



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 8 September 2009 (14.09)

**11806/09
ADD 1**

**PV/CONS 39
ECOFIN 509**

ADDENDUM to DRAFT MINUTES¹

Subject: **2954th** meeting of the Council of the European Union (**ECONOMIC and
FINANCIAL AFFAIRS**) held in Brussels on 7 July 2009

¹ The information from the Council minutes which is contained in this addendum is not confidential and may therefore be released to the public.

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Agenda items released to the public concerning the final adoption of Council acts

"A" items: (list: 11546/09 PTS A 32)

When finally adopting the "A" items relating to legislative acts, the Council agreed to enter the following in these minutes:

- 8. Council Regulation establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries concerning jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, matters of parental responsibility and matters relating to maintenance obligations, and the law applicable to matters relating to maintenance obligations**
9987/09 JUSTCIV 133
+ REV 1 (fi)

The Council adopted the above Regulation. (Legal basis: Articles 61(c), 65 and 67(2) and (5) of the Treaty establishing the European Community).

- 1. Statement by the Council
on Articles 6 and 9**

"In situations where the Commission intends not to authorise the opening of formal negotiations on the envisaged agreement under Article 6 or not to authorise the conclusion of the negotiated agreement under Article 9 the Member State concerned may at any time, if it so wishes, bring the matter before the Council with a view to a debate within that body."

2. Statements by the Council and by the Commission on Article 13

"The Council invites the Commission to consider carefully, when preparing its report under Article 13, whether, in the light of the experience gathered on the application of the Regulation, the Regulation on its expiry should be replaced by a new one covering the same subject matters or including also other matters covered by other Community instruments. In the context of the report on the application of the Regulation on applicable law, the Commission should consider, in particular, whether a possible new Regulation should cover recognition and enforcement under Regulation (EC) No 44/2001."

"The Commission takes note of this invitation and will examine it carefully in its report on the application of the Regulation, without prejudice to its own competences."

3. Statement by the Commission

"The Commission recalls that the rights and obligations arising from agreements concluded, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, are not affected by the provisions of the EC Treaty pursuant to Article 307, first subparagraph. This also applies to the so-called broad legal assistance agreements.

To the extent that such agreements are not compatible with the EC Treaty, the Member States shall take all appropriate steps to eliminate the incompatibilities established, in line with Article 307, second subparagraph, of the Treaty. The Commission is of the view that the acceding Member States should renegotiate such agreements in order to eliminate any incompatibilities with the Community acquis, including on matters such as jurisdiction, recognition and enforcement in civil and commercial matters. The Commission offers all its cooperation to achieve a satisfactory result with regard to these specific agreements. The Commission considers the result of these renegotiations should be reviewed after 8 years following the adoption of the Regulations."

11. Council Decision on the Guidelines for the Employment Policies of the Member States
10421/09 SOC 377 ECOFIN 409 EDUC 107

The Council adopted the above Decision. (Legal basis: Article 128(2) of the Treaty establishing the European Community).

12. Council Regulation on the common system of trade for ovalbumin and lactalbumin (codified version)
10357/09 AGRI 237 CODIF 56

The Council adopted the above Regulation. (Legal basis: Articles 26, 87, 88, 89, 132, 133 and 308 of the Treaty establishing the European Community).

13. Council Regulation amending Council Regulation (EC) No 1386/2007 laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation
10150/09 PECHE 136
+ COR 1 (hu)
+ REV 1 (lv)

The Council adopted the above Regulation. (Legal basis: Article 70 of Regulation (EC) No 1386/2007).

14. Directive of the European Parliament and of the Council on passenger hand holds on two-wheel motor vehicles (codified version)
PE-CONS 3626/08 CODIF 53 ENT 83 CODEC 520

The Council adopted the above Directive in accordance with the second indent of Article 251(2) of the EC Treaty. (Legal basis: Article 95 of the Treaty establishing the European Community).

15. Directive of the European Parliament and of the Council on stands for two wheel motor vehicles (codified version)

PE-CONS 3625/08 CODIF 52 ENT 82 CODEC 519

The Council adopted the above Directive in accordance with the second indent of Article 251(2) of the EC Treaty. (Legal basis: Article 95 of the Treaty establishing the European Community).

16. Directive of the European Parliament and of the Council on the identification of controls, tell-tales and indicators for two- or three-wheel motor vehicles (codified version)

PE-CONS 3629/08 CODIF 57 ENT 84 CODEC 523

+ COR 1

+ COR 2 (lv)

The Council adopted the above Directive in accordance with the second indent of Article 251(2) of the EC Treaty. (Legal basis: Article 95 of the Treaty establishing the European Community).

17. Decision of the European Parliament and of the Council granting a Community guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Community

PE-CONS 3620/09 ECOFIN 268 RELEX 317 CODEC 519

+ COR 1 (bg)

The Council approved the amendments set out in the European Parliament's opinion and adopted the proposed act thus amended. (Legal basis: Articles 179 and 181 A of the Treaty establishing the European Community).

18. Regulation of the European Parliament and of the Council establishing a procedure for the negotiation and conclusion of bilateral agreements between Member States and third countries concerning sectoral matters and covering applicable law in contractual and non-contractual obligations

PE-CONS 3655/09 JUSTCIV 130 CODEC 725

+ REV 1 (fi)

The Council approved the amendments set out in the European Parliament's opinion and adopted the proposed act thus amended. (Legal basis: Articles 61(c), 65 and 67(5) of the Treaty establishing the European Community).

**4. Statement by the Council
on Articles 6 and 9**

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19. Regulation of the European Parliament and of the Council establishing a programme to aid economic recovery by granting Community financial assistance to projects in the field of energy

PE-CONS 3659/09 ENER 188 ECOFIN 376 CODEC 729

+ COR 1 (de)

+ COR 2 (hu)

+ REV 1 (cs)

The Council approved the amendment set out in the European Parliament's opinion and adopted the proposed act thus amended (Legal basis: Articles 156 and 175(1) of the Treaty establishing the European Community).

7. Statement by the Commission

"The Commission underlines that energy efficiency and renewable energy sources are key priorities of EU energy policy, both for environmental and for security of supply reasons. In this respect, the Regulation will contribute to these priorities by giving substantial support to offshore wind projects.

The Commission recalls in this context the various other new initiatives supporting energy efficiency and renewable energy sources, suggested by the Commission notably in its European Recovery Plan, which was endorsed by the European Council of December 2008. These include:

A modification to the ERDF Regulation to allow investments up to €8 billion in energy efficiency and renewable energies in housing in all the Member States.

A public-private partnership on a "European energy-efficient buildings" initiative to promote green technologies and the development of energy-efficient systems and materials in new and renovated buildings. The estimated envelope for this action is €1 billion: €500 million from existing EC FP7 budget over the years 2010 to 2013 and €500 million from industry.

The EC-EIB initiative "EU Sustainable Energy Financing Initiative". It aims at enabling investments for energy efficiency and renewable energy projects in urban settings. The Commission finances a technical assistance facility from the Intelligent Energy Europe programme (annual allocation of 15 M€ for 2009). This facility, managed by the EIB, will facilitate access to EIB loans with substantial leverage effects.

The creation by EU institutional investors - led by the EIB - of a market oriented equity fund, called Marguerite: the 2020 European Fund for Energy, Climate Change and Infrastructure. This Fund would invest in the areas of energy and climate change (TEN-E, sustainable energy production, renewable energy, new technologies, energy efficiency investments, security of supply, as well as environmental infrastructure). The Commission supports this initiative.

Furthermore, the Commission will present before the end of November 2009 the revision of the energy efficiency action plan as demanded by Council (Conclusions of the European Council of March 2009) and Parliament (EP Resolution P6_TA(2009)0064).

There is agreement among experts that energy efficiency is the cheapest available option to reduce greenhouse gas emissions. The Commission will provide by November 2009 a detailed analysis of the obstacles for increased energy efficiency investments. It will in particular examine whether there is a need for increased financial incentives in the form of low-interest loans and/or grants, how the European budget could be used to this end, and, if appropriate, the Commission will include, inter alia, additional funds for financing of energy efficiency in the new EU Energy Security and Infrastructure Instrument, to be presented in 2010.

When reviewing the energy efficiency action plan, the Commission will pay particular attention to the neighbourhood dimension of energy efficiency. It will analyze how it can give financial and regulatory incentives to neighbourhood countries to step up their investments in energy efficiency.

Should the Commission, when reporting in 2010 on the implementation of the Regulation under its Article 28, find that it will not be possible to commit by the end of 2010 a part of the funds foreseen for the projects listed in the annex to the Regulation, the Commission will propose, if appropriate and in a geographically balanced way, an amendment to the Regulation allowing for the financing of projects in the area of energy efficiency and renewable energy sources, in addition to the above initiatives, including eligibility criteria similar to those applying to projects in the Annex to this Regulation."

8. Statement by Portugal

"Portugal is voting in favour, although in its view, in a review of the programme under Article 28, consideration should be given to the inclusion of renewable energy and energy efficiency projects, particularly for microgeneration and for smart grids and meters, to help achieve the objectives in Article 4(a) and (b) of the Regulation."

20. Directive of the European Parliament and of the Council on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC

PE-CONS 3609/09 MAP 2 MI 34 COMPET 50 IND 4 COSDP 81

POLARM 2 PESC 144 CODEC 107

- + COR 2 (fi)
- + COR 3
- + COR 4 (it)
- + REV 1 (fr)
- + REV 2 (nl)
- + REV 4 (de)
- + REV 5 (hu)

The Council approved the amendment set out in the European Parliament's opinion and adopted the proposed act thus amended, with the Portuguese delegation abstaining. (Legal basis: Articles 47(2), 55 and 95 of the Treaty establishing the European Community).

9. Statement by Portugal

"Portugal deeply regrets that this opportunity to establish fair terms of competition in defence equipment markets, with equal opportunities for Europe's small and medium-sized businesses, has been missed, particularly because measures required for progressive opening up of prime contractors' supply chains have not been considered.

Portugal would therefore urge the Commission to submit legislative proposals, should the review under Article 73 of the Directive show that an internal market for supply chains, where small and medium-sized businesses are more involved, and the development of a European defence market underpinned by a sustainable European defence technological and industrial base have not been brought about by the Directive's application."

10. Statement by the Netherlands

"The Netherlands welcomes the adoption of the Directive on defence and security procurement. The Directive is expected to bring greater transparency and competitiveness to the European defence and security market for prime contractors competing for public contracts. It is tailored to the special nature of defence and security tendering.

The Netherlands sets great store by timely review of the Directive's operation, under Article 73, within five years following the Directive's transposition into national law. The Netherlands specifically calls on the European Commission to assess whether the European internal market for defence and security is working, both for prime contractors competing for public contracts and for subcontractors competing for supply contracts from prime contractors for performance of a public contract. Europe's small and medium-sized businesses are usually involved as subcontractors. The development of a true European defence and security market, with a properly working internal market, requires an open and transparent market at every stage of the production chain, in order to create a level playing field that offers a fair chance to all European small and medium-sized businesses wishing to compete for a supply contract.

The Netherlands calls on the European Commission to come up with effective (legislative) measures if the review of the Directive shows little or no internal market to have been opened up for Europe's small and medium-sized businesses operating as subcontractors in the European defence and security industry."

**11. Statement by the Austrian delegation
on the second to fourth subparagraphs of Article 39(1)**

"In Austria's view, Member States should establish the implementing conditions for Article 39(1), pursuant to the second to fourth subparagraphs thereof, in accordance with their national legal provisions and in compliance with Community law. These may include the conditions whereby a candidate or tenderer (economic operator) can show that the grounds for a conviction referred to in Article 39(1) no longer obtain. Where an economic operator shows that the grounds for such a conviction no longer obtain, the contracting authority should not be required to exclude that candidate or tenderer."

**12. Statements by the Commission
Article 13(d)**

"For the purposes of this Directive, 'area of operation' (Art. 13(d)) should be understood as being the third country(ies) in which a defence or security operation is being undertaken, together with those third countries in the surrounding geographic zone."

Article 31

"Article 31 is a non-mandatory provision. Consequently, and with a view to promoting transparency in public procurement, it should be understood as allowing Member States to adapt the forms for their non-mandatory use.

Documents transmitted by Member States to the Commission as a result of obligations in this Directive will be treated, where relevant, in accordance with Commission's rules on security laid down in Decision 2001/844/EC. Requests for public access to these documents will be treated by the Commission in accordance with Articles 4(5) and 9 of Regulation 1049/2001."

13. Statement by the Polish delegation

"Poland is in favour of the adoption of community legislation concerning issues of the award of public procurement contracts in the field of defence and security. Such regulations should aim at enhancing competitiveness of European defence equipment market while creating a level playing field leading to enhanced competitiveness of national defence industries.

We underline the fact that the adoption of a such directive regulating above mentioned issues should be preceded by thorough analysis concerning its impact assessment focusing in particular on its impact on competitiveness, security of supply, participation of Small and Medium-sized Enterprises, labour market as well as the geographical distribution of the defence equipment production among the European Union Member States. The issue has become of even more importance in view of the economic and financial crisis that has occurred during the last phase of the legislative work on the directive and which concerns the defence sector in a particular manner.

In Poland's opinion there is a risk that the adoption of the Directive in its current wording would deepen the existing differences between national defence industries. This may lead to disadvantageous effects such as: bankruptcy of defence enterprises, unemployment rate increase and as a worst case scenario a decline of defence sector on a national level.

Poland expresses its belief that the proposals aiming at limiting the possible consequences of abovementioned phenomena were not dealt with due concern during the legislative work on the directive.

The Directive should not limit national rules on offset arrangements.

Therefore, Poland would like to express its belief that the current proposal would neither lead to the creation of a level playing field and the increase of efficiency of national defence industries nor to the enhanced competitiveness of the European defence market."

**14. Statement by Austria
regarding certain terms used in the Directive**

"Austria would point out that, in Austria, the term "Verdingungsunterlagen" ("contract documents") refers to "Ausschreibungsunterlagen" ("documents relating to the call for tenders"). Furthermore, in Austria, the term "Eignungskriterien" ("selection criteria") also covers "Auswahlkriterien" ("eligibility criteria")."
