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European Union

**Brussels, 9 December 2015
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ADD 1**

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DRAFT MINUTES

Subject: **3421st** meeting of the Council of the European Union (**ECONOMIC AND FINANCIAL AFFAIRS**) held in Brussels on 11 November 2015

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¹ Deliberations on Union legislative acts (Article 16(8) of the Treaty on European Union), other deliberations open to the public and public debates (Article 8 of the Council's Rules of Procedure).

LEGISLATIVE DELIBERATIONS

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

"A" ITEMS

1. Draft amending budget No 8 to the general budget for 2015: Own Resources and European Data Protection Supervisor

13410/15 FIN 716 PE-L 62

approved by Coreper, Part 2, on 4.11.2015

The Council adopted its position on draft amending budget No 8 to the general budget for 2015. (Legal basis: Article 314 of the Treaty on the Functioning of the European Union)

2. Draft Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 207/2009 on the Community trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trademark, and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) [First reading] (LA+S)

= Adoption

a) of the Council's position at first reading

b) of the statement of the Council's reasons

13511/15 CODEC 1428 PI 78

+ ADD 1 REV 1

10373/15 PI 42 CODEC 949

+ COR 1 (es)

+ ADD 1

approved by Coreper, Part 1, on 6.11.2015

The Council approved its position at first reading, with the United Kingdom delegation voting against and the Netherlands delegation abstaining, in accordance with Article 294(5) of the Treaty on the Functioning of the European Union. (Legal basis: Article 118 of the TFEU)

Statement by the Commission

"The Commission takes note of the agreement reached between the European Parliament and the Council on the reform of the EU trade mark system. In view of the added value of this reform for the users of the EU trade mark system, the Commission has decided to support it, as in balance, the overall agreement significantly improves the existing situation in particular in terms of substantive trade mark law. This is despite its concerns on certain budgetary aspects of the agreement.

The Commission regrets in particular that the co-legislators have been unable to agree on one of the key elements of its proposal concerning the budget of the OHIM: the automatic review of the level of the fees in case of significant recurrent surplus and the automatic transfer of such surplus to the EU budget. Indeed, while the level of the fees will be fixed in the EU trade mark regulation, the transfer of "substantive" surplus will remain submitted to the discretion of the Budget Committee of the OHIM (vote at 2/3 majority). The Commission recalls that such transfer would have taken place only after all types of use of the resources available as provided by the basic act have been satisfied, including the offsetting of central industrial property offices and other concerned authorities of Member States for the costs that they incur in ensuring the smooth functioning of the European Union Trade Mark System.

The Commission will continue to review the level of the fees charged by the OHIM in view of proposing to adjust them as closely as possible to the costs of the services provided to the industry and of preventing the accumulation of significant surpluses within the OHIM, in line with the rules applicable to all other agencies which have been agreed with the European Parliament and the Council.

The Commission stresses that fully self-financed agencies, such as the OHIM, as well as Institutions and bodies with budgetary autonomy financed outside the EU budget, should support the full cost of their staff, including the costs for the schooling of the children of their staff in the European schools. In line with the principle of administrative autonomy, the Commission will pursue all appropriate means to ensure that these agencies, Institutions and bodies effectively bear such costs or that they refund the EU budget of these costs."

The Commission stresses that, as regards the procedure of pre-selection and appointment of the Executive Director, any upcoming reform of OHIM should fully align with the principles of the Common Approach.

Statement by the Netherlands delegation

"Although the Netherlands welcomes many elements of the proposed trademark reform package, which will make the new system more accessible, efficient and less costly, it wishes to express – again - our grave concerns regarding the proposed provisions on goods in transit (Article 10 paragraph 5 of the Directive and Article 9 paragraph 5 of the Regulation as well as their corresponding recitals).

These provisions will introduce the possibility to detain goods on account of possible infringement of a national or EU-trademark, where those goods are merely in transit through EU-territory.

The Netherlands believes that the proposed measure will put a disproportionate and unnecessary burden on holders of goods and an impediment to legitimate international trade, including for legitimate generic medicines. The Netherlands has had a negative experience in 2008 with detaining medicines in transit and does not want that to happen again.

Although the Netherlands supports the battle against counterfeiting as this undermines trade, IP-rights etc., the proposed measure for detaining goods in transit is unacceptable for The Netherlands. Against this background the Netherlands will abstain from voting on the trademark reform package."

Statement by the United Kingdom

"The UK has always provided strong support for the package of EU trade mark reforms, which will deliver real benefits for trade mark users. However, we cannot support the Regulation since it includes a provision that enables the transfer of future surpluses accumulated from trade mark and design fees to the general EU budget. Research has suggested that IP rich industries contribute 39% of the EU's GDP, with trade marks a significant part of this. We must nurture and protect this contribution to retain our competitiveness: therefore we should not divert money which came from IP to other uses. It should stay in the system, for example supporting innovation or enforcement."

3. Draft Directive of the European Parliament and of the Council to approximate the laws of the Member States relating to trade marks (Recast) [First reading] (LA+S)

= Adoption

- a) of the Council's position at first reading
- b) of the statement of the Council's reasons

13514/15 CODEC 1429 PI 79

+ ADD 1 REV 1

10374/15 PI 43 CODEC 950

+ ADD 1

approved by Coreper, Part 1, on 6.11.2015

The Council approved its position at first reading, with the Netherlands delegation 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 the Commission

"The Commission takes note of the agreement reached between the European Parliament and the Council on the reform of the EU trade mark system. In view of the added value of this reform for the users of the EU trade mark system, the Commission has decided to support it, as in balance, the overall agreement significantly improves the existing situation in particular in terms of substantive trade mark law. This is despite its concerns on certain budgetary aspects of the agreement.

The Commission regrets in particular that the co-legislators have been unable to agree on one of the key elements of its proposal concerning the budget of the OHIM: the automatic review of the level of the fees in case of significant recurrent surplus and the automatic transfer of such surplus to the EU budget. Indeed, while the level of the fees will be fixed in the EU trade mark regulation, the transfer of "substantive" surplus will remain submitted to the discretion of the Budget Committee of the OHIM (vote at 2/3 majority). The Commission recalls that such transfer would have taken place only after all types of use of the resources available as provided by the basic act have been satisfied, including the offsetting of central industrial property offices and other concerned authorities of Member States for the costs that they incur in ensuring the smooth functioning of the European Union Trade Mark System.

The Commission will continue to review the level of the fees charged by the OHIM in view of proposing to adjust them as closely as possible to the costs of the services provided to the industry and of preventing the accumulation of significant surpluses within the OHIM, in line with the rules applicable to all other agencies which have been agreed with the European Parliament and the Council.

The Commission stresses that fully self-financed agencies, such as the OHIM, as well as Institutions and bodies with budgetary autonomy financed outside the EU budget, should support the full cost of their staff, including the costs for the schooling of the children of their staff in the European schools. In line with the principle of administrative autonomy, the Commission will pursue all appropriate means to ensure that these agencies, Institutions and bodies effectively bear such costs or that they refund the EU budget of these costs.

The Commission stresses that, as regards the procedure of pre-selection and appointment of the Executive Director, any upcoming reform of OHIM should fully align with the principles of the Common Approach."

Statement by the Netherlands

"Although the Netherlands welcomes many elements of the proposed trademark reform package, which will make the new system more accessible, efficient and less costly, it wishes to express – again - our grave concerns regarding the proposed provisions on goods in transit (Article 10 paragraph 5 of the Directive and Article 9 paragraph 5 of the Regulation as well as their corresponding recitals).

These provisions will introduce the possibility to detain goods on account of possible infringement of a national or EU-trademark, where those goods are merely in transit through EU-territory.

The Netherlands believes that the proposed measure will put a disproportionate and unnecessary burden on holders of goods and an impediment to legitimate international trade, including for legitimate generic medicines. The Netherlands has had a negative experience in 2008 with detaining medicines in transit and does not want that to happen again.

Although the Netherlands supports the battle against counterfeiting as this undermines trade, IP-rights etc., the proposed measure for detaining goods in transit is unacceptable for The Netherlands. Against this background the Netherlands will abstain from voting on the trademark reform package."

Statement by Estonia

Estonia wishes to underline that it fully supports the trade mark reform and will not therefore oppose the adoption of the regulation and the directive.

However, Estonia wishes to express its concerns on the proposed administrative procedure for the revocation or declaration of invalidity of a trade mark. Estonia regrets that a satisfactory compromise was not found during the negotiations. We remain of the opinion that the proposed administrative procedure will not be efficient and will create additional administrative burden. Furthermore, it will completely change our current system, which has proved to be cost-efficient and effective, posing therefore systematic problems for our legal system.

4. **Directive of the European Parliament and of the Council on the approximation of the laws of the Member States relating to caseins and caseinates intended for human consumption and repealing Council Directive 83/417/EEC [First reading] (LA)**
PE-CONS 37/15 DENLEG 89 AGRI 361 CODEC 955

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)

5. **Directive of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from medium combustion plants [First reading] (LA+S)**
PE-CONS 42/15 ENV 445 ENER 269 IND 110 TRANS 226 ENT 130
SAN 204 CODEC 972

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

Statement by Estonia

"Estonia recognises the overall objective of the Medium Combustion Plants Directive and its positive impact on the air quality and thus votes in favour of the final compromise.

Nevertheless, Estonia regrets that not all the elements of the new Directive are coherent with the EU's overall energy and climate framework. Estonia has been supporting and promoting the usage of solid biomass and other renewable energy sources. Operators have retrofitted their combustion plants accordingly. Therefore, Estonia is of the view that the solution achieved in the Directive creates a disproportionate burden especially on the existing small biomass plants in rural areas which goes against encouraging the uptake of the usage of renewables."

Statement by The Netherlands, Sweden and Germany

"Germany, Sweden and the Netherlands wish to emphasize that improvement of European air quality is very important both for public health and the environment. In this respect European source control measures are essential as air pollution is a transboundary issue. The limit values of the air quality directive are not met in many places in Europe partly due to emissions in other member states.

The agreed compromise is a step forward, but too small a step. As a consequence the reductions of emissions from medium combustion plants in Europe will be less than possible with cost effective measures. Sweden, Germany and the Netherlands accept the compromise but regret that it has not been possible to agree to a higher overall ambition."

Statement by Romania

"Romania acknowledges the importance of improving the legislation on air quality and of the common efforts for controlling air pollution in the European Union, including through the reduction of emissions from medium combustion plants.

However, we consider that this directive will generate a significant administrative and financial burden for the public authorities and operators. The final text does not fully take into account the national circumstances of all member states, in particular regarding the use of indigenous fuels.

Romania maintains its concerns as regards the negative economic and social impact of the directive's provisions, especially of those related to district heating. The directive does not respond to some major concerns in relation to the emissions limit values for solid and liquid fuels, as well as to the derogation for district heating.

Therefore, Romania cannot support the final text of the directive."

Statement by the Commission

"The Commission underlines that it is contrary to the letter and to the spirit of Regulation 182/2011 (OJ L 55 of 28.2.2011, p. 13) to invoke Article 5, paragraph 4, second subparagraph, 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, paragraph 4, recourse to second subparagraph, 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."

6. Council Directive repealing Directive 2003/48/EC on taxation of savings income in the form of interest payments

8214/2/15 REV 2 FISC 34 ECOFIN 259

+ REV 2 COR 1 (da)

+ REV 2 COR 2

+ REV 2 COR 3 (de)

The Council adopted this Directive. (Legal basis: Article 115 of the TFEU)

"B" ITEMS

3. Any other business

– **Current legislative proposals**

= Information from the Presidency

The Council took note of the state of play in relation to legislative financial services files.