such as exempting intra-day trade are off the table.

As regards taxing trading for market making, the consensus is that only shares will be exempted. But there are still different opinions on the definition of market making. The goal is to find a compromise which allows for taxing proprietary trading while exempting market making for really illiquid markets. One final issue yet to be settled is whether to only tax shares issued in the 11 EU countries rather than all shares traded by EU11 resident institutions. A possible compromise might be to allow for country-specific approaches.

Once the decision on this “core engine”, as negotiators call the overall package, has been made, technical and legal work will have to be completed, which could take until summer 2016.

If there is no bad last-minute surprise, the agreement would lead to a tax, which, of course, will be watered down to a certain extent. However, the current compromises will not lead to a catastrophically weak FTT, as they seemed to be heading for a while, and which would have been totally unacceptable for civil society. If the final result reflects the current state of negotiations, the deal would also be acceptable for civil society.

Brief update: EU regulators weaken EU law to limit food speculation (MiFID II- MiFIR)

The implementation of the new MiFID II / MiFIR law that imposes limits on derivatives contracts that speculate on food or other commodities, including energy (for background, see February 2015 Newsletter), is being weakened in different ways by the European regulators, who published proposals to set the technical standards for applying the laws on 28 September 2015.

Firstly, the European Securities Markets Authority (ESMA) proposed that speculative contracts held by one person/company can consist of up to 35% of the derivatives trade on a commodity exchange. In general, national authorities should have the choice to impose position limits per person/company and per commodity exchange of between 5% to 35%, even though 5% in the hands of one speculator can already have a significant effect on some exchanges. Secondly, ESMA did not propose how market and price volatility on financial commodity exchanges should be taken into account when deciding on position limits, even though this is part of the legal text and a major reason why position limits were being called for after spikes in food prices had caused hunger and food riots. Thirdly, there is a weak regulatory standard on how to assess whether a non-financial company or person that is very active in speculative commodity derivatives trading should be subject to stricter regulation and even be required to hold capital reserves (i.e. a weak definition of “ancillary activity” for large commodity traders). Fourthly, ESMA is asking for a one-year delay in the application of MiFID II-MiFIR, arguing that all required data collection and reporting instruments cannot be in place by 1 January 2017.

The ESMA position has been very much influenced by the financial and the energy industries, which have been lobbying heavily, as can be seen in position papers and the media. The European Parliament has protested these developments and is negotiating with the European Commission to improve and/or find compromises on the ESMA proposals.

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**.**

2015

December

- **1, G20:** China takes over G20 Presidency
- **1, ECON (Brussels):** Meeting
- **2, EP (Brussels):** Plenary
- **7, ECON (Brussels)**: Meeting
- **7, Eurogroup (Brussels)**: Meeting
- **14-17, EP (Strasbourg):** Plenary
- **17-18, European Council (Brussels):** Meeting
- **31, G7:** End of German Presidency

2016

January

- **6 COM:** Deadline Public consultation on covered bonds in the European Union
- **6, COM:** Deadline Call for evidence: EU regulatory framework for financial services
- **6, COM:** Deadline Public consultation on the review of the European Venture Capital Funds (EuVECA) and European Social Entrepreneurship Funds (EuSEF) regulations
- **8, COM:** Deadline Public consultation on re-launch of the Common Consolidated Corporate Tax Base (CCCTB)
- **14, COM:** Deadline Public consultation on impacts of maximum remuneration ratio under CRD IV, and overall efficiency of CRD IV remuneration rules

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.