DRAFT MINUTES¹

Subject: 3409th meeting of the Council of the European Union (Environment), held in Brussels on 18 September 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 agenda**
   
   11865/15 OJ/CONS 46 ENV 552 CLIMA 97

   The Council adopted the above agenda.

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**LEGISLATIVE DELIBERATIONS**

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

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

   11909/15 PTS A 64

   The Council approved the 'A' items listed in 11909/15.

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

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**NON-LEGISLATIVE ACTIVITIES**

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

   11910/15 PTS A 65

   The Council approved the 'A' items listed in 11910/15.

   The documents for items 1 and 2 should read as follows:

   **Item 1:**
   
   11618/15 TRANS 266
   + COR 1
   + ADD 1 REV 1
   + ADD 2
   + ADD 3
   11560/15 TRANS 262
   + COR 1 (lt)
   + REV 1 (pt)

   **Item 2:**
   
   11866/15 CULT 46
   + COR 1

   Statements relating to these items are set out in the Annex.
4. **Draft Council conclusions on the preparations for the 21st session of the Conference of the Parties (COP 21) to the United Nations Framework Convention on Climate Change (UNFCCC) and the 11th session of the Meeting of the Parties to the Kyoto Protocol (CMP 11) (Paris, 30 November to 11 December 2015)**
   
   The Council adopted the conclusions as set out in 12165/15. The Commission's statement and the statement made by the United Kingdom, Poland and Sweden are set out in the Annex.

5. **Any other business**

   **Draft statement by Luxembourg promoting cycling as a mode of transport**

   The Council took note of the information provided by the Presidency on the above-mentioned subject.

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STATEMENTS FOR THE COUNCIL MINUTES

Re item 1 on the list of 'A' items: Proposal for a Council Decision establishing the position to be adopted by the Union at the 12th General Assembly of OTIF as regards certain amendments to the Convention concerning International Carriage by Rail (COTIF) and to its Appendices

= Adoption

STATEMENT BY GERMANY

'Germany's legal position is that it is entitled to vote on items 8 (Partial Revision of COTIF-Basic convention), 10 (Partial Revision of Appendix D (CUV UR)), 13 (Revised and consolidated explanatory report) also contrary to the decision of the Council. The reason is that the Union does not have the competency in this respect. The division of competency between the Union and the Member States is the subject matter of proceedings pending at the European Court of Justice (C-600/14 Germany v Council). Before a decision of the European Court of Justice, Germany will exercise its voting right in the OTIF General Assembly, maintaining its legal position and without prejudice to the pending proceedings at the ECJ, not in derogation of this Council decision, although it considers this decision to be unlawful.'

STATEMENT BY THE UNITED KINGDOM

'The United Kingdom regrets that Council Decision (EU) 2015/.... does not reflect the fact that the European Union shares competence with the Member States in relation to Appendix D (CUV UR) and the consequential amendment to Article 12 of the COTIF Convention, items 10 and 8 respectively in the annex to the Council Decision.

The division of competence concerning these amendments is the subject matter of proceedings pending before the Court of Justice of the EU in Case C-600/14 Germany v Council of the European Union.

The provisions of Appendix D are limited to the rights and obligations of parties to a contract of use of vehicles in international rail traffic. These provisions are completely distinct from EU regulatory rules governing vehicle maintenance and safety, and they could neither affect those rules nor alter their scope.

In order not to pre-empt the judgment of the CJEU in Case C-600/14, the United Kingdom is abstaining on this Council Decision.'
STATEMENT BY FRANCE

'The division of powers between the European Union and the Member States as regards amendments to Article 12 of the Convention concerning International Carriage by Rail and to Appendix D (Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic) of that Convention is the subject of proceedings pending before the Court of Justice of the European Union.

France is involved in these proceedings and is requesting that the Court annul Council Decision No 2014/699/EU of 24 June 2014, particularly insofar as it recommends a coordinated position on the amendment of Article 12 and asserts that the Union has exclusive competence as regards the partial modification of Appendix D. Therefore France cannot support the adoption of this Decision while the proceedings are still ongoing.

However, France is in favour of the amendments set out in this Decision being adopted by the General Assembly of OTIF.'

Re items 30 and 31 on the list of 'A' items:

Proposal for a Council Decision on the signing, on behalf of the European Union, of the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196)
Proposal for a Council Decision on the signing, on behalf of the European Union, of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196)

STATEMENT BY THE COMMISSION

'The Commission reiterates that the Union has exclusive external competence to sign and conclude the Additional Protocol supplementing the Council of Europe Convention on the Prevention of Terrorism pursuant to Article 3(2) TFEU. That provision also precludes Member States from signing and concluding the Protocol.

The Union’s exclusive competence extends to the entire Protocol, including its Article 7, which is ancillary to the substantive provisions of the Protocol.

In this regard, the Commission reserves the right to make use of all the legal means at its disposal to ensure the respect of the provisions of the Treaties.

As regards the Convention, the Commission takes the view that the Union’s competences are not limited to areas covered by the Framework Decision on terrorism.'
Re item 33 on the list of 'A' items: Draft Council Decision establishing the position to be taken on behalf of the European Union within the Council for Trade in Services of the World Trade Organization on the approval of preferential treatment notified by WTO Members, other than the Union and its Member States, as regards services and service suppliers of least-developed country Members, on the application of measures other than those described in Article XVI of the GATS

= Adoption

STATEMENT BY THE COMMISSION

'The Commission welcomes the adoption of the Council Decision establishing the EU position to support the approval of the preferential treatment granted by WTO Members other than the EU and its Member States to services and service suppliers of least developed countries regarding the application of measures other than those described in Article XVI of the GATS ("Market Access") in accordance with the WTO Ministerial Decision of 7 December 2013 (WT/L/918).

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 matter by common accord as regards the position of the Member States in the WTO. The Commission considers that a Council Decision would be legally sufficient to support the approval of the preferential treatment granted in this case, and that such separate Decision is unwarranted since trade in transport services falls within the framework of the EU competencies as defined by the Treaty on the Functioning of the European Union.'

STATEMENT BY IRELAND

'The provisions relating to the temporary presence of natural persons for business purposes included in the notification authorized by the Council Decision 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.'
Re agenda item 4: Draft Council conclusions on the preparations for the 21st session of the Conference of the Parties (COP 21) to the United Nations Framework Convention on Climate Change (UNFCCC) and the 11th session of the Meeting of the Parties to the Kyoto Protocol (CMP 11) (Paris, 30 November to 11 December 2015)

-- Adoption

STATEMENT BY THE COMMISSION
on paragraph 17 of the Council conclusions

'In the Commission's view the formulation of paragraph 17 of the Council Conclusions entitled 'joint fulfilment' is not legally accurate.

The EU's Intended Nationally Determined Contribution (INDC), agreed and communicated on 6 March 2015, says that the EU and its Member States will act jointly to deliver its contribution of an at least 40% domestic reduction in greenhouse gas emissions by 2030 compared to 1990. This means the EU and its MS will join the Paris Agreement with a single EU target.

Article 3(2) TFEU provides that in light of existing EU legislation on mitigation the EU has exclusive competence to undertake international obligations in this respect.

The Commission reserves its right to take all appropriate action as guardian of the Treaty.'

STATEMENT BY THE UNITED KINGDOM, POLAND AND SWEDEN

'The Member States party to this declaration do not agree with the Commission's statement that the Union has exclusive competence to undertake international obligations in respect to mitigation of climate change. The arrangements for joint fulfilment of mitigation commitments by the Union and its Member States under the second commitment period of the Kyoto Protocol, as set out in Council Decision (EU) 2015/1339 adopted by Council on 13 July 2015, reflect the balance of competence and there is no need to move away from those arrangements. Paragraph 3 of the submission of the EU and its 28 Member States with regard to their Intended Nationally Determined Contribution is clear that their target will be fulfilled jointly.'