



**COUNCIL OF  
THE EUROPEAN UNION**

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(OR. fr)**

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ADD 1**

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**ADDENDUM to DRAFT MINUTES<sup>1</sup>**

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Subject:      **2936th** meeting of the Council of the European Union (**JUSTICE AND  
HOME AFFAIRS**), held in Luxembourg on 6 April 2009

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<sup>1</sup> The information from the Council minutes which is set out 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: 8331/09 PTS A 16)

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

4. Council Decision on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2008/.../JHA  
14571/08 COPEN 195  
+ COR 1 (fr)  
+ REV 1 (cs)

The Council adopted the above Decision. (Legal basis: Article 31 and Article 34(2)(c) of the Treaty on European Union and Article 11(4) of Council Framework Decision 2008/.. /JHA).

### 1. Statement by the Czech Republic

"The Czech Republic states that it respects the choice of the Council to establish a procedure according to which any modification of reference tables of offences and sanctions annexed to this Decision shall be adopted by the Council acting by a qualified majority and after having consulted the European Parliament, as provided for in Article 34(2)(c) TEU in connection with Article 39(1) TEU.

Accordingly the Czech Republic states that the respective procedure is being established with a view to the particular nature of the reference tables and shall be without prejudice to the procedure provided for in Article 34(2) (c) TEU requiring unanimity in the Council for the adoption of Decisions and modifications thereof."

5. Council Decision establishing the European Police Office (Europol)  
8706/3/08 REV 3 EUROPOL 47  
+ REV 3 COR 1 (fi)  
+ REV 3 COR 2  
+ REV 3 COR 3 (it)  
+ REV 4 (da)  
+ REV 4 COR 1 (da)

The Council adopted the above Decision. (Legal basis: Article 30(1)(b), Article 30(2) and Article 34(2)(c) of the Treaty on European Union).

2. Commission statement

"The Commission recalls that, in the financial framework 2007-2013, the integration of Europol in the EU budget was foreseen only as from 2010. The new Article 60(5) of the draft Council Decision states that the transitory costs incurred by Europol shall be borne by the Community budget as early as 2009. The Commission stresses that Point 47 of the Interinstitutional Agreement (IIA) on budgetary discipline and sound financial management of May 2006, requires the agreement of the budgetary authority on the financing of any new agency from the EU budget. "

3. Statement by the Czech Republic

"The Czech Republic states that it regards the Council's act of unanimously adopting the Council Decision establishing the European Police Office (Europol) as the expression of consent of all Parties to the Convention based on Article K.3 of the Treaty on European Union on the Establishment of a European Police Office (Europol Convention); the Protocol drawn up on the basis of Article K.3 of the Treaty on European Union and Article 41(3) of the Europol Convention, on the Privileges and Immunities of Europol, the Members of its Organs, the Deputy Directors and Employees of Europol; and the Protocol drawn up on the basis of Article K.3 of the Treaty on European Union on the Interpretation, by way of Preliminary Rulings, by the Court of Justice of the European Communities on the Convention on the Establishment of a European Police Office to the termination of the above treaties in the sense of Article 54(b) of the Vienna Convention on the Law of Treaties."

20. Council Regulation concerning a multi-annual recovery plan for bluefin tuna in the Eastern Atlantic and Mediterranean, amending Regulation (EC) No 43/2000 and repealing Regulation (EC) No 1559/2007  
7116/09 PECHE 44  
+ COR 1  
+ COR 2 (nl)  
+ COR 4 (fr)  
+ COR 5 (nl)  
+ REV 1 (lt)  
+ REV 2 (fi)

The Council adopted the above Regulation. (Legal basis: Article 37 of the Treaty establishing the European Community).

4. Commission statement  
re Article 36 - "Growth factors for fattened or farmed tuna"

"The Commission is willing to cooperate closely with Member States towards the establishment of harmonised growth factors to be applied to bluefin tuna fattened or farmed in cages."

5. Commission statement  
re Article 6 - "Farming and fattening capacity measures" (FIFG)

"In the context of the preparation of the closure of the FIGF programmes 2000-2006, the Commission is ready to provide guidance on the interpretation of Article 30(4) of Regulation (EC) No 1260/1999 to take into account the situation of enterprises that have received funding through FIGF and that will be affected by the implementation of the bluefin tuna Recovery Plan or other national or Community measures."

6. Commission statement  
re Article 6 "Farming and fattening capacity measures" (EFF)

"The Commission declares that enterprises that will be affected by the implementation of the bluefin tuna Recovery Plan and that are willing to convert their facilities, partly or as a whole, to conventional aquaculture methods for the production of other species may benefit from EFF funding under the conditions set by Regulation (EC) No 1198/2006."

7. Commission statement

re Article 5 "Fishing capacity measures" and Article 6 "Farming and fattening capacity measures"

"When monitoring the application of Articles 5 and 6, the Commission will take into account the provisions of Article 5(6)."

8. Commission statement

re Article 5 "Fishing capacity measures"

"The Commission deems that the reduction of fishing capacity needs to be effective, definitive and can be verified. This reduction of fishing capacity will be achieved by scrapping of the vessels concerned or by their real and definitive reconversion. In this respect, the Commission considers that the withdrawal of vessels' authorisations to fish for bluefin tuna will be considered as a complementary measure to reduce fishing capacity in the context of the ICCAT bluefin tuna Recovery Plan provided that Member States certify that these vessels have authorisations to fish for other species in line with sustainability aims of the CFP and are not equipped with nets or other gears for bluefin tuna."

21. Regulation of the European Parliament and of the Council concerning the supplementary protection certificate for medicinal products (codified version)

PE-CONS 3602/09 C0DIF 8 SAN 8 CODEC 67

+ C0R 1 (hu)

+ REV 1 (lt)

+ REV 2 (bg)

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

22. Directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading system of the Community  
PE-CONS 3737/08 ENV 1042 ENER 480 IND 238 COMPET 596 MI 576  
ECOFIN 642 TRANS 496 AVIATION 308 CODEC 1906  
+ COR 1 (fi)  
+ COR 2 (ro)  
+ 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 175(1) of the Treaty establishing the European Community).

9. Statement by the UK  
regarding the legal basis

"The UK notes that the adoption of the Directive on the sole legal base of Article 175(1) of the Treaty establishing the European Community (TEC) is inappropriate for a measure which contains significant provisions on fiscal policy. In line with observations the UK has made in similar circumstances previously, the UK continues to take the view that where EC legislation includes fiscal measures the legal base should include, either solely or, where appropriate, jointly, one of the Treaty articles dealing with fiscal issues. In this case the UK takes the view that Article 175(2) TEC should have been included as a legal base for the Directive."



10. Commission statement

re Article 10(3) on the use of revenues generated from the auctioning of allowances

"Between 2013 and 2016, Member States may also use revenues generated from the auctioning of allowances to support the construction of highly efficient power plants, including new energy power plants that are CCS-ready. For new installations exceeding the degree of efficiency of a power plant according to Annex 1 to the Commission Decision of 21 December 2006 (2007/74/EC)<sup>1</sup> the Member States may support up to 15 % of the total costs of the investment for a new installation that is CCS-ready."

11. Commission statement

re Article 10a(6) on the Community guidelines for State aid for environmental protection and the EU emissions trading system

"Member States may deem it necessary to compensate temporarily certain installations for CO<sub>2</sub> costs passed on in electricity prices if the CO<sub>2</sub> costs might otherwise expose them to the risk of carbon leakage. In the absence of an international agreement, the Commission undertakes to modify, after consulting Member States, the Community guidelines on State aid for environmental protection by the end of 2010 to establish detailed provision under which Member States may grant State aid for such support. The provisions will follow the principles as presented in the document submitted to the European Parliament and the Council on 19 November 2008 (Annex II to 15713/1/08).

The Commission will monitor the situation, particularly in the light of the state of interconnection in the Baltic energy market and will report by the end of 2015."

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<sup>1</sup> Commission Decision of 21 December 2006 establishing harmonised efficiency reference values for separate production of electricity and heat in application of Directive 2004/8/EC of the European Parliament and of the Council (*notified under document number C(2006) 6817*).

23. Decision of the European Parliament and of the Council on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020  
PE-CONS 3738/08 ENV 1043 ENER 481 IND 239 COMPET 597 MI 577  
ECOFIN 643 TRANS 497 CODEC 1907  
+ REV 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 175(1) of the Treaty establishing the European Community).

24. Directive of the European Parliament and of the Council on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 (LA)(First reading)  
PE-CONS 3739/08 ENV 1044 ENER 482 IND 240 CODEC 1908  
+ COR 1 (hu)  
+ COR 2 (nl)  
+ REV 1 (pt)  
+ REV 2 (ro)

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

12. Commission statement  
on latest developments in deployment of CCS technologies

"From 2010 the Commission will regularly report on latest developments in deployment of CCS technologies within its activities related to running the network of CCS demonstration projects. This reporting will include information on the progress on the CCS demo plants deployment, progress of CCS technologies development, cost estimates and the development of CO<sub>2</sub> transport and storage infrastructure."

13. Commission statement

on draft permit decisions and on draft decisions of transfer pursuant to Articles 10(1) and 18(2) of the Directive

"The Commission will publish all opinions on draft permit decisions pursuant to Article 10(1) of the Directive, and on draft decisions of transfer pursuant to Article 18(2). The published version of the opinions will, however, display no information whose confidentiality is warranted under the exceptions to public access to information under Regulations (EC) Nos 1049/2001 and 1367/2006 concerning respectively public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43) and the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13)."

14. Commission statement

on whether carbon dioxide should be a named substance with suitable thresholds in a revised Seveso-Directive

"CO<sub>2</sub> is a common substance and currently not classified as dangerous. CO<sub>2</sub> transport and storage sites are therefore at the moment not included in Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (Seveso-Directive). On the basis of the Commission's preliminary analysis of the available information, for CO<sub>2</sub> transport, both empirical and modelled evidence for pipeline transport would seem to indicate that the risks presented are no higher than for pipeline transport of natural gas. The same would seem to be true for ship transport of CO<sub>2</sub> as compared with ship transport of liquefied natural gas or liquefied petroleum gas. The indications are also that the accident hazard posed by a CO<sub>2</sub> storage site, whether from rupture at injection or from post-injection leakage, is unlikely to be significant. However, the case for considering CO<sub>2</sub> as a named substance under the Seveso-Directive will be considered in more detail when developing the proposed revision of the Directive, scheduled for late 2009/early 2010. Should the

assessment identify a relevant potential accident hazard, the Commission will make proposals to include CO<sub>2</sub> as a named substance with suitable thresholds in the revised Seveso-Directive. In that case, the Commission would also propose changes to Annex III to Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (Environmental Liability Directive) as appropriate to ensure that all Seveso installations handling supercritical CO<sub>2</sub> are covered under the Environmental Liability Directive."

15. Commission statement  
on mineral sequestration of CO<sub>2</sub>

"Mineral sequestration of CO<sub>2</sub> (the fixation of CO<sub>2</sub> in the form of inorganic carbonates) is a potential climate abatement technology which could in principle be used by the same categories of industrial installation as can use geological storage of CO<sub>2</sub>. However, it is at present still in the development stage. In addition to the energy penalty<sup>1</sup> associated with capturing CO<sub>2</sub>, there is currently a substantial energy penalty associated with the mineral carbonation process itself, which will require to be addressed before commercial implementation can be envisaged. As with geological storage, the controls required to ensure the environmental safety of the technology would also have to be established. These controls are likely to be substantially different from those for geological storage, given the fundamental differences between the technologies. In the light of these considerations, the Commission will follow closely the technical progress with mineral sequestration, with a view to developing an enabling legal framework to allow for environmentally-safe mineral sequestration and its recognition under the Emissions Trading System, when the technology has reached an appropriate state of development. Given the interest in the technology among Member States and the pace of technological change, a first assessment is likely to be appropriate towards 2014, or earlier if circumstances warrant."

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<sup>1</sup> "Energy penalty" is the term used to express the fact that a plant applying CO<sub>2</sub> capture or mineralisation uses some of its energy for those processes, and so needs more energy than a plant of equivalent output without capture/mineralisation.

25. Directive of the European Parliament and of the Council on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC  
PE-C0NS 3736/08 ENER 479 ENV 1041 TRANS 495 AGRI 474  
C0DEC 1905  
+ C0R 1 (it)  
+ C0R 2 (pt)  
+ REV 1 (nl)

The Council approved the amendment set out in the European Parliament's opinion and adopted the proposed act thus amended. (Legal basis: Article 175(1) and Article 95 of the Treaty establishing the European Community in relation to Articles 17, 18 and 19 of this Directive).

16. Statement by the UK  
regarding the legal basis:

"The UK takes the view that the adoption of the Directive on the legal base of Article 175(1) of the Treaty establishing the European Community (TEC) is to be without prejudice to the future application of Article 175(2) TEC including in particular for measures containing provisions on fiscal policy."

17. Commission statement  
re Article 2(e)

"The Commission is of the view that for the purposes of this Directive, the term "industrial and municipal waste" may include waste denominated as "commercial waste".

18. Commission statement  
relating to Article 23(8), second subparagraph, second indent

"The Commission is of the view that the reference to the target of 20 % in Article 23(8), second subparagraph, second indent, will not be construed in a way different to Article 3(1) of the Directive."

**19. Commission statement**

re Article 23(8)(c), (9) and (10)

"The Commission acknowledges that some Member States already in 2005 have achieved a high share of renewable energy at national level. When establishing the reports referred to in Article 23(8)(c), (9) and (10), the Commission will, as part of its assessment of the best cost-benefit basis, take due account of marginal costs of increasing the share of renewable energies and will include, as appropriate, adequate solutions also for such Member States in any proposal put forward in accordance with the abovementioned Article of the Directive."

**20. Commission statement**

on Annex VII

"The Commission will seek to advance the development of the guidelines referred to in Annex VII of the Directive by 2011 and will cooperate with Member States to develop the data and the methodologies needed to estimate and monitor the contribution of heat pumps to the fulfilment of the objectives of the Directive.

The guidelines will provide for corrections to Seasonal Performance Factor (SPF) values used to assess the inclusion of heat pumps not driven by electricity to take account of the fact that the primary energy needs of such heat pumps are not affected by the efficiency of the power system. In preparing these guidelines the Commission will also evaluate the feasibility of providing for a methodology under which the SPF value used to assess the inclusion of any given heat pump is based on average EU climate conditions."

26. Directive of the European Parliament and of the Council amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC, as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC  
PE-C0NS 3740/1/08 ENV 1045 ENT 337 ENER 483 TRANS 498  
C0DEC 1909 REV 1  
+ REV 1 C0R 1 (bg)  
+ REV 2 (ro)

The Council approved the amendment set out in the European Parliament's opinion and adopted the proposed act thus amended. (Legal basis: Article 95 and Article 175(1) of the Treaty establishing the European Community in relation to Articles 1(5) and 2 of this Directive).

21. Commission statement

"The Commission confirms that the 2 % reductions mentioned in Article 7a(2), letters b) and c), are not binding and that the review will address their non-binding character."

27. Regulation of the European Parliament and of the Council setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO<sub>2</sub> emissions from light-duty vehicles  
PE-C0NS 3741/08 ENV 1046 ENT 338 C0DEC 1910  
+ C0R 1 (en)  
+ REV 1 (bg)

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

## **22. Commission statement**

"The Commission confirms that in 2009 it intends to propose a revision of Directive 1999/94/EC relating to the availability of consumer information on fuel economy and CO<sub>2</sub> emissions in respect of the marketing of new passenger cars. This is to ensure that consumers receive appropriate information about the CO<sub>2</sub> emissions of new passenger cars.

The Commission will by 2010 review Directive 2007/46/EC so that the presence of innovative technologies ("eco-innovations") in a vehicle and their impact on the vehicle's specific emissions of CO<sub>2</sub> can be communicated to the Member State authorities responsible for monitoring and reporting in accordance with the Regulation.

The Commission will also consider preparing and implementing requirements for cars to be fitted with fuel economy meters as a means to encourage more fuel-efficient driving. In this context, the Commission will consider modifying the framework type approval legislation and adopting the necessary technical standards by 2010.

The Commission is, however, committed to the aims of its Better Regulation initiative and the need for proposals to be underpinned by a comprehensive assessment of the impacts and benefits. In this regard and in accordance with the Treaty establishing the European Community, the Commission will continue to evaluate the need to bring forward new legislative proposals but reserves its right to decide if and when it would be appropriate to present any such proposal."

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