



Council of the
European Union

Brussels, 16 December 2015
(OR. en)

13899/1/15
REV 1

LIMITE

PV/CONS 60
ECOFIN 838

DRAFT MINUTES¹

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

¹ Information on Council legislative deliberations, on other cases of Council deliberations open to the public and on public debates may be found in [Addendum 1](#) to these minutes.

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1. **Adoption of the provisional agenda**

13662/15 OJ CONS 59 ECOFIN 826

The Council adopted the above-mentioned agenda.

LEGISLATIVE DELIBERATIONS

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

2. **Approval of the list of 'A' items**

13663/15 PTS A 82

The Council adopted the "A" items as listed in doc. 13663/15.

The documents on item 2 should read as follows:

Item 2: 13511/15 CODEC 1428 PI 78
+ ADD 1 REV 1
10373/15 PI 42 CODEC 949
+ COR 1 (es)
+ ADD 1

Details on the adoption of these items are set out in the Addendum.

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.

NON-LEGISLATIVE ACTIVITIES

4. **Approval of the list of 'A' items**

13664/15 PTS A 83

The Council adopted the "A" items as listed in doc. 13664/15.

Statements to these items are set out in the Annex.

5. **Commission action plan on building a Capital Markets Union**

- = Council conclusions
13531/15 EF 194 ECOFIN 819 UEM 389 SURE 27
+ COR 1
+ COR 2 (el, fi, lv, mt, sk, hr)

The Council adopted the conclusions on the Commission action plan on building a Capital Markets Union as set out in doc. 13922/15.

6. **Implementation of the Banking Union**

- = Information on the state of play regarding the relevant files

The Council was informed of the state of play on implementation of the Banking Union and took note of the urgency to speed up the necessary measures at national level.

7. **Single Resolution Mechanism - Bridge financing**

- = Orientation debate with a view to a political agreement

Ministers agreed on the way forward as regards providing bridge financing to the Single Resolution Fund with a view to endorsing the final bridge financing arrangements in December.

8. **Economic governance and follow-up to the Five Presidents' Report entitled 'Completing Europe's Economic and Monetary Union'**

- = Presentation by the Commission and first exchange of views
13356/15 ECOFIN 800 UEM 385
13348/15 ECOFIN 798 UEM 383
13352/15 ECOFIN 799 UEM 384
13374/15 ECOFIN 803 UEM 387
13358/15 ECOFIN 801 UEM 386
13330/15 ECOFIN 796 UEM 382
+ ADD 1

The Council had a first exchange of views on the package of initiatives on economic governance presented by the Commission on 21 October 2015, following the Five Presidents Report on Completing Europe's Economic and Monetary Union.

9. Climate finance

- Preparation of the 21st Conference of Parties to the United Nations Framework Convention on Climate Change (UNFCCC) (Paris, 30 November to 11 December 2015)
- = Council conclusions
13478/2/15 REV 2 ECOFIN 813 ENV 658 CLIMA 120

The Council adopted the set of Council conclusions as set out in doc. 13875/15.

The Polish delegation entered a statement as set out in the Annex.

10. Follow-up to the G20 and IMF meetings in Lima from 8 to 11 October 2015

- = Information from the Presidency and the Commission

The Council was debriefed by the Presidency and the Commission on the G20 and IMF meetings which took place on 8-11 October in Lima.

11. Any other business

No issues were raised under this item.

STATEMENTS FOR THE COUNCIL MINUTES
CONCERNING NON-LEGISLATIVE ACTIVITIES

- Ad "B" item 9:** **Climate finance**
- **Preparation of the 21st Conference of Parties to the United Nations Framework Convention on Climate Change (UNFCCC) (Paris, 30 November to 11 December 2015)**
 - = **Council conclusions**

STATEMENT BY POLAND

"The new global agreement should ensure protection of the global climate for future generations. We all should strive to achieve in Paris final compromise which is fair, realistic and acceptable to all Parties.

Poland provides financial assistance to developing countries on a voluntary basis and is ready to continue to do so, in accordance with the current arrangements, in order to support the negotiation process.

Current voluntary character of financial contributions shall be preserved for the period before and after 2020, when the new global agreement enters into force. In accordance with the October 2009 European Council conclusions binding obligations cannot be imposed on EU Member States without prior agreement on the internal burden sharing to be approved by the European Council.

In Poland's opinion, the ECOFIN Council conclusions shall not be interpreted in a way allowing for the adoption of binding financial obligations for all EU Member States before or after 2020, irrespective of the adoption of the new global agreement."

- Ad "A" item 21:** **Draft Council Decision establishing the position to be taken on behalf of the European Union within the Ministerial Conference of the World Trade Organization on the accession of the Republic of Liberia to the World Trade Organization**
- = **Adoption**

STATEMENT BY IRELAND

"The provisions relating to the temporary presence of natural persons for business purposes included in the Decision authorized by the Council only bind Ireland as part of the Union where it has notified its wish to participate in the above Decision in accordance with Protocol No.21 on the position of Ireland and the United Kingdom in respect of the area of Freedom, Security and Justice. Ireland will ensure that the temporary presence of natural persons for business purposes is allowed in accordance with those provisions."

STATEMENT BY THE UNITED KINGDOM

"The provisions relating to the temporary presence of natural persons for business purposes included in the above Decision only bind the United Kingdom as part of the Union where it has notified its wish to participate in the above Decision in accordance with Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice."

STATEMENT BY THE COMMISSION

"The Commission welcomes the adoption of the Council Decision establishing the EU position in favour of the accession of the Republic of Liberia.

The Commission notes that it is proposed that a Decision of the Representatives of the Governments of the Member States meeting within the Council be adopted on this accession by common accord as regards the position of the Member States in the WTO. The Commission notes that it would have been possible to adopt an EU decision which would have rendered such a separate decision unnecessary."

- Ad "A" item 40:**
- (a) Draft Council Decision authorising Member States to ratify, in the interest of the European Union, the Protocol of 2014 to the Forced Labour Convention, 1930, of the International Labour Organisation with regard to matters related to judicial cooperation in criminal matters**
 - (b) Draft Council Decision authorising Member States to ratify, in the interest of the European Union, the Protocol of 2014 to the Forced Labour Convention, 1930, of the International Labour Organisation with regard to matters related to social policy**
= Adoption

STATEMENT BY THE CZECH REPUBLIC

"The Czech Republic fully supports the Protocol of 2014 to the Forced Labour Convention, 1930, of the International Labour Organisation.

This being so, the Czech Republic continues to have doubts as to the existence of EU exclusive competence in the field cover by the Protocol, in particular bearing in mind the wording of Art 82(2) and Art 153(2) TFEU (both provisions allowing the European Parliament and the Council to establish minimum rules or requirements) as well as the Opinion 2/91 in which the Court of Justice of the EU concluded specifically in the ILO context that the provisions of an international agreement are not of such a kind as to affect rules adopted by the EU, when both the agreement and the EU legislation set out minimum standards."

STATEMENT BY THE FEDERAL REPUBLIC OF GERMANY, JOINED BY THE HELLENIC REPUBLIC, HUNGARY AND ROMANIA

"The Commission presented two proposals for Council Decisions authorising Member States to ratify, in the interest of the European Union, the Protocol of 2014 to the Forced Labour Convention, 1930, of the International Labour Organisation for those parts that fall within the competences of the Union (1) in accordance with Article 153(1)(a) and (b) TFEU or (2) in accordance with Article 82(2) TFEU. Article 218(6) (a) (v) TFEU is named as the procedural legal basis for the Council Decisions.

The Federal Republic of Germany underlines the legal and political significance of the Protocol of 2014 to the Forced Labour Convention, 1930, of the International Labour Organisation. It explicitly supports the aims of the instruments and the ratification of the Protocol by all Member States also in the interest of the Union and the call on Member States to ratify, and it will initiate the ratification process in Germany as soon as possible.

However, there are divergent legal opinions about the underlying procedural norms that could not yet be resolved. From the German point of view Article 218(6) TFEU which is used as the procedural basis does not qualify for this purpose. However, because of the legal and political significance of the Protocol the Federal Republic of Germany is ready to endorse the presented proposals and to disregard the procedural concerns outlined in its written comment of 23 October 2014. The Federal Republic of Germany therefore endorses the present Decision notwithstanding its legal opinion concerning the interpretation of Article 218(6) TFEU.

The Federal Government wishes to seize this opportunity to explore, together with the Member States and the European Commission, viable ways of reconciling the procedural interests of the EU Member States as autonomous constituents of the ILO on the one hand and of the European Union as the guardian of the *acquis communautaire*, on the other."

STATEMENT BY IRELAND

"Ireland wishes to underline that it fully supports the Protocol of 2014 to the Forced Labour Convention of the International Labour Organisation.

Ireland wishes to make clear however that it considers that the Council Decision authorising Member States to ratify, in the interest of the European Union, the Protocol of 2014 to the Forced Labour Convention, 1930, of the International Labour Organisation as regards Articles 1 to 4 of the Protocol with regard to matters related to judicial cooperation in criminal matters only applies to areas falling within exclusive EU competence insofar as the Protocol may affect EU common rules."

STATEMENT BY THE REPUBLIC OF MALTA

"The Republic of Malta fully supports the content of the 2014 Protocol to the Forced Labour Convention, 1930, of the International Labour Organisation and intends to ratify it. The Republic of Malta however has strong legal and procedural concerns with these two proposed Council decisions authorising Member States to ratify the ILO Protocol.

The Republic of Malta does not consider that there exists exclusive EU competence arising from the areas covered by the Protocol, given that both Articles 82(2) and 153(2) TFEU allow the European Parliament and Council to establish minimum standards and taking into account Opinion 2/91 in which the Court concluded specifically in the ILO context that the provisions of an international agreement are not of such a kind as to affect rules adopted by the EU, when both the agreement and the EU legislation set out minimum standards. Therefore this raises questions about the necessity and appropriateness of having the proposed Council decisions. Moreover, the Republic of Malta also regrets the lack of detailed analysis by the Commission on the distribution of competences to justify the need for these decisions and the lack of clarity in the final text outlining the extent of the competences being exercised (exclusive or shared).

Furthermore, the Republic of Malta is still not convinced on the appropriateness of the use of Article 218(6) TFEU as a procedural legal base given that Article 218 (6) TFEU specifies that the Council, "on a proposal by the negotiator," may adopt a decision concluding agreements between the Union and international organisations. When a negotiator is nominated, this has to be done by decision of the Council as provided for in Article 218 (3) TFEU second clause of the sentence. In relation to the above-mentioned Protocol, no mandate for the negotiation and adoption of the Protocol at the 103rd International Labour Conference was given by means of a Council Decision. Therefore Article 218 (6) TFEU is at best questionable as a procedural legal basis.

Notwithstanding the abovementioned legal concerns, in view of the importance of the Protocol which Malta fully supports, the Republic of Malta has decided to abstain from voting on these Decisions."

STATEMENT BY THE UNITED KINGDOM

"The United Kingdom wishes to record its support for the Protocol of 2014 to the Forced Labour Convention, 1930, and to place on record its intention to ratify the Protocol.

The United Kingdom wishes to record its view that there is no exclusive external competence for the Union arising from the Protocol in respect of the subject matter referred to in the *Council Decision authorising Member States to ratify, in the interest of the European Union, the Protocol of 2014 to the Forced Labour Convention, 1930, of the International Labour Organisation with regard to matters related to judicial cooperation in criminal matters*. Accordingly, there was no requirement for the Member States to be authorised to this extent to ratify the Protocol in the interests of the Union. Accordingly, Member States should have been able to consider ratification of the Protocol in their own right.

Further, the United Kingdom considers that the draft *Council Decision in relation to matters related to judicial cooperation in criminal matters*, being a measure proposed pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, is subject to Protocol (No. 21) to the Treaties on the position of the United Kingdom and Ireland in Respect of the Area of Freedom, Security and Justice.

Accordingly, the United Kingdom does not consider that it is automatically bound, as suggested by Recital (9), to participate in the Council Decision simply on account of its participation on Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.

As a result, the United Kingdom will not exercise its right under Protocol 21 to opt in to the *Council Decision authorising Member States to ratify, in the interest of the European Union, the Protocol of 2014 to the Forced Labour Convention, 1930, of the International Labour Organisation with regard to matters related to judicial cooperation in criminal matters.*"

Ad "A" item 42:

- (a) **Draft Council Decision on the signature, on behalf of the European Union, and on the provisional application of the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Union and the Islamic Republic of Mauritania for a period of four years**
= **Adoption**
- (b) **Draft Council Regulation on the allocation of the fishing opportunities under the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Union and the Islamic Republic of Mauritania for a period of four years**
= **Adoption**
- (c) **Draft Council Decision on the conclusion of the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Union and the Islamic Republic of Mauritania for a period of four years**
= **Request for the consent of the European Parliament**

STATEMENT BY POLAND

on the allocation key in the Regulation on allocation of fishing opportunities

"Poland reiterates that fishing opportunities available to the Union in the EU-Mauritania protocol are purchased for the benefit of the EU fishing fleets using EU funds. Therefore, the quota and license allocations contained in Article 1 of this Regulation, particular for Categories 6 and 7, do not constitute any precedent whatsoever for future protocols. The Commission is invited frequently and regularly to monitor the utilization rate of fishing opportunities in Categories 6 and 7, so as to ensure that the reallocation mechanism referred to in paragraphs 2 and 3 of Article 1 is timely used to fully utilize the fishing opportunities in question and to avoid interrupting operations of the fleets concerned."

STATEMENT BY THE COMMISSION

"By its judgement in joined cases C-103/12 and C-165/12 (European Parliament and the Commission v. Council) the Court of Justice clearly confirmed that decisions relating to the conclusion of external fisheries agreements fall fully within the scope of Article 43(2) TFEU (in conjunction with the applicable procedure of Article 218 TFEU, i.e. Article 218(6)a(v) for the decisions on the conclusion of the agreements) and rejected the position that such decisions could fall within the scope of Article 43(3) TFEU.

In relation to the decision on the signature and conclusion of the new Protocol to the Sustainable Fisheries Partnership with the Islamic Republic of Mauritania, the Commission regrets the Council's amendment replacing the legal basis of Article 43(2) in conjunction with Article 218(5), 218(6)a and Article 218(7) TFEU with Article 43 (without mentioning the paragraph) in conjunction with Articles 218(5), 218(6)a and 218(7) TFEU, and therefore maintains its initial proposal."

Ad "A" item 46: **Commission Delegated Decision of 15.9.2015 supplementing Decision No 1104/2011/EU of the European Parliament and of the Council as regards the common minimum standards to be complied with by the competent PRS authorities**
= **Intention not to raise objections to a delegated act**

STATEMENT BY THE COUNCIL

"The Council reaffirms the strategic importance of the system established under the Galileo programme, currently under deployment, and of the precise objectives of all aspects of the programme. One of its services, the Public Regulated Service (PRS), is restricted to government-authorized users for specific applications that require a high level of service continuity. The European Union has provided for the possibility for certain third countries and international organisations to become PRS participants through specific agreements concluded with them. In this respect, the Council believes that the Norwegian and US requests for access to the PRS service should be addressed promptly, and therefore supports the rapid simultaneous opening of negotiations as soon as the two relevant mandates have been adopted by the Council. The Council calls for these agreements to allow Norway, as closely associated European partner hosting important Galileo ground infrastructure, and the United States, operating the NAVSTAR GPS, to access the PRS service, and underlines the importance of establishing a fruitful bilateral cooperation. Furthermore, the cooperation with the US should seek to promote optimal interoperability of Galileo and GPS taking into account financial and operational constraints."

STATEMENT BY AUSTRIA

"Austria takes the view that the CMS Decision, which is based on Article 8(2) of Decision No 1104/2011/EU in conjunction with Article 290 TFEU, should be published in the Official Journal of the European Union (L series), assuming it does not contain any classified information.

On several occasions during the preparatory consultations for this legal act held among the Commission and Member States' experts, Austria put forward this reasoned stance and also suggested alternatives to the Commission's chosen solution.

Austria acknowledges that the text now addresses its legal concerns in two ways:

- (i) the CMS Decision's very title clearly indicates that it does not "amend" the basic act (Decision No 1104/2011/EU), but merely "supplements" it;
- (ii) part 3 of the explanatory memorandum states that the act is not to be published because of the particular circumstances of the case (in particular the confidential nature of the matters at issue).

Nevertheless, Austria considers that in this specific legal context it is necessary to publish the CMS (unless they contain any classified information). Although the above-mentioned part 3 of the explanatory memorandum precludes a future, systematic practice by the Commission not to publish delegated acts, a further worrying effect of the CMS Decision merits attention: In the absence of publication, there can be no binding effect on individuals or companies, and it remains entirely unclear how the national PRS authorities are supposed to meet their obligation to comply with the CMS under such circumstances.

Austria believes that these legal concerns can be addressed in the course of a review of both Decision No 1104/2011/EU and the CMS Decision itself (cf. Article 18 thereof) before the PRS system is put into operation."
