



**COUNCIL OF
THE EUROPEAN UNION**

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(OR. fr)**

**12396/09
ADD 1**

PV/CONS 42

ADDENDUM to DRAFT MINUTES¹

Subject: **2957th** meeting of the Council of the European Union (**GENERAL AFFAIRS
and EXTERNAL RELATIONS**), held in Brussels on 27 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: 12270/09 PTS A 35)

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

79. Council Regulation amending Regulation (EC) No 43/2009, as regards fishing opportunities and associated conditions for certain fish stocks

11973/09 PECHE 180
+ COR 1 (lv)

The Council adopted the above Regulation. (Legal basis: Article 20 of Regulation (EC) No 2371/2002, Article 12 of Regulation (EC) No 1342/2008 and Article 9(3), (4), (5), (7), (8), (9) and (10) of Regulation (EC) No 302/2009).

80. Council Regulation excluding certain groups of vessels from the fishing effort regime laid down in Chapter III of Regulation (EC) No 1342/2008

11974/09 PECHE 181
+ COR 1
+ COR 2 (sk)
+ COR 3 (cs)

The Council adopted the above Regulation. (Legal basis: Article 11 of Regulation (EC) No 1342/2008).

82. Directive of the European Parliament and of the Council amending Directive 98/8/EC concerning the placing of biocidal products on the market as regards the extension of certain time periods

PE-CONS 3624/09 ENV 303 ENT 92 CODEC 536

+ COR 1 (fi)

+ REV 1 (ro)

The Council approved the amendments set out in the European Parliament's opinion and adopted the proposed act thus amended. (Legal basis: Article 95 of the Treaty establishing the European Community).

**1. Statement by the Commission
concerning data protection, data sharing and "free riders"**

"The Commission notes the issues concerning data protection, data sharing and "alleged free riders" that have been raised during the discussions on the proposal for the extension of certain time periods under the Biocides Directive. The Commission will consider appropriate solutions to the identified problems in the framework of the substantive revision of the Biocides Directive."

**2. Statement by the Commission
concerning the creation by Member States of correlation tables**

"The Commission recalls its position concerning the creation by Member States of correlation tables linking the transposition measures taken by the Member States with the Directive, in the interest of citizens, Better Regulation and transparency and to assist the examination of the conformity of national rules with Community provisions.

In this instance, the Commission does not stand in the way of an agreement at Council with a view to the successful conclusion of the inter-institutional procedure on this file and in light of the ongoing horizontal discussions on this matter between the institutions."

83. Regulation of the European Parliament and of the Council amending Regulation (EC) No 1692/2006 establishing the second "Marco Polo" programme for the granting of Community financial assistance to improve the environmental performance of the freight transport system ("Marco Polo II")

PE-CONS 3660/09 TRANS 207 MAR 85 CADREFIN 34 ENV 373
CODEC 736

The Council approved the amendments set out in the European Parliament's opinion and adopted the proposed act thus amended. (Legal basis: Articles 71(1) and 80(2) of the Treaty establishing the European Community).

84. Decision of the European Parliament and of the Council on the participation by the Community in a European metrology research and development programme undertaken by several Member States

PE-CONS 3661/09 RECH 164 COMPET 286 CODEC 742
+ COR 1 (cs)
+ COR 2 (de)
+ COR 3 (mt)
+ REV 1 (nl)

The Council approved the amendments set out in the European Parliament's opinion and adopted the proposed act thus amended. (Legal basis: Article 169 and the second paragraph of Article 172 of the Treaty establishing the European Community).

85. Regulation of the European Parliament and of the Council on substances that deplete the ozone layer (Recast)

PE-CONS 3622/09 ENV 301 CODEC 534
+ COR 1 (fi)
+ REV 1 (es)
+ REV 2 (lt)

The Council approved the amendment set out in the European Parliament's opinion and adopted the proposed act thus amended, with the Maltese delegation abstaining. (Legal basis: Article 175(1) of the Treaty establishing the European Community).

3. Statement by the Commission

"The Commission confirms its intention to consider by 30 June 2010 the inclusion of additional substances in Part B of Annex II to the Regulation, in particular evaluating whether the conditions for their inclusion set out in Article 24(3) are fulfilled. This accelerated examination will focus on the following substances: Hexachlorobutadiene, 2-Bromopropane (iso-propyl bromide) and Iodomethane (methyl iodide)."

4. Statement by Malta

"Malta is concerned with the narrow interpretation being given to Article 6(2), Article 13(4) and the list of critical uses contained in Annex VI with respect to the use of halons on non-military ships. Malta does not agree with the narrow interpretation that maintains that there are only two cases on merchant ships where halons can be used for making inert occupied spaces, namely, the inertisation of flour pumps in occupied spaces and the inertisation of certain occupied spaces on petroleum/oil/gas tankers.

This narrow interpretation is detrimental to the Community's interests without adding value to the protection of the environment considering, inter alia, that vessels operating under third countries' flags will not be affected by the provisions of this Regulation, even within European ports. Third country maritime Administrations implement standards set by the International Maritime Organisation, within the context of the related 1992 amendments to the International Convention on the Safety of Life at Sea (SOLAS). This widens the competitive disadvantage of European maritime flags vis-à-vis third country flags jeopardizing directly the interests of Member States. In turn this compromises the ability of the Community to exert influence in the maritime industry not only without any counter gain but with a net loss.

Malta maintains that the uses of halon 2402 and 1301 in machinery spaces containing combustion engines, oil fired boilers or oil fuel units and generators, cargo pump rooms and other similar spaces, on ships built before 1 October 1994 (the date of entry into force of the 1992 SOLAS amendments) are considered as critical uses of halon."

- 86. Directive of the European Parliament and of the Council amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC and Directive 2005/56/EC as regards reporting and documentation requirements in the case of merger and divisions**
PE-CONS 3644/09 DRS 38 COMPET 254 CODEC 694
+ COR 1 (fi)
+ COR 2 (nl)
+ COR 3 (de)
+ REV 1 (ro)

The Council approved the amendments included in the European Parliament's opinion and adopted the proposed act thus amended, with the Austrian and German delegations voting against. (Legal basis: Article 44(2)(g) of the Treaty establishing the European Community).

5. Statement by the Austrian delegation

"Austria supports the Directive's aim of reducing the administrative burden on companies. In this respect, Austria welcomes many of the envisaged measures.

However, Austria still has the following major concerns which have been raised repeatedly in the proceedings of the Council working party: in the case of a merger between a wholly-owned subsidiary and the parent company, it is not permissible under Article 25 of the Third Directive to call a general meeting. However, taking a reorganisation measure without a resolution of the general meeting is incompatible with the basic tenets of Austrian company law, namely with the distribution of powers between the management and the general meeting (owners) and with the legal protection system arising from the resolution of the general meeting. Thus the provision would give rise to a major need to amend national law which would not be offset by any substantial advantages in terms of the administrative burden on companies, because the general meeting of a wholly-owned subsidiary can be held with a minimum of organisation and costs.

Austria therefore rejects the Directive."

6. Statement by the German delegation

"Germany attaches great importance to the aim of reducing the administrative burden on companies and emphatically supports the EU action programme to reduce bureaucracy.

On two counts, however, the transformation into binding rules of what were hitherto options for Member States does not lead to simplification but to a considerable administrative burden for Germany and may lead to additional pressure on companies. Germany cannot therefore agree to the Directive.

This is because the general meeting of a subsidiary in the case of a merger and/or division of a company is dispensed with. This is irreconcilable with the fundamental division of powers under German company law between the board of directors and the owners/shareholders represented at the general meeting. Germany is also obliged to impose on its companies a hitherto unknown right of sell-out of shares prior to a company merger, although in this case protection of minority shareholders is sufficiently guaranteed by other means.

Germany would therefore welcome the retention of the options in both cases. Germany finds the insistence on these changes incomprehensible, as the alleviations concerning three other points are retained only as options or are incorporated as new options, departing from the original Commission proposal. Many of the simplifications proposed by the Directive have been in force in Germany for a long time (possibility for shareholders to dispense with reporting requirements) or will be incorporated into German law on 1 August 2009 (possibility of electronic publication in the case of a merger or division). Germany has thereby already ensured simplification and the reduction of costs to a considerable extent, and this should be made obligatory throughout the Community in the future only following implementation of the Directive."

87. Decision of the European Parliament and of the Council on interoperability solutions for European public administrations (ISA)

PE-CONS 3667/09 TELECOM 122 CINOET 302 CODEC 779
+ REV 1 (It)

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

88. Regulation of the European Parliament and of the Council concerning trade in seal products

PE-CONS 3668/09 ENV 393 AGRI 241 MI 236 CINER 79 OECGE 141
CODEC 783
+ COR 1 (fi)
+ COR 2 (dk)
+ COR 3 (de)
+ REV 1 (ga)

The Council approved the amendment set out in the European Parliament's opinion and adopted the proposed act thus amended, with the Danish, Romanian and Austrian delegations abstaining. (Legal basis: Article 95 of the Treaty establishing the European Community).

7. Statement by Denmark

"Denmark has during the negotiations underlined the economic and cultural importance of seal hunting for Greenland, especially for the Greenlandic hunters who live in small, remote coastal communities and who rely heavily on the trade in sealskin. Seal hunting in Greenland takes place on a sustainable basis. Denmark acknowledges that the Regulation permits trade in seal products resulting from hunts conducted by Inuit communities. However, Denmark is of the opinion that trade in seal products as a whole is a legitimate activity, which should not be unnecessarily hampered and stigmatised. Denmark is of the opinion that the Regulation could negatively impact the trade in seal

products and as a consequence have severe adverse effects for the Greenlandic seal hunters. Denmark doubts whether there is a market rationale and justification for the Regulation as adopted, noting in particular that sustainable seal hunting is possible with full respect for legitimate animal welfare concerns. Against this background, Denmark has decided to abstain from voting."

8. Statement by Sweden, Finland and Estonia

"The delegations of Sweden, Finland and Estonia wish to make the following statement concerning the adoption of the Regulation of the European Parliament and of the Council concerning trade in Seal Products.

The Regulation introduces a general ban on the placing on the market of seal products, with some exemptions. These exemptions are of fundamental importance, in order to ensure that seal products that result from hunting regulated under national law with the sole purpose of the sustainable management of marine resources and hunts traditionally conducted by Inuit and other indigenous communities can continue to be placed on the European market.

In this context, Sweden, Finland and Estonia would like to point out that hunting is not an area of EC competence, unless it is linked to the conservation of species.

Sweden, Finland and Estonia would also like to express their concern on the negative trade policy implications the Council Regulation will have and the likely harm this regulation will bring to EC trade relations with important trading partners."

89. Directive of the European Parliament and of the Council amending Council Directive 87/372/EEC on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community

PE-CONS 3673/09 TELECOM 126 CODEC 795

- + COR 1 (fi)
- + COR 2 (mt)
- + COR 3 (mt)

The Council approved the amendments set out in the European Parliament's opinion and adopted the proposed act thus amended. (Legal basis: Article 95 of the Treaty establishing the European Community).

90. Regulation of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems

PE-CONS 3646/09 SOC 312 CODEC 697

- + COR 1 (pt)
- + COR 2 (ga)

The Council approved the European Parliament's amendments to the common position. The above Regulation is therefore deemed to have been adopted in the form of the common position thus amended. (Legal basis: Articles 42 and 308 of the Treaty establishing the European Community, and Article 89 of Regulation (EC) No 883/2004).

**9. Statement by the Council
ad Title II**

"The Council considers that, where, under Title II of the draft implementing Regulation, information has to be made available, it is to be understood that this information will be provided without delay at the request of the institution of the Member State concerned and not automatically."

**10. Statement by the Council
ad Article 16**

"In relation to Article 16, the Council considers that this provision does not apply in cases where an activity exercised in another Member State is considered to be marginal within the meaning of Article 14(5)(b)."

**11. Statements by the Spanish delegation
ad Article 25(5), (6) and (7)**

"Spain considers that Article 25(5), (6) and (7) of the Common Position is related to Article 19 of Regulation (EC) No 883/2004 and has to be understood and interpreted in this way. Therefore, bearing in mind that the Spanish Public Health Services, according to Spanish legislation, do not refund, except in exceptional cases of vital emergency, treatments provided by private health institutions, the Spanish Social Security Administrations will apply paragraph 7 and will not be able to provide national reimbursement rates in these cases.

For treatments provided by doctors and hospitals depending on public institutions, taking into account that the sharing of costs by the insured person does not exist, the invoices that are issued by public doctors and hospitals correspond to the actual amount referred to in Article 62 of the Common Position."

ad Article 30

"Spain considers that Article 30 of this Regulation should have included paragraph 2 of the Ruling on the case C-50/05, *Maija T I Nikula* that establishes: "However, Article 39 EC precludes the amount of pensions received from institutions of another Member State from being taken into account if contributions have already been paid in that other State out of income from work received in that State. It is for the persons concerned to prove that the earlier contributions were in fact paid."

Trying to obtain the necessary consensus and unanimity, the Spanish delegation can accept not including a specific paragraph in Article 30 which would refer to paragraph 2 of this ruling, convinced that, in any case, the content of this judgment will continue to be applicable and therefore institutions and beneficiaries could require its implementation. In this sense, the Spanish Administration reserves its right to support the claims of the eventual beneficiaries of this ruling. Furthermore, the Spanish Administration is committed, in the event that a Member State applies Article 30 of Regulation (EC) No 883/2004 and consequently deducts contributions from the Spanish pensions in order to finance their sickness insurance, to reach agreements and arrangements with this Member State for assuming and transferring directly the amounts of contributions. The intention of the Spanish Administration is to avoid financial losses to the detriment of migrant workers who are beneficiaries of Spanish pensions and who reside in the territory of other Member States which provide for the collection of contributions on these pensions."

**12. Statement by the Council
ad Article 33**

"With regard to Article 33, the Council considers that:

- the document to be established by the Administrative Commission for the determination of the legislation applicable should clearly require that an indication be given with regard to the worker's entitlement to any benefits in respect of accidents at work and occupational diseases;
- as in the case of Article 36(1) and (2) of the basic Regulation, paragraphs (1) and (2) of Article 33 should be considered jointly."

**13. Joint statement by the Austrian, German, Italian, Netherlands and Spanish delegations
ad Articles 45(6) and 46(3)**

"While recognising the importance that the implementing Regulation

- does not restrict the rights of a person to defer a pension under the legislation of one or more Member States (Article 46(2) of the Common Position) or to withdraw a claim for a pension not in all Member States involved (Article 46(3) of the Common Position); or
- does not oblige Member States to grant retroactive pensions if the person concerned withholds information on periods completed in that state when claiming a pension of other Member States (Article 45(6) of the Common Position);

the agreement of Austria, Germany, Italy, the Netherlands and Spain to these provisions is subject to the understanding that this is no obstacle to the application of national legislation or legal principles due to which a renunciation of rights which could be claimed cannot lead to a burden for institutions granting social security benefits or institutions granting income support or any kind of social assistance."

**14. Statement by the Council
ad Article 54**

"The Council considers that further examination by the Administrative Commission will be needed in order to settle practical implementing measures, namely with respect to the technical aspects of the calculation of unemployment benefits for self-employed persons."

**15. Statement by the Council
ad Article 55 (4)**

"Article 55(4) provides for a requirement that the institution of the Member State to which an unemployed person has gone to seek work should provide monthly information upon request. The Council considers that there is no need to specify in the text that the information requested includes details as to whether the unemployed person is actively seeking work, since the competent institution in the Member State where the unemployed person has gone to seek work will treat that person in the same way as an unemployed person under its own legislation, ensuring that the unemployed person is subject to the same obligations and checking procedures. In addition, it is to be understood that the non-provision of information on a monthly basis by the institution of the Member State where the unemployed person seeks work does not, in itself, lead to the suspension of the award of benefits by the competent Member State."

**16. Statement by the Council
ad Article 59**

"The Council considers that it is to be understood that Article 59 covers changes of both competence and the order of priority right between Member States."

**17. Statement by the Council
ad Article 60**

"The Council considers that, with respect to Article 60 and in relation to the priority rules referred to in Article 68 of the basic Regulation, it should be made clear that for the purpose of the application of Article 68 "rights available on the basis of an activity as an employed or self-employed person" means rights under the legislation of a Member State whose legislation applies under Title II of the basic Regulation because of the exercise of an activity as an employed or self-employed person, including the cases mentioned under Article 11(2) of the basic Regulation."

**18. Statement by the Council
ad Article 64**

"With respect to Article 64, the Council considers that, for the calculation of the annual average cost per person in each of the age groups listed in that Article, a Member State may determine aggregate averages on the basis of their statistical data where these data are broken down into smaller age groups."

**19. Statement by the Council
ad Article 70**

"With respect to Article 70, the Council considers that further examination by the Administrative Commission will be needed with regard to reimbursement methods. No later than five years after the entry into force of this Regulation, this provision should therefore be evaluated in order to examine if it results in an equal and balanced sharing of costs between Member States. In addition, the Council agrees that this Article has no impact on the content of Article 86 of the basic Regulation."

**20. Statement by the Council
ad Article 72(3)**

"The Council agrees that the obligation to transfer without delay should not apply to small amounts in order to avoid disproportionate costs."

**21. Statement by the Commission
with regard to data forwarded through the EESSI (Electronic Exchange of Social Security Information) network**

"The data forwarded through EESSI (Electronic Exchange of Social Security Information) network, pertaining to social security coordination laid down by Regulation 883/2004 and its implementing regulation is solely exchanged between competent institutions and for the purpose of the aforementioned Regulations."

The Commission recalls that currently according to Regulations 1408/71 and 574/72 the same data are exchanged between competent institutions mostly using paper forms. The directory doesn't contain sensitive data as it provides details of the institutions dealing with all social security branches as it now exists for sickness institutions for the purpose of the European Health Insurance Card (EHIC).

The Commission reaffirms that the data that are forwarded through the EESSI network is encrypted during transit between the Access Points. The Commission has no access to the data exchanged via the EESSI network for other purposes than for guaranteeing, from a technical point of view, the proper operational functioning, the maintenance and the development of the EESSI network."

91. Regulation of the European Parliament and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems, and determining the content of its annexes

PE-CONS 3647/09 SOC 313 CODEC 698

The Council approved the European Parliament's amendments to the common position. The above Regulation is therefore deemed to have been adopted in the form of the common position thus amended. (Legal basis: Articles 42 and 308 of the Treaty establishing the European Community).

**22. Unilateral statement by the Portuguese delegation
ad Article 1(17)**

"Portugal agrees with the changes to Article 62(3) of the basic Regulation, ensuring that the same calculation method of unemployment benefits applies to both frontier and non-frontier workers who during the last activity resided in a Member State other than the competent Member State, and recalls the statement included in the Minutes of the Council which approved that Regulation, according to which "the Council and the Commission acknowledge that the agreement of Portugal on Articles 11(3)(c) and 65(6) and (7) is without prejudice to Portugal's request for fair treatment in the sharing of costs between Portugal and other States which are not members of the European Union, in the context of the agreements to be negotiated following the adoption of this Regulation.""

23. Joint statement by the Government of Malta and the European Commission

"The inclusion of the pensions payable under the:

Armed Forces Act (Cap 220);
Police Act (Cap 164);
Prisons Act (Cap 260); and
Pensions Ordinance (Cap 93)

within the scope of Regulation (EC) No 883/2004 is without prejudice to the classification of such schemes in according to national Law."

24. Unilateral statement by the Italian delegation

"The agreement of Italy on Article 87(10a) is without prejudice to Italy's request for fair treatment in the sharing of costs between Italy and other States which are not members of the European Union, in the context of the agreements to be negotiated following the adoption of this Regulation."

25. Unilateral statement by the Netherlands delegation

"In relation to the entry "Q. NETHERLANDS" (5) as laid down in the Commission proposal, which contained an insurance fiction for situations where the applicable legislation and/or the competence between Member States to grant family benefits changes, it was agreed that this entry was no longer necessary due to the provisions of the new Article 59(2) of the Common Position which prescribes that the payment of family benefits (in cases where the applicable legislation and/or the competence between Member States changes) takes effect from the date on which the first Member State ceases payment."

92. Regulation of the European Parliament and of the Council on credit rating agencies

PE-CONS 3642/09 EF 69 ECOFIN 347 CODEC 691

- + COR 1
- + COR 2
- + COR 3 (sk)
- + COR 4 (sv)
- + REV 1 (sl)
- + REV 1 COR 1 (sl)
- + REV 1 COR 2 (sl)
- + REV 2 (cs)
- + REV 2 COR 1 (cs)
- + REV 3 (de)
- + REV 3 COR 1 (de)

The Council approved the amendment set out in the European Parliament's opinion and adopted the proposed act thus amended (Legal basis: Article 95 of the Treaty establishing the European Community).

93. Regulation of the European Parliament and of the Council on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001

PE-CONS 3665/09 EF 77 ECOFIN 400 CONSOM 124 CODEC 767

- + COR 1 (cs)

The Council approved the amendment set out in the European Parliament's opinion and adopted the proposed act thus amended, with the German and Finnish delegations abstaining. (Legal basis: Article 95(1) of the Treaty establishing the European Community).

26. Statement by the Polish delegation

"In the course of negotiations, and in a spirit of compromise, Poland agreed to the introduction of new provisions concerning both the multilateral interchange fee (MIF) and the reachability of payment service providers, provided that Member States outside the euro area were accorded adequate transitional periods to allow the necessary adaptation of and investment in their national payment systems, with due regard for the specificity of local markets.

Poland's concerns have been heightened by the decisions taken in the course of negotiations with the European Parliament, whereby the transitional periods of five and two years respectively, as laid down in Article 8(4), were shortened to four years and one year respectively; this could have fundamental negative consequences for the Polish banking sector. Nevertheless, Poland supports the compromise.

However, Poland would stress that non-euro area Member States which enter the euro area after 1 November 2013 will still be able to benefit from the transitional period ending on 1 November 2014; it considers that this much is evident from Article 8(4) and recital 13."

94. Directive of the European Parliament and of the Council amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management

PE-CONS 3670/09 ECOFIN 411 EF 81 CODEC 787

+ REV 1 (es)

+ REV 2 (bu)

+ REV 3 (de)

The Council approved the amendment set out in the European Parliament's opinion and adopted the proposed act thus amended (Legal basis: Article 47(2) of the Treaty establishing the European Community).

95. Directive of the European Parliament and of the Council of on the taking up, pursuit and prudential supervision of the business of electronic money institutions, amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC

PE-CONS 3666/09 EF 78 ECOFIN 401 CODEC 769

+ COR 1

+ COR 2 (bu)

+ COR 3 (el)

+ COR 4 (sv)

+ REV 1 (lt)

+ REV 2 (it)

The Council approved the amendment set out in the European Parliament's opinion and adopted the proposed act thus amended (Legal basis: Article 47(2), first and third sentences, and Article 95 of the Treaty establishing the European Community).

96. Decision of the European Parliament and of the Council establishing a Community programme to support specific activities in the field of financial services, financial reporting and auditing

PE-CONS 3671/09 ECOFIN 412 EF 82 SURE 17 BUDGET 35 DRS 44
CODEC 788

+ REV 1 (hu)

+ REV 2 (de)

The Council approved the amendment set out in the European Parliament's opinion and adopted the proposed act thus amended (Legal basis: Article 95 of the Treaty establishing the European Community).

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