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European Union

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PV/CONS 42

DRAFT MINUTES

Subject: **3331st meeting of the Council of the European Union (GENERAL AFFAIRS) held in Brussels on 23 July 2014**

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LEGISLATIVE DELIBERATIONS

(Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

- 1. Regulation of the European Parliament and of the Council on improving securities settlement in the European Union and on Central Securities Depositories (CSDs) and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 [First reading] (LA+S)**
PE-CONS 49/14 EF 63 ECOFIN 202 CODEC 599

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with the Finnish delegation abstaining, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 114 of the TFEU).

Joint statement by the Kingdom of Belgium, the Federal Republic of Germany and the Grand Duchy of Luxembourg

"Belgium, Germany and Luxembourg welcome the adoption of the Regulation on improving securities settlement in the EU and on centralized securities depositories. This regulation is an important step in the achievement of a European regulatory framework in the field of financial market infrastructures, in line with internationally agreed standards.

As part of the legislative process, Belgium, Germany and Luxembourg would like to recall the importance of the work performed by the lawyers-linguists in the legislative procedure in order to ensure the quality of legislation and the translation of EU legislative acts in all official languages.

At that stage of the legislative procedure, any modification to the text agreed between the European Parliament and the Council, be it a modification on the form or on the substance, requires unanimous agreement of the Member States and the European Parliament.

In the absence of unanimous agreement, the text of the political agreement between the European Parliament and the Council must remain unchanged.

Belgium, Germany and Luxembourg regret that this principle has not been complied with regard to this regulation and expect that it is strictly adhered to in future cases."

Statement by Finland

"Openness and transparency is a crucial objective for financial markets. Finland wants to retain its current 100% transparency regarding domestic ownerships in Finnish listed companies and cannot therefore support the regulation which may endanger this transparency. Finland emphasizes the need to improve the level of available shareholder information across EU and urges including this in the preparation of EU securities law legislation (SLL) and amendment of the shareholders' rights directive (SHRD)."

2. Directive of the European Parliament and of the Council amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions [First reading] (LA+S)

PE-CONS 75/14 EF 84 ECOFIN 270 CODEC 808

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 53(1) of the TFEU).

Statement by Spain

"Spain welcomes the agreement on UCITS V.

Spain notes that the sanctions regime is highly sensitive. Member States operate under very different legal and institutional frameworks and these national frameworks need to remain coherent as harmonisation of the sanctions regime is pursued at European level. The difficulties of these discussions are well known and most Member States specificities have been addressed, in particular when they are grounded on constitutional concerns.

Spain will strive to implement the permanent ban on the exercise of management functions in investment firms in conformity with national law."

Statement by Sweden

"Access to data traffic records held by providers of public electronic communications networks by public authorities amounts to a serious interference with the right to respect of private and family life and the right to protection of personal data. Issues of privacy and surveillance are highly sensitive topics that need to be dealt with in a consistent manner across all EU policy areas. Such powers should be restricted to investigations of crimes. Sweden is worried that this power is spreading to financial market files which do not deal with such matters. The judgment of the European Court of Justice on the 8th of April in which the ECJ declares the Data Retention Directive (2006/24/EC) to be invalid further reinforces this view (see Cases C-293/12 and C-594/12)."

3. Directive of the European Parliament and of the Council on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features [First reading] (LA+S)

PE-CONS 89/14 EF 128 ECOFIN 360 CONSOM 100 CODEC 1018

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 114 of the TFEU).

Statements by the Commission

On the recourse to EBA regulatory technical standards for the adoption of the EU standardised terminology

"The Commission considers that the recourse to EBA regulatory technical standards for the adoption of the EU standardised terminology is inconsistent with Article 10 of Regulation (EU) No 1093/2010 (OJ L 331/12 of 15.12.2010) since determining the list of the most representative services at EU level, together with corresponding common terms and definitions, cannot be regarded as a purely technical matter but entails strategic decisions or policy choices."

On the transposition of the provisions on access to a payment account with basic features

"The Commission considers that the reference to a "binding" framework in Article 16 (10) of the Directive should be interpreted in compliance with the Court's case-law on the transposition of directives in the legal order of Member States, according to which the provisions of directives must be implemented with unquestionable binding force."

On the longer implementation period for Member States where the equivalents of a fee information document and statement of fees already exist at national level

"The Commission considers that the introduction of a longer implementation period for Member States to adopt the common format and symbol of the fee information document and statement of fees where the equivalents of these documents already exist at national level, introduces an unjustified difference in the treatment between Member States. The Commission also notes that the Directive does not contain any explanation on the objective reasons identified for such a difference in treatment."

Statement by the Czech Republic

"The Czech Republic considers that the inclusion of comparison websites in the Directive represents a significant intervention in a market that seems to work efficiently. Moreover, the obligation of the Member States to ensure the operation of comparison websites, even through public authorities, is likely to expose the Member States to unnecessary public expenses and legal risks."

4. Regulation of the European Parliament and of the Council establishing a framework for managing financial responsibility linked to investor-to-state dispute settlement tribunals established by international agreements to which the European Union is party
[First reading] (LA+S)

PE-CONS 92/14 WTO 143 FDI 11 CODEC 1112

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 207(2) of the TFEU).

Joint declaration by the European Parliament, the Council and the Commission

"The adoption and application of this Regulation are without prejudice to the division of competences established by the Treaties and shall not be interpreted as an exercise of shared competence by the Union in areas where the Union's competence has not been exercised."

Statement by the Czech Republic, Lithuania, Poland and Slovakia

"The Czech Republic, Lithuania, Poland and Slovakia wish to state that the adoption and application of this Regulation is without prejudice to the division of competence established by the Treaties and shall not be interpreted as an exercise of shared competence by the Union in areas where the Union's competence has not been exercised before the entry into force of this Regulation.

The Czech Republic, Lithuania, Poland and Slovakia underline that the Union's exclusive competence in the area of common commercial policy relating to international investment agreements or free trade agreements containing investment protection provisions is limited to foreign direct investment according to Article 207 TFEU, which is the legal basis of this Regulation.

The Czech Republic, Lithuania, Poland and Slovakia attach utmost importance to the fact that the adoption of this Regulation does not constitute any reasons or legal basis to claim an exclusive external competence of the Union pursuant to Article 3 para. 2 TFEU for the conclusion of international investment agreements or free trade agreements containing investment protection provisions not explicitly covered by Article 207 para. 1 TFEU, in particular provisions on portfolio investment and other provisions on investment protection that are not covered by the Union's exclusive competence on common commercial policy.

The Czech Republic, Lithuania, Poland and Slovakia accept the definition "required by Union law" based on understanding that the definition "required by Union law" includes treatment when the Member State applied any of the means stated in the Directive to achieve the result of the Directive.

The Czech Republic, Lithuania, Poland and Slovakia accept Article 14(5) based on understanding that Article 19 does not apply to Article 14(5).

While maintaining the opinion on elements outlined above, the Czech Republic, Lithuania, Poland and Slovakia can support the adoption of this Regulation."

Statement by Germany, Finland and the Netherlands

Germany, Finland and the Netherlands wish to state that the adoption and application of this Regulation is without prejudice to the division of competence established by the Treaties and shall not be interpreted as an exercise of shared competence by the Union in areas where the Union's competence has not been exercised before the entry into force of this Regulation.

Germany, Finland and the Netherlands underline that the Union's exclusive competence in the area of common commercial policy relating to international investment agreements or free trade agreements containing investment protection provisions is limited to foreign direct investment according to Article 207 TFEU, which is the legal basis of this Regulation.

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5. Directive of the European Parliament and of the Council establishing a framework for maritime spatial planning [First reading] (LA)

PE-CONS 72/14 POLGEN 38 POLMAR 6 PESC 263 AGRI 208 TRANS 147
JAI 160 ENV 268 PECHE 142 CODEC 773

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with the Slovenian delegation abstaining, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Articles 43(2), 100(2), 192(1), and 194(2) of the TFEU).

6. Regulation of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC [First reading] (LA+S)

PE-CONS 60/14 TELECOM 68 MI 235 DATAPROTECT 38
EJUSTICE 26 CODEC 652

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 114 of the TFEU).

Statement by the Netherlands

"The Netherlands thanks the Greek presidency and preceding presidencies for the final result that was achieved on the regulation for electronic identification and trust services for electronic transactions in the internal market (e-IDAS). The Netherlands is especially pleased with the opportunities offered to private suppliers of electronic identities and with the inclusion of website authentication within the scope of the regulation. The latter will allow supervisory bodies to intervene in case of security incidents such as the one that occurred at a Dutch supplier of website certificates (Diginotar) in 2011. Member states now face the challenge of making the regulation practicable for all parties that will need to work with it. In facing this challenge, however, there lies a concern for the Netherlands. Practice has shown that citizens, enterprises and implementing organizations may have difficulty distinguishing between different security levels of electronic identities and trust services. Member states will have to cooperate intensively and give practical guidance to users in the implementation phase of the regulation. Only then will mutual acceptance of electronic identities and trust services become a reality and will the regulation contribute to the completion of the internal market."

7. Regulation of the European Parliament and of the Council on multiannual funding for the action of the European Maritime Safety Agency in the field of response to marine pollution caused by ships and oil and gas installations [First reading] (LA)

PE-CONS 66/14 MAR 46 FIN 200 ENV 252 CODEC 736

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 100(2) of the TFEU).

8. Directive of the European Parliament and of the Council on marine equipment and repealing Council Directive 96/98/EC [First reading] (LA+S)

PE-CONS 42/14 MAR 27 ENT 53 CODEC 473

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 100(2) of the TFEU).

Commission statements:

On the Competence of the Committee

"The Commission regrets the inclusion of Recital 24 that has the potential to create confusion and legal uncertainty. The role of the Committees which ensure control by Member States on the Commission's exercise of implementing powers is defined only by Regulation No (EU) 182/2011, adopted on the basis of Article 291, third paragraph, TFEU. Therefore, no other secondary legislative act can alter or would need to specify further this role. In particular, the rules of procedures of committees are adopted by the committees on the basis of Regulation No (EU) 182/2011. As such they are to be applied when the Committee exercise its role defined by Regulation No (EU) 182/2011. Any reference to rules of procedures outside this context is superfluous and inappropriate. It also risks complicating the functioning of the committee.

With regard to the possibility of the European Parliament to be invited to meetings, the Commission will implement this recital in accordance with its practice in the implementation of point 15 of the Framework agreement on relations between the European Parliament and the European Commission."

On the 'no-opinion' clause

"The Commission underlines that it is contrary to the letter and to the spirit of Regulation 182/2011 to invoke Article 5 § 4, subparagraph 2, point b) in a systematic manner. Recourse to this provision must respond to a specific need to depart from the rule of principle which is that the Commission may adopt a draft implementing act when no opinion is delivered. Given that it is an exception to the general rule established by Article 5 § 4 recourse to subparagraph 2, point b), cannot be simply seen as a "discretionary power" of the legislator, but must be interpreted in a restrictive manner and thus must be justified.

While the Commission notes the agreement reached by the European Parliament and the Council on the recourse to this provision it regrets that such justification is not reflected in a recital."

On the consultation of experts in the context of preparation of Delegated acts

"The Commission regrets the inclusion in Articles 8(2), 8(3), 11(3) & 27(6) of a provision stressing the importance for the Commission to 'carry out consultations with experts, including Member States' experts, during the preparation of such delegated acts' The Commission recalls that the Commission is autonomous in the preparation and adoption of delegated acts. Moreover, Article 290 TFEU contains an exhaustive list of the procedural conditions which a delegation may be made subject to. The standard recital on expert advice contained in the Common Understanding agreed between the three institutions is a reflection of that interpretation."

9. Proposal for a Directive of the European Parliament and of the Council amending Directive 2001/18/EC as regards the possibility for the Member States to restrict or prohibit the cultivation of genetically modified organisms (GMOs) in their territory [First reading] (LA+S)

- Adoption

a) of the Council's position at first reading

b) of the statement of the Council's reasons

10972/14 AGRI 445 ENV 621 AGRILEG 130 DENLEG 108 MI 496

CODEC 1489

+ COR 1 (it)

+ ADD 1

+ ADD 1 COR 1 (It)

+ REV 1 (It)

+ REV 2 (fi)

11435/1/14 REV 1 CODEC 1550 AGRI 473 ENV 650 AGRILEG 144

DENLEG 117 MI 511

+ REV 1 ADD 1

+ REV 1 ADD 1 COR 1

approved by Coreper, Part 2, on 15.07.2014

The Council approved its position at first reading, with the Belgian and Luxembourg delegations abstaining, in accordance with Article 294(5) of the Treaty on the Functioning of the European Union. (Legal basis: Article 114 of the TFEU).

Statement by Luxembourg

"The Luxembourg delegation wishes to thank the Hellenic Presidency for relaunching the negotiations on amending Directive 2001/18/EC allowing Member States to restrict or prohibit the cultivation of GMOs in their territory.

Our government recognises that the proposed amendments are aimed at improving the above-mentioned Directive. It particularly appreciates the fact that a new recital has been introduced which refers to the Commission's recommendations of 13 July 2010 on the development by the Member States of coexistence measures, including in border areas. Luxembourg particularly welcomes the fact that the grounds for prohibiting cultivation appear in the body of the proposed text and that the Member States may invoke reasons of public policy as such grounds. It also welcomes the strengthening of the EFSA risk assessment guidance.

However, our government is concerned about the involvement of GMO businesses in the proposed authorisation process. It wonders about the balance of power between the Member States, those with smaller administrations, and GMO businesses. Our government also wonders whether the proposal might not lead to a spate of authorisations for GMO cultivation.

A large majority of the population in the Grand Duchy is opposed to the cultivation of GMOs. Moreover, the current government programme stipulates that Luxembourg will continue to apply the precautionary principle in respect of GMOs, promote sustainable "GMO-free" agriculture and defend its anti-GMO position both domestically and at EU and international level.

The Luxembourg government wishes to draw attention, in this context, to the Commission communication of 2 February 2000 [COM(2000)1] on the precautionary principle; the latter is also mentioned in Article 191 TFEU, which aims to ensure a high level of environmental protection. The current state of research does not allow us to rule out entirely the possibility of long-term risks associated with the cultivation of GMOs, including repercussions for fauna and flora and for public health, particularly since no long-term studies exist on this subject.

For these reasons, the Luxembourg government is unable to give its full support to the compromise proposal and must therefore abstain from the vote."

NON-LEGISLATIVE ACTIVITIES

(Public debate in accordance with article 8(4) of the Council's Rules of Procedures)

5. Presentation of the Italian Presidency Work Programme¹

The Italian Presidency presented, in public session, its work programme for the duration of its term of office (July to December 2014). The Council held an exchange of views.

¹ Public debate pursuant to Article 8 (4) of the Council's Rules of Procedure