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European Union

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DRAFT MINUTES

Subject: **3496th** meeting of the Council of the European Union
(**Foreign Affairs/Trade**), held in Brussels on 11 November 2016

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1. **Adoption of the agenda**

14069/16 OJ CONS 54 RELEX 920

The Council adopted the agenda.

LEGISLATIVE DELIBERATIONS

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

2. **TDI Modernisation and new anti-dumping methodology**

- **Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community and Council Regulation (EC) No 597/2009 on protection against subsidised imports from countries not members of the European Community [First reading]**
- **Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union [First reading]**

14113/16 COMER 116 WTO 315 ANTIDUMPING 12

14249/16 COMER 118 WTO 320 ANTIDUMPING 13 IA 110 CODEC 1623

In the light of views expressed on the summary of a Presidency compromise proposal on the modernisation of the EU's trade defence instruments, the Presidency indicated its intention to continue work at technical level and in the Permanent Representatives' Committee with a view to finalising a mandate for trilogue negotiations by the end of the year, as mandated by the European Council.

Ministers also took note of the presentation by the Commission of its proposal for a new anti-dumping methodology. The Presidency underlined its commitment to deal with this file in an expeditious manner.

NON-LEGISLATIVE ACTIVITIES

3. **Approval of the list of "A" items**

14070/16 PTS A 85

The Council adopted the "A" items listed in 14070/16. On item 4, the EL Delegation voted against, and the BG, CY and HU Delegations abstained.

The documents on item 4 should read as follows:

Item 4: 13981/1/16 REV 1 SCH-EVAL 193 FRONT 425 COMIX 724
 13979/16 SCH-EVAL 192 FRONT 424 COMIX 723

Statements to these items are set out in the Annex.

4. **WTO: Post Nairobi**

The Council discussed the way forward on the post Nairobi process, as well as on the plurilateral negotiations on Trade in Services Agreement (TiSA) and the Environmental Goods Agreement (EGA).

The Council generally confirmed its support for the Commission's proposals regarding the EU's overall strategic objectives for the post-Nairobi period, and took note of Member States' comments regarding the possible package for the WTO 11th Ministerial Conference, and for the negotiations on EGA and TiSA.

5. **EU-US Transatlantic Trade and Investment Partnership (TTIP)**

= State of play

The Council discussed the state of play and next steps in the TTIP negotiations. Although these negotiations have not yet delivered an ambitious, balanced and comprehensive agreement, the Council noted the Commission's efforts towards consolidation of the negotiating texts. The next steps in the negotiations will need to be assessed once the new US administration is in place.

6. **EU-Japan and EU-Mercosur Free Trade Agreements**

= State of play

14315/16 WTO 323 COLAC 97 COASI 214 ASIE 87

The Council took note of the state of play of the FTA negotiations with Japan and Mercosur.

7. **Any other business**

No issues were raised under this item.

STATEMENT FOR THE COUNCIL MINUTES

Ad "A" item 1: **Draft Council Decision on the signing, on behalf of the Union, and provisional application of the Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, to take account of the accession of Ecuador**
= **Adoption**
and
Proposal for a Council Decision on the conclusion, on behalf of the Union, of the Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, to take account of the accession of Ecuador
= **Request for the consent of the European Parliament**

STATEMENT BY AUSTRIA

"With regard to the provisional application by the European Union of the Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, to take account of the accession of Ecuador, the Republic of Austria declares that it may implement those parts of the Agreement involving competences of the Member States only after all necessary internal procedures for entry into force of the Agreement have been completed. The Republic of Austria will initiate as expediently as possible its internal procedures and will, if any problem arises, consult with the European Commission."

STATEMENT BY THE IRELAND

"Ireland recalls the statement made by the Council on 31 May 2012 at the occasion of the adoption by the Council of the decision authorising the signature and the provisional application of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part. The Council's statement noted that:

'Should the implementation of the agreement by the European Union necessitate a recourse to measures pursuant to Part III, Title V, of the Treaty on the Functioning of the European Union, the provisions of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, will be fully respected.'

Ireland notes that the Council statement applies also to the accession by Ecuador to the Agreement and notes further that the Commission has, by letter dated 13 October 2016, notified Ecuador of the terms of the Council statement."

STATEMENT BY PORTUGAL

"Bearing in mind the compliance with the principle of competence sharing between the European Union and its Member States, as established by the Treaties, the Council Decision regarding the provisional application of the Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, to take account of the Accession of Ecuador, shall not affect the autonomy of Portugal's decisions regarding issues within its national competence, whose international binding to Protocol of Accession, pursuant to its Constitutional principles and rules, depends on the conclusion of the internal ratification procedures and the entry into force of the Protocol of Accession in the international legal system."

STATEMENT BY SLOVENIA

"On the basis of the allocation of competences between the European Union and its Member States under the Treaties, the Decision of the Council that authorises the provisional application of the Protocol of Accession to the Agreement between the European Union and its Member States, of one part, and Columbia and Peru, of the other part, to take into account of the Accession of Ecuador, shall not affect the autonomy of the Republic of Slovenia to decide to be bound by it with regard to issues falling within its national competence. That implies *inter alia* that reference in the said Protocol to internal requirements and procedures necessary for its provisional application is to be understood in the case of Slovenia as referring to the completion of ratification procedures."

STATEMENT BY THE UNITED KINGDOM

"The United Kingdom welcomes the signature of the Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, to take account of the Accession of Ecuador.

However, the United Kingdom considers that the Agreement contains provisions related to the temporary presence of natural persons for business which are pursuant to Title V of Part III of the Treaty on the Functioning of the Union. The United Kingdom recalls that, in accordance with Article 2 of 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, no provision of any international agreement concluded by the Union pursuant to that Title shall be binding upon or applicable in the United Kingdom unless, in accordance with Article 3 of the Protocol, it notifies its intention that it wishes to take part in the adoption and application of a proposed measure.

As a result, in accordance with Article 3 of Protocol (No. 21), the United Kingdom notified the President of the Council that, to the extent that the Decisions relate to the temporary presence of natural persons for business, it intends to take part in the Council Decisions."

Ad "A" item 4: **Draft Council Implementing Decision setting out a recommendation for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk**
= **Adoption**

STATEMENT BY GREECE

"Greece regrets that the adoption of the Commission's proposal for a Council Implementing Decision setting out a Recommendation for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk, is based, among others, on the assumption that 'a significant number of irregular migrants (about 60 000) stranded in Greece [who] may reasonably be expected to seek to move irregularly to the other Member States'.

Greece recalls its Follow-up report (12 August 2016) on the implementation of the Action plan on addressing the deficiencies identified in the field of management of its external borders following the evaluation of November 2015, where it presented its well-founded position that no risk of secondary movements from its territory to other EU Member States - such that can pose a threat to the internal security and public order in accordance with the Schengen Borders Code - can be substantiated.

Since the November 2015 evaluation, all border controls and patrols at all BCPs of Greece have been further tightened. Among others, in the framework of the National Operation 'SARISA', Greece has taken all necessary measures to prevent and deter any attempt of absconding from the mainland to the north, including to the former Yugoslav Republic of Macedonia. Furthermore, Greece has requested the deployment of Frontex Guest Officers at the land borders between Greece and Albania and Greece and the former Yugoslav Republic of Macedonia.

Greece believes that the "factual indicators" referred to in recital no.13 of this proposal cannot be adequately substantiated. The repeated mention of what is 'justified to expect' (recital no.6); what 'appears justified' (recital no.12); as well as of those 'who may reasonably be expected to seek to move irregularly to other Member states' (explanatory memorandum, p.3) proves that the proposal is based on speculations and lacks the necessary reasoning for prolonging temporary border controls in accordance to article 29 of the SBC.

Greece further recalls that the information provided by the five Schengen States (Austria, Germany, Denmark, Sweden and Norway) on the internal border controls has been scant and not sufficiently detailed, which is reflected in the 28 September 2016 Commission report on the implementation of the 12 May 2016 Council Recommendation. It, therefore, does not provide solid ground for prolonging temporary border controls.

Greece reiterates that adequate response on behalf of Member States to EASO and FRONTEX calls for experts is key to the success of the implementation of the EU-Turkey Statement.

In addition, the assumptions on the cumulated number of asylum applications received by Schengen States is irrelevant to the subject matter and it does not justify the need for the prolongation of the temporary internal border controls.

Consequently, Greece cannot agree to the proposal for this Council Implementing Decision."

STATEMENT BY HUNGARY

"Since the beginning of the migration crisis Hungary is of the opinion that the protection of the external borders is the key in stemming the *influx of irregular* migrants. We have to ensure that the external borders are crossed only in accordance with rules and regulations.

Hungary is convinced that the draft decision setting out a Recommendation for prolonging temporary internal border control gives an inadequate response to real problems and could lead to the collapse of the Schengen Area.

The draft decision itself highlights that information provided by the 5 Member States show a progressive stabilisation of the situation. The facts and data listed in the draft decision and the figures presented in the report of the European Commission on 28 September 2016 do not justify either the necessity or the proportionality of the maintenance of temporary border controls at the specified internal border sections. Neither the draft decision nor the report of the Commission present any objective evidence with regard to the entry points of the asylum seekers into the territory of the 5 Member States concerned.

The 'Back to Schengen Roadmap' does not provide the legal condition for maintaining the temporary border control at internal borders; however, Hungary agrees with the full implementation of the process of getting 'back to Schengen'.

Internal border control should be limited in scope, frequency, location and time, to what is strictly necessary to respond to the serious threat and to safeguard public policy and internal security, without hampering free movement unduly within the Schengen Area. The relevant Member States should be consulted regularly with a view to ensure that internal border controls are only carried out at those parts of the internal border where it is considered necessary and proportionate and the implementation should be monitored closely by the Commission and the relevant Member States.

Based on the aforementioned circumstances Hungary cannot support the adoption of the draft decision."
