



Council of the
European Union

Brussels, 22 July 2016
(OR. en)

11358/16

LIMITE

PV/CONS 41
AGRI 423
PECHE 282

DRAFT MINUTES¹

Subject: **3481st** meeting of the Council of the European Union
(AGRICULTURE AND FISHERIES), held in Brussels on 18 July 2016

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 agenda**

11078/16 OJ CONS 40 AGRI 406 PECHE 269

The Council adopted the above agenda.

NON-LEGISLATIVE ACTIVITIES

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

11103/16 PTS A 64

The Council adopted the "A" items listed in 11103/16.

Statements to these items are set out in the Annex. The Council took note of a statement by Slovenia on item 31.

LEGISLATIVE DELIBERATIONS

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

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

11102/16 PTS A 63

The Council adopted the "A" items listed in 11102/16.

The documents on item 1 should read as follows:

Item 1: 10789/1/16 REV 1 CODEC 991 AGRI 384 AGRILEG 104 PHYTOSAN 19
+ REV 1 ADD 1 REV 1
+ REV 1 ADD 1 REV 1 COR 1
8795/16 AGRI 253 AGRILEG 65 PHYTOSAN 10 CODEC 634
+ COR 1 (sl)
+ COR 2 (cs)
+ REV 1 (pl)
+ ADD 1

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

NON-LEGISLATIVE ACTIVITIES

4. **Work Programme of the Presidency**

= Presentation by the Presidency

(Public debate in accordance with Article 8(2) of the Council's Rules of Procedure)

The Slovak Presidency gave a public presentation on its work programme and its priorities as regards agriculture and fisheries issues.

5. Market situation and support measures

= Information from the Commission and exchange of views
11022/16 AGRI 400 AGRIFIN 83 AGRIORG 60

The Council took note of the update by the Commission on market developments and on a set of new support measures, delegations' suggestions and comments, and of the Commission's reaction.

The Council broadly endorsed the new measures, noting that the legal acts putting these measures into effect will be scrutinised under the usual procedures, that the deployment of these measures will be kept under watch and that their effectiveness will be assessed in due course.

The Council invited the Commission to take the necessary steps in the budgetary procedure for the corresponding financial support to be made available.

In order to facilitate an effective and rapid implementation of the proposed measures and initiatives the Council tasked the SCA with their follow-up.

The Council also took note of the information provided by Poland on drought and its impact as set out in 11125/16.

6. International agricultural trade issues

= Presentation by the Commission on the state of play
= Exchange of views
11023/16 AGRI 401 AGRIORG 61 WTO 206

The Council took note of the Commission's update on international agricultural trade issues, of the Italian AOB item on rice imports set out in 11144/16, as well as of delegations' questions and views. The Presidency will regularly invite the Commission to update the Council on international agricultural trade issues.

7. **CAP Simplification – Review of greening after one year**

= Information from the Commission and exchange of views

11025/16 AGRI 403 AGRIORG 62 AGRILEG 105 AGRIFIN 85 AGRISTR 41

The Council took note of the information provided by the Commission representative on the review of greening measures as part of the simplification exercise, and the proposed next steps, and of delegations' comments.

The Presidency will convey the main points from the exchange of views to the Commission in writing.

8. **Any other business**

a) **Outcome of the International Experts' Conference "Strengthening of the farmers' position in the food supply chain" (Bratislava, 30 June – 1 July 2016)**

= Information from the Presidency

11099/16 AGRI 411 AGRILEG 108

The Council took note of a short report by the Presidency on a conference held in Bratislava on 30/6-1/7 on "Strengthening the farmers' position in the food supply chain", the outcome of which will be discussed further at the informal Ministerial meeting in Bratislava on 11-13 September.

b) **Occurrence of drought and impact on arable crops in Poland**

= Information from the Polish delegation

11125/16 AGRI 413 AGRIORG 63 AGRIFIN 88

Item 8 b) was addressed under item 5.

c) **Catastrophic fire in Cyprus**

= Information from the Cyprus delegation

10657/16 AGRI 373 AGRIFIN 79

The Council took note of the concerns expressed by the Cyprus delegation regarding catastrophic forest fires in Cyprus and its request for support and solidarity from the Commission and the Member States. The Council also took note of the comment made by one delegation and the reaction of the Commission representative.

d) Problems resulting from prohibition of usage of potassium phosphonates for plant protection in organic production

= Requested by the Czech delegation
11115/16 AGRI 412 AGRILEG 110 PHYTOSAN 21

The Czech delegation, supported by the German delegation, raised the issue of the prohibition of potassium phosphonates against mildew and pointed out the negative impact for the organic sector. The Council took note of the request made by the Czech delegation and the answer from the Commission representative.

e) Rice imports from EBA countries

= Requested by the Italian delegation
11144/16 AGRI 415 AGRIORG 64

Item 8 e) was addressed under item 6.

f) Threat posed by lumpy skin disease in the Union

= Requested by the Austrian delegation
11267/16 VETER 75

The Council took note of the Austrian request in relation to lumpy skin disease as set out in 11267/16, of the broad support from delegations to the Austrian request and of the Commission representative's reaction.

STATEMENTS FOR THE COUNCIL MINUTES

Ad "A" item 3: **Recommendation for a Council Decision to authorise the Commission to open negotiations on behalf of the European Union for the conclusion of a Sustainable Fisheries Partnership Agreement and Protocol with the Republic of Kenya**
= **Adoption**

STATEMENT 1 BY THE COMMISSION

"The Commission does not consider it necessary that a Council Decision authorising the opening of negotiations indicates a substantive legal basis."

STATEMENT 2 BY THE COMMISSION

"Following article 31(2) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy, the Commission fully recognizes the importance of the sustainable exploitation of marine biological resources and the consequent need to ensure a proper implementation of the concept of surplus, as expressed in article 62(2) of the UNCLOS, particularly when Sustainable Fisheries Partnership Agreements and associated protocols rule the access of the EU external fleet to resources distributed in waters of the partner country.

However, regarding article 64 of the UNCLOS and article 31(4) of the R(EU) N° 1380/2013, the Commission considers that the concept of surplus applies to a lesser degree to fishing activities exploiting highly migratory species, where management objectives and management measures – priority access rules, catch, capacity or effort limits, and sharing keys where relevant – have to be primarily fixed at regional or sub-regional levels by the Contracting Parties to competent Regional Fisheries Management Organisations, taking in due account the relevant scientific advice."

Ad "A" item 27: Commission Delegated Regulation (EU) .../... of 23.5.2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities
= Intention not to raise objections to a delegated act

STATEMENT BY THE NETHERLANDS, FINLAND AND BELGIUM

"The Netherlands, Finland and Belgium generally welcome the Commission's adoption of the delegated regulation with regard to regulatory technical standards specifying the criteria relating to the methodology for determining the minimum requirement for own funds and eligible liabilities (MREL, C(2016)2976)), but would like to express their dissatisfaction with some of the amendments made by the Commission in this delegated regulation, compared to the draft RTS prepared by the European Banking Authority (EBA)².

In particular, The Netherlands, Finland and Belgium regret the omission of the second subparagraph of Article 5(1) of the EBA draft RTS, which specifies that resolution authorities shall assess whether the MREL for institutions that would reasonably likely pose a systemic risk in case of failure is sufficient to grant access to the resolution fund as set out in article 44(5)a and 44(8) of the Bank Recovery and Resolution Directive (Directive 2014/59/EU), in particular as regards a minimum contribution to loss absorption and recapitalisation of 8 % of total liabilities and own funds in resolution. The Netherlands, Finland and Belgium disagree with the view expressed by the Commission that this provision in the EBA draft RTS is not in line with the BRRD.

While regretting the omission of said provision, The Netherlands, Finland and Belgium consider that resolution authorities are able to act as foreseen in the provision of the EBA draft RTS. Therefore, The Netherlands, Finland and Belgium will not oppose the adoption of this delegated regulation, also in view of preventing further delays in the adoption of the delegated regulation.

Finally, with a view to the upcoming Commission proposal on implementing the Total Loss Absorbing Capacity (TLAC) standard and reviewing the current MREL framework, The Netherlands, Finland and Belgium underline the importance of duly taking into account the Council Conclusions on the roadmap to complete the Banking Union³. In this regard, it should be recalled that the Council has agreed to seek to ensure consistent rules and adequate amounts for the bail-in buffers that contribute to an efficient and orderly resolution process in line with BRRD for all credit institutions for which bail-in would be the validated resolution strategy."

² EBA final Draft Regulatory Technical Standards on criteria for determining the minimum requirement for own funds and eligible liabilities under Directive 2014/59/14, 3 July 2015

³ 10460/16

STATEMENT BY FRANCE

"France wishes to underline that certain aspects of the Commission Delegated Regulation specifying the criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities (MREL) are not appropriate, particularly in as much as these aspects go beyond what is provided for in Directive 2014/59/EU of 15 May 2014:

- Article 3(3) of the Delegated Regulation provides for a 10 % threshold of liabilities which may be excluded from the scope of the bail-in pursuant to Articles 44(2) and 44(3) of Directive 2014/59/EU. Should this threshold be exceeded, the Delegated Regulation requires the resolution authority to assess whether to increase the requirement level. This threshold is not provided for in the Directive;
- the Delegated Regulation relies on questionable interpretations of Directive 2014/59/EU of 15 May 2014, in particular by providing for an MREL calculation based on doubling the leverage requirement (in point (e) of Article 1(1) and in point (d) of Article 2(6)) and by providing that the recapitalisation capacity must allow all capital buffers to be restored (in point (c) of Article 1(2) and in Article 2(8)).

Nevertheless, France does not formally object to the Commission Delegated Regulation, taking into account:

- the need for a swift entry into force of the delegated act to allow target MREs to be set by the end of 2016, as provided for by Directive 2014/59/EU; France does not wish to hamper the timely implementation of the European recovery and resolution framework;
- the fact that the European Commission has announced its intention to propose an amendment to Directive 2014/59/EU of 15 May 2014 in order to implement the total loss-absorbing capacity (TLAC) requirement adopted by the Financial Stability Board and thereby amend the provisions relating to the MREL; the Delegated Regulation will therefore become obsolete and will have to be amended accordingly unless it is repealed."

Ad "A" item 32: Council Decision establishing the position to be taken on behalf of the European Union within the Stabilisation and Association Council established by the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo*, of the other part, concerning a Decision of the Stabilisation and Association Council adopting its rules of procedure

STATEMENT BY THE COMMISSION

"The Commission, recalling its statements made at the time of the adoption of the Council decisions on the signing and the conclusion of the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo*, of the other part, disagrees with the addition of Article 37 TEU as a substantive legal basis for the Council Decision establishing the position to be taken on behalf of the European Union for the adoption of the Rules of Procedure of the Stabilisation and Association Council as they are not related to CFSP matters.

Furthermore, in line with case-law, in particular cases C-81/13, United Kingdom v. Council and C-658/11, European Parliament v. Council, the voting rules for Council decisions under Article 218 (9) TFEU are set in Article 218 (8), first paragraph, TFEU. The addition of Article 31 TEU as a procedural legal basis is therefore in direct violation to the established jurisprudence of the Court.

The Commission reserves all its rights."

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.