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European Union

Brussels, 31 October 2017  
(OR. en)

13569/17

PV/CONS 58  
SOC 672  
EMPL 515  
SAN 370  
CONSOM 329

## DRAFT MINUTES

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Subject: **3569th** meeting of the Council of the European Union  
(**Employment, Social Policy**, Health and Consumer Affairs),  
held in Luxembourg on 23 October 2017

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1. **Adoption of the agenda**

13078/17 OJ CONS 55 SOC 632 EMPL 480 SAN 349 CONSOM 315

The Council adopted the above-mentioned agenda.

**NON-LEGISLATIVE ACTIVITIES**

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

13169/17 PTS A 72

The Council adopted the "A" items listed in 13169/17.

On the item of the Proclamation of the European Pillar of Social Rights, 17 Member States took the floor to underline the importance of this Proclamation for advancing EU-wide upward convergence in the social field.

Statements related to these items are set out in the Annex.

**LEGISLATIVE DELIBERATIONS**

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

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

13168/17 PTS A 71

The Council adopted the "A" items listed in 13168/17.

Details on the adoption of these items are set out below.

1. **Regulation of the European Parliament and of the Council laying down management, conservation and control measures applicable in the Convention Area of the International Commission for the Conservation of Atlantic Tunas (ICCAT) and amending Council Regulations (EC) No 1936/2001, (EC) No 1984/2003 and (EC) No 520/2007 [First reading]**

= Adoption of the legislative act

PE-CONS 31/17 PECHE 255 CODEC 1077

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 43(2) TFEU).

**2. Directive of the European Parliament and of the Council amending Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment [First reading]**

= Adoption of the legislative act  
PE-CONS 40/17 ENV 658 MI 530 CODEC 1166

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 TFEU).

**3. Directive of the European Parliament and of the Council amending Directive 2009/45/EC on safety rules and standards for passenger ships [First reading]**

= Adoption of the legislative act  
PE-CONS 34/17 MAR 140 CODEC 1123

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 100(2) TFEU).

**4. Directive of the European Parliament and of the Council amending Council Directive 98/41/EC on the registration of persons sailing on board passengers ships operating to or from ports of the Member States of the Community and amending Directive 2010/65/EU of the European Parliament and of the Council on reporting formalities for ships arriving in and/or departing from ports of the Member States  
Adoption of the legislative act [First reading]**

= Adoption of the legislative act  
PE-CONS 35/17 MAR 141 CODEC 1124

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with the German delegation voting against, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 100(2) TFEU).

**5. Directive of the European Parliament and of the Council on a system of inspections for the safe operation of ro-ro ferry and high-speed passenger craft in regular service and amending Directive 2009/16/EC of the European Parliament and of the Council on port State control and repealing Council Directive 1999/35/EC (First reading)**

= Adoption of the legislative act  
PE-CONS 36/17 MAR 142 CODEC 1125

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 100(2) TFEU).

**4. Proposal for a Directive of the European Parliament and of the Council amending Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services [First reading]**

*Interinstitutional file: 2016/0070 (COD)*

= General approach  
13153/17 SOC 637 EMPL 484 MI 706 COMPET 669 JUSTCIV 240  
CODEC 1578  
6987/16 SOC 144 EMPL 97 MI 142 COMPET 118 CODEC 279

The Council reached a general approach on the text as set out in 13612/17. The Commission submitted a statement and the Latvian and Croatian delegations submitted a joint statement to the Council minutes; both these statements are to be found in the Annex to this document.

## **NON-LEGISLATIVE ACTIVITIES**

**5. European Semester**

**a) Key Employment Challenges: Key messages from the EMCO based on the Annual Employment Performance Report and the Employment Performance Monitor**

12563/17 SOC 597 EMPL 458 ECOFIN 750 EDUC 346  
+ ADD 1 – ADD 2

**b) Key Social Challenges: Main messages from the SPC based on the Annual Review of the Social Protection Performance Monitor**

12741/1/17 SOC 610 EMPL 469 ECOFIN 770 EDUC 355 REV 1  
+ ADD 1 – ADD 7  
+ ADD 1 COR 1

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

The Council endorsed the main messages from EMCO and SPC, as contained in the above-mentioned documents.

## **LEGISLATIVE DELIBERATIONS**

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

6. **Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems and regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (Text with relevance for the EEA and Switzerland) [First reading]**

*Interinstitutional file: 2016/0397 (COD)*

- = Partial general approach  
13139/17 SOC 336 EMPL 483 CODEC 1576  
+ COR 1  
15642/16 SOC 812 EMPL 549 CODEC 1910  
+ ADD 1  
+ ADD 1 REV 1 (en, fr, de)

The Council reached a partial general approach on the text as set out in Annexes I and II of 13645/17 REV1. The Polish delegation submitted a statement to the Council minutes, which is to be found in the Annex to this document.

7. **Any other business**

a) **European Institute for Gender Equality (EIGE): New edition of the Gender Equality Index**

= Presentation by EIGE

The Council took note of the information provided by the European Institute for Gender Equality.

b) **Tripartite Social Summit (Brussels, 18 October 2017)**

= Information from the Presidency and the Commission

The Council took note of the information provided by the Presidency and the Commission.

c) **Tallinn Digital Summit (29 September 2017)**

= Information from the Presidency  
13239/17 SOC 644 EMPL 492 DIGIT 214

The Council took note of the information provided by the Presidency.

d) **New Skills Agenda for Europe**

= Information from the Commission

The Council took note of the information provided by the Commission.

**STATEMENTS FOR THE COUNCIL MINUTES**

**Ad "B" item 4:**        **Proposal for a Directive of the European Parliament and of the Council amending Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (First reading)**  
**Interinstitutional file: 2016/0070 (COD)**  
=        **General approach**

**STATEMENT BY CROATIA AND LATVIA**

"Croatia and Latvia support the measures undertaken to improve the situation of posted workers and highly appreciates the Presidency's efforts to reach an agreement on the *proposal for a Directive of the European Parliament and of the Council amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services*.

However, despite several improvements that have now been included in the Presidency compromise text, we consider that the proposal does not take into due consideration the existing socio-economic differences across the European Union and can have an adverse impact on the economic situation and job creation. Furthermore, it can reduce competitiveness that was regained with a lot of effort during the financial and economic crisis and be harmful to the functioning of the EU single market in services in general.

Particularly we are concerned about the introduction of the concept of remuneration instead of minimum rates of pay. The concept of remuneration is ambiguous and calls into question the practical implementation. It will increase complexity and legal uncertainty for companies and workers and create burdensome administrative requirements thus making lawful posting more difficult, and it risks causing unintentional adverse consequences, such as increasing bogus self-employment or undeclared work."

## STATEMENT BY THE COMMISSION

"The Commission welcomes the adoption by the Council of a general approach on its proposal amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

The Commission notes that the general approach of the Council, like its initial proposal, includes a series of new provisions aimed at creating fair conditions for the posting of workers in the single market. The Commission shares this objective, which is at the very origin of its proposal, based on the principle of 'equal pay for equal work at the same place'.

The Commission shares the view that this objective will be more easily achieved if the new rules on posting of workers can be based on a genuine dynamic of cooperation between the competent authorities, which can be further improved. Indeed, because of its transnational nature, the posting of workers poses particular challenges for the entities responsible for supervising the application of working conditions. Greater and easier cooperation between the competent authorities of the home and host Member States appears therefore necessary.

The Commission considers that the establishment of a 'European Labour Authority for ensuring fairness in our single market' will significantly contribute to effectively addressing these challenges.

As announced in the State of the Union address and the Letter of Intent of 13 September, the Commission intends to include a proposal for a European Labour Authority in its work programme for 2018.

The Commission notes that the general approach of the Council foresees that, because of the highly mobile nature of international road transport, the revised rules on posting will be applied to that sector from the date of entry into force of the legislative act amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EC for posting drivers in the road transport sector. It calls on the Council and the European Parliament to adopt it swiftly in order to adapt the rules to the specific needs of posted workers in the sector while ensuring proper functioning of the internal road transport market.

Until that moment the existing rules on posting remain in force in road transport. These rules do not apply to road transport operations which do not constitute posting. The Commission will continue to closely monitor the proper enforcement of the current rules in particular in the road transport sector and where appropriate take action."

**Ad "B" item 6:      **Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems and regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (Text with relevance for the EEA and Switzerland)**  
**- Partial general approach****

**STATEMENT BY POLAND**

"The objective of the Estonian Presidency is to adopt the partial general approach to the draft amendments to the Regulations 883/2004 and 987/2009. Poland appreciates the efforts made by the Estonian Presidency in developing a compromise proposal. The text submitted to the EPSCO Council is more balanced than the proposals made by the European Commission. Poland fully supports the solutions proposed by the Estonian Presidency on equal treatment, however, lingering doubts as to the amendments in the field of applicable legislation prevent Poland from voting for the draft. Hence, the decision on abstaining from voting has been made.

Poland maintains its fundamental reservation as to the proposal of extending the ban of replacement of a posted employed person and a posted self-employed person (Article 12 of the Regulation 883/2004). The effects of this solution have not been reliably assessed at any stage of the negotiations of the draft. In particular, in no way has it been demonstrated how the proposed tightening of the posting conditions would be translated into the fight against fraud and errors in the field of social security and what would be the consequences of entering into force of the new solutions for small and medium enterprises. In the absence of a clear justification for a need for amendments made, the general impression may appear that their main objective is to reduce a possibility of using the institution of posting.

Moreover, the long-term negotiations on the draft amendment to the Regulations 883/2004 and 987/2009 have not resolved Poland's doubts as to the consequences of an erroneous issue of the A1 document (Article 19a(2) of the Regulation 987/2009). Poland supports the view that the withdrawal of this document due to an error should not automatically produce a retroactive effect. It is necessary to take into account the principle of proportionality. In view of Poland, we cannot put an equal sign between the error and abuse, and the effect as regards the validity of the document should reflect the extent to which the parties involved contributed to a decision on changing the applicable legislation. The solution proposed in the draft will entail negative consequences both for employees and employers (lack of legal certainty as to the state competent for social security), as well as for social security institutions (a need to settle not only due contributions but also benefits provided). The longer a period between issuing and withdrawing the A1 document is, the more severe these consequences will be.

In addition, the compromise proposal made by the Estonian Presidency does not dispel Poland's doubts as to defining the concept of „registered office or place of business”, used as a link in determining the applicable legislation for persons pursuing an activity in two or more Member States (Article 14(5a) of the Regulation 987/2009). The criteria proposed in the draft go beyond those proposed by the CJEU case-law. Particularly problematic, from the point of view of Poland, is the criterion of „the turnover, working time, number of services rendered and/or income”. The application of this criterion in the future will cause significant administrative difficulties for institutions determining the applicable legislation and entail a risk of making wrong decisions.

Poland is deeply convinced that the common interest of all European Union Member States is both the fight against unfair and illegal practices in the field of the applicable legislation and the protection of the rights of migrant workers. However, it is necessary to strike a balance in implementing these objectives. In the opinion of Poland, the proposed solutions do not fully meet this requirement."

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**Ad "A" item 4:        Draft Council Decision on the signing, on behalf of the Union, and provisional application of a Protocol setting out the fishing opportunities and the financial contribution provided for by the Fisheries Partnership Agreement between the European Union and the Republic of Mauritius**  
=        **Adoption**

#### **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 Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Republic of Mauritius and the Implementation Protocol thereto, 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 article 218(5), 218(6)a and 218(7) TFEU, and therefore maintains its initial proposal."

**Ad "A" item 5:      **Draft Council Regulation on the allocation of fishing opportunities under the Protocol setting out the fishing opportunities and the financial contribution provided for by the Fisheries Partnership Agreement between the European Union and the Republic of Mauritius**  
=      **Adoption****

**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.

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**Ad "A" item 6:**        **Draft Council Decision on the conclusion of a Protocol setting out the fishing opportunities and the financial contribution provided for by the Fisheries Partnership Agreement between the European Union and the Republic of Mauritius**  
=        **Request of the consent of the European Parliament**

**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.

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**Ad "A" item 7:      **Proposal for an Interinstitutional Proclamation on the European Pillar of Social Rights**  
=      **Approval****

**STATEMENT BY DENMARK (SUPPORTED BY HUNGARY AND POLAND)**

"Denmark supports an EU focusing on delivering tangible results to European citizens in areas where joined efforts create added European value.

Denmark supports a socially responsible Europe that aims at inclusive growth. This commitment is based on the principles of sustainable growth and the promotion of economic and social progress, as well as cohesion and convergence, while upholding the integrity of the internal market - a Union taking into account the diversity of national systems and the key role of social partners, cf. the Bratislava Declaration.

Member States are the primary responsible for ensuring social progress and economic growth through ea. national structural reforms and sound fiscal policies. European initiatives can and should not seek to replace national responsibilities in this regard.

It is in this context that Denmark has agreed for the Council to sign the inter-institutional proclamation of the European Pillar of Social Rights. Denmark notes that a number of important issues have been clarified in the preamble of the Pillar. While agreeing to the Social Pillar Denmark would like to underline the following:

- The European Pillar of Social Rights contains no new legal rights or obligations but gives political guidance towards efficient employment and social outcomes in response to current and future challenges. The rights and principles contained in the European Pillar of Social Rights are not directly enforceable.
- While setting a framework for the work ahead, it should be underlined that the main responsibility for achieving good social outcomes and well-performing labour markets are primarily - and should remain - the competence and responsibility of Member States. The European Pillar of Social Rights does not entail an extension of the Union's powers and tasks as conferred by the Treaties.
- Furthermore, the competence and autonomy of Social Partners should be fully respected. Social partners at all levels have a crucial role to play in pursuing and implementing the European Pillar of Social Rights, in accordance with their autonomy in concluding agreements and the right to collective bargaining and collective action."