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NEWSLETTER

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1. Latest news

- **Council of the EU** - The European Council has decided to set two price caps on petroleum products falling under CN code 2710 which originate in or are exported from Russia. Also, the Council will review price cap mechanism for crude oil as of mid-March and the review will occur regularly every two months.

More information at: <https://www.consilium.europa.eu/en/press/press-releases/2023/02/04/eu-agrees-on-level-of-price-caps-for-russian-petroleum-products/>

This decision starts from the EU's desire to support Ukraine in the war of aggression started by Russia in March 2022 for independence, sovereignty and territorial integrity within its internationally recognized borders. Earlier in December 2022, the Council capped the price of Russian oil at USD 60 per barrel to severely limit the income of Russian companies. The establishment of two price ceilings for petroleum products that originate in or are exported from Russia was decided by the EU. There are also two exceptions related to petroleum products that refer to maritime transport and technical assistance, brokerage services or financial assistance. By introducing these exceptions, the EU had in mind the mitigation of the negative consequences of the energy supply of third countries and the reduction of price increases. The two price ceilings take into account the degree of processing of petroleum products: 45 dollars per barrel for the unprocessed one and 100 dollars for the processed one. The establishment of the price took place by consulting the authority in the field Price Cap Coalition, it becomes applicable from February 5, 2023 and will be reviewed regularly every two months.

- **The European Securities and Markets Authority** – ESMA has release its first market report on European Union (EU) Money Market Funds (MMF). The report contains supervisory information collected by National Competent Authorities (NCAs) and ESMA and provides for the first time a comprehensive market-level view of EU MMFs. Based on its findings, EMSA suggested that the European Commission should consider a number of changes to the MMF Regulation, intended to make MMFs more resilient.

More information at: <https://www.esma.europa.eu/press-news/esma-news/esma-report-finds-eu-mmf-industry-close-eu15tn>



February 2023 saw the publication of the inaugural report on the European Union (EU) money market (MFM) by the EU financial market regulator and supervisor, the European Securities and Markets Authority (ESMA). Starting from the information collected from the national authorities, a comprehensive picture of the market of monetary funds is synthesized and offered. This market unites the demand and supply of short-term financing and plays a central role in the financial system, being closely interconnected with other parts of the financial sector. The importance of monitoring MMF developments in the EU was also highlighted by the periods of stress on the short-term markets in March 2020. The introduction of the reporting obligation by MMF administrators to ESMA, led to the transparency of the market towards institutional actors. The value of the assets of the MMF sector in the EU was 1.44 billion euros in 2021, with over 90% belonging to the funds in three countries: France, Luxembourg and Ireland. The sectoral breakdown of the MMF assumes low volatility (46% of total assets), variable (42%) and constant (12%).

Geographically, the funds in France are expressed in euros and with variable volatility, while the funds in Ireland and Luxembourg are in foreign currencies with low or constant volatility. The exposure of the MMF is mainly to the government debt, during the pandemic, an increase in the share was achieved, so that later it will slowly decrease to the previous composition. The MMF's risk sensitivity is higher than the minimum regulatory level, the weight of liquid assets increasing at a regular rate, thus significantly reducing the risk compared to the interest rate. The owners of the MFF are represented by professional investors (financial companies, insurance companies, pension funds and banks) who own over 90% of the assets. At the same time, in 2022, ESMA proposed to the Commission a series of changes to the MMF regulation to increase market resistance through measures to improve general stability and reduce liquidity risk. Other measures proposed by ESMA aim at complementary reforms such as: improving the reporting requirements, the liquidity stress testing framework, the transparency of the rating requirements, addressing the threshold effects for constant financial instruments.

- **Council of the EU** – The Council preparatory body that oversees the implementation of the EU's code of conduct on business taxation has elected a new chairperson. María José Garde (Spain) will take up the position on 5 February 2023 for a period of two years. The Council's code of conduct group, established in 1998, consists of high-level taxation experts of the member states.

More information at: <https://www.consilium.europa.eu/en/press/press-releases/2023/02/01/business-taxation-maria-jose-garde-elected-as-chair-of-the-code-of-conduct-group/>

The EU member states have jointly assumed a political, intergovernmental commitment to monitor and remedy potentially harmful fiscal measures in the member countries. At the level of the Council, since 1998, it has been established a conduct group made up of recognized experts in the fiscal field. The group's activity mainly involves an international dimension: promoting good fiscal governance worldwide, performing technical works, evaluating and revising the list of non-cooperative countries for fiscal purposes. Periodically, the revision of the respective list is carried out following an in-depth analysis regarding the application of the commitments assumed by the third countries. The president of this group has an important position benefiting from the Commission's technical assistance and is responsible for the connection with third countries. At the end of February, this position was taken over by Mrs. María José Garde, who has extensive experience in the field of international taxation, having previously also been the president of the OECD Global Forum on Transparency.



2. News for practitioners

- **Court of Justice of the European Union** – The Court released its judgment in Case C-163/21, *De Capitani v Council*. In this particular case, the General Court decided that The Council must grant access to documents drawn up within its working groups relating to the legislative procedure concerning the amendment of the directive on the annual financial statements.
More information at: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2023-01/cp230015en.pdf>

In February, the Court of Justice ruled in the case of *De Capitani v Council*. In principle, the Court established that in the case of legislative procedures regarding the legislative changes regarding the annual financial statements, the obligation of the Council to grant access and transparency to the prepared documents. The case started from the submission by Mr. De Capitani of a request for access to the documents preceding the legislative procedure regarding the change of Directive 2013/34 regarding the annual financial statements. The council rejected the petitioner's request on the grounds that the disclosure of the documents would seriously undermine the decision-making process. It should be noted that the respective documents belonged to a "Commercial Company Law" working group, which is an internal body of the Council and prepares the work of the Committee of Permanent Representatives. Addressing the issue of prior access to documents related to legislative procedures, the Tribunal had to judge the case considering two opposing issues: on the one hand, the principles of publicity and transparency of legislative procedures provided by the Treaty on the Functioning of the EU and the Charter of Fundamental Rights of the EU, and on the other on the other hand, the exception from the disclosure of documents used in the decision-making process of an institution. The Council's defense was based on the idea that in the legal order of the EU, the principle of openness, which implies publicity and transparency in legislative procedures, is of fundamental importance. In this way, access to legislative documents must be made as comprehensive as possible. But this right to access the documents of the EU institutions must be exercised in accordance with the general principles, limits and conditions established by the Community legislation. Under these conditions, it can be observed that the unconditional right to access to documents is not absolute, as it can be restricted by the EU institutions in thoroughly justified cases. However, the Court rejected the Council's claims, regarding the specific defense that the disclosure of internal documents concretely and effectively undermines the legislative process in question. The Court established the lack of allegedly sensitive content of the documents caused by the fact that they actually contained only textual comments and specific changes, inherent in a normal legislative process. The lack of particular importance of the respective materials means that they do not contain sensitive elements that would generate legal and political difficulties in the respective case. Also, the defense related to the preliminary nature of the documents was removed on the grounds that European legislation does not make a distinction depending on the stage of the discussions, but provides for the characteristic of not making a decision in the respective case by the community institution. The petitioner's interest was emphasized by the fact that European citizens must know the positions expressed by the member states within the Council specifically to generate a debate on this matter before this institution establishes its position in the legislative procedure in question. Also, the cooperation between the EU states is not jeopardized by the access and transparency of the documentation in dispute, this being a preliminary one that may suffer subsequent changes and their repositioning. An important aspect emphasized by the Court concerns the fact that the legislators have the obligation to be accountable to the citizens so that the citizens can exercise their democratic rights and follow the community decision-making process in detail. Also, another aspect invoked related to the technicality of the documents was removed starting



from the fact that it is not relevant and applicable in the free access to them. At the same time, expressing the position of their state of origin, the members of the working groups of the Council receive a mandate in the exercise of their functions. This mandate mainly involves representation in the legislative process, a process that must be known throughout its evolution by European citizens.

3. News for academia and students

- “Monitoring, Indicators and Evaluation Plans for EU Cohesion Policy Programmes, 2021-2027”, April 25-28 (EIPA, Maastricht) – Trans European Policy Studies Association (TEPSA) is organising a three days webinar on the new regulations about monitoring and evaluation requirements needed to implement the new Structural and Cohesion funds for the period 2021-2027. The course will focus on monitoring requirements, choice of programme indicators, data challenges and the Performance Framework and many other issues.
More information at: <https://www.tepsa.eu/course-monitoring-indicators-and-evaluation-plans-for-eu-cohesion-policy-programmes-2021-2027-april-25-28-eipa-maastricht/>

The national authorities are evaluating the programs and projects for the recently concluded implementation period, 2014-2020. At the same time, they must also start ways to evaluate and implement the new programs for the period 2021-2027. Under these conditions, the management authorities must collect the best possible ways of monitoring and evaluating the projects. The purpose of the webinar is to review monitoring requirements, choice of program indicators, data challenges and performance framework. At the same time, we study the program templates and reporting for the new structural funds programs, how to prepare an Evaluation Plan for the period 2021-2027 including the management of evaluation studies, the preparation of field work and the typical problems that may arise. The working methods of the seminar involve working groups, mini-workshops, exercises and videos to develop simulations of the essential elements of monitoring systems and evaluation plans, to provide a clear picture of good practice in the key disciplines involved.