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THE EUROPEAN UNION**

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LIMITE

**PV/CONS 83
MI 126**

DRAFT MINUTES ¹

Subject : **2233rd Council meeting (Internal Market)**, held in Brussels,
on 7 December 1999

¹ Information on the final adoption of Council acts which may be released to the public may be found in Addendum 1 to these minutes.

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1. **Adoption of the agenda**
13713/99 OJ/CONS 83 MI 124

The Council adopted the above-mentioned agenda.

2. **Approval of the list of "A" items**
13714/99 PTS A 68

The Council approved the "A" items as listed in 13714/99 PTS A 68.

Information concerning item 2 on the list is given in Addendum 1 to these minutes.

3. **Strategy for the internal market**
- Oral presentation by the Commission
- Exchange of views

The Council welcomed the presentation of the Commission's Strategy for the internal market. It particularly welcomed the development of a timetable of specific target actions to ensure delivery of strategic and operational objectives. The Council commended the strategy to the European Council meeting in Helsinki and agreed to return to the subject, for a first interim review, at its meeting on 25 May 2000.

4. **Joint Work Programme of the three Presidencies (FIN, P, F)**
- Progress report
- Exchange of views
12928/99 MI 115
+ COR 1 (en)

The Council welcomed the Joint Work Programme of the Finnish, Portuguese and French Presidencies, endorsing the broad priorities and general direction of work outlined in the document.

5. **Scoreboard (new version)**

- Oral presentation by the Commission
- Exchange of views

The Council welcomed the Commission's presentation of the latest version of the Single Market Scoreboard and expressed strong support for its continued use as an instrument for monitoring progress in improving the performance of the internal market.

6. **SLIM initiative - phase IV**

- Oral presentation by the Commission
- Exchange of views

The Council took note of the Commission's presentation of the review of phase IV of the SLIM initiative, dealing with company law, the dangerous substances directive and directives on pre-packaged products, and expressed its intention to consider the Commission's forthcoming comprehensive evaluation of phases I-III at the first meeting of the Internal Market Council under the Portuguese Presidency.

7. **Proposal for a Directive of the European Parliament and of the Council amending Directives 89/48/EEC and 92/51/EEC on the general system for the recognition of professional qualifications and supplementing Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/342/EEC, 85/433/EEC and 93/16/EEC concerning the professions of nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor**

- Political Agreement/Common Position
13379/99 ETS 18 CODEC 730
13378/99 ETS 17 CODEC 729

The Council reached a unanimous political agreement on a common position on the above proposal for a Directive, as it stands in document 13378/99. The Common Position will be put on the agenda of a forthcoming Council as an "A" item as soon as the texts have been finalised.

8. **Amended proposal for a Directive of the European Parliament and of the Council on the harmonisation of certain aspects of copyright and related rights in the Information Society**

- Progress report
12913/99 PI 61 CULTURE 84 CODEC 681

The Council took note of the progress report in 12913/99 PI 61 CULTURE 84 CODEC 681.

9. **Amended proposal for a Directive of the European Parliament and of the Council on certain legal aspects of electronic commerce in the Internal Market**

- Political Agreement/Common Position
13657/99 ECO 403 CONSOM 77 CODEC 750
13655/99 ECO 402 CONSOM 76 CODEC 749

1. With a view to adopting a common position on this Directive, the Council reached a political agreement, with the Belgian delegation abstaining, on the draft submitted by the Permanent Representatives Committee (doc. 13655/99, subject to the following amendments:

a) Article 3 (5) (a) (i) to be amended as follows:

"- public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons;

b) the following recitals relating to Article 3 to be added:

"whereas national courts, including civil courts, dealing with private law disputes can take measures to derogate from the freedom to provide Information Society services in conformity with conditions established in this Directive;"

"whereas Member States, in conformity with conditions established in this Directive, may apply their national rules on criminal law and criminal proceedings with a view to taking all investigative and other measures necessary for the detection and prosecution of criminal offences, without there being a need to notify such measures to the Commission;"

c) the following new sub-paragraph to be added as Article 8(4):

"This Directive applies in addition to Community Directives concerning access to and the exercise of activities of the regulated professions."

- d) the following new recital relating to Article 8 to be added:

"Whereas this Directive complements Community law and national law relating to regulated professions maintaining a coherent set of applicable rules in this field;"

- e) Article 12(1), introductory sentence, to be amended to read as follows:

"Where an Information Society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, Member States shall ensure that the service provider shall not be liable for the information transmitted, on condition that the provider:

- f) the following new recital relating to Articles 12 and 13 to be added before the two recitals already agreed in footnote 22 of doc. 13655/99:

"Whereas the exemptions from liability established in this Directive cover only cases where the activity of the Information Society service provider is limited to the technical process of operating and giving access to a communication network over which information made available by third parties is transmitted or temporarily stored, for the sole purpose of making the transmission more efficient; whereas this activity is of a mere technical, automatic and passive nature which implies that the Information Society service provider has neither knowledge of nor control over the information which is transmitted or stored;"

- g) Article 13(1), introductory sentence, to be amended to read as follows:

"Where an Information Society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, Member States shall ensure that the service provider shall not be liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that:"

- h) Article 14(1), introductory sentence, to be amended to read as follows:

"Where an Information Society service is provided that consists of the storage of information provided by a recipient of the service, Member States shall ensure that the service provider shall not be liable for the information stored at the request of a recipient of the service, on condition that:"

- i) Recital relating to Article 14 (footnote 23 of doc. 13655/99) to be amended as follows:

"Whereas, in order to benefit from a limitation of liability, the provider of an Information Society service, consisting of the storage of information, upon obtaining actual knowledge or awareness of illegal activities has to act expeditiously to remove or to disable access to the information concerned; whereas the removal or disabling of access has to be undertaken in the respect of the principle of freedom of expression and of procedures established for this purpose at national level; whereas this Directive does not affect Member States' possibility to establish specific requirements which must be fulfilled expeditiously prior to the removal or disabling of information".

- j) the following recital relating to Article 15 to be added:

"whereas this Directive does not affect the possibility for Member States to require service providers, who host information provided by recipients of their service, to apply duties of care, which can reasonably be expected from them and which are specified by national law, in order to detect and prevent certain types of illegal activities;"

- k) Article 23 to be amended as follows:

"1. Not later than three years after the adoption of this Directive, and thereafter every two years, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive, accompanied, where necessary, by proposals for adapting it to legal, technical and economic developments in the field of Information Society services, in particular with respect to crime prevention, the protection of minors, consumer protection and to the proper functioning of the Internal Market.

2. In examining the need for an adaptation of this Directive, the report shall in particular analyse the need for proposals concerning the liability of providers of hyperlinks and location tool services, "notice and take down" procedures and the attribution of liability following the taking down of content. The report shall also analyse the need for additional conditions for the exemption from liability, provided for in Articles 12 and 13, in the light of technical developments and the possibility of applying the Internal Market principles to unsolicited commercial communications by e-mail."

- l) Article 24, first sentence, to be amended to read as follows:

"Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within 18 months of its entry into force."

2. The Council also agreed to enter the statements as set out in Annex I in the minutes of the meeting.
3. The Council invited the Permanent Representatives Committee to undertake the finalisation of the recitals and the necessary legal and linguistic adjustment of the draft Directive, with a view to formal adoption of the common position as an "A" item at a forthcoming session of the Council.
10. **Amended proposal for a Directive of the European Parliament and of the Council on the resale right for the benefit of the author of an original work of art**
 - Political Agreement/Common Position
13678/99 PI 64 CULTURE 92 CODEC 751
11857/99 PI 53 CULTURE 68 CODEC 565
+ COR 1

The Council, after continuing its examination of the above proposal for a Directive, concluded that it was not yet in a position to reach an agreement which would take account of the concerns of all the delegations. It therefore instructed the Permanent Representatives Committee to continue work on this proposal with a view to enabling the Council to reach agreement, possibly at a further Council meeting (Internal Market) before the end of the year.

11. **Amended proposal for a thirteenth Directive of the European Parliament and of the Council on company law, concerning takeover bids**
 - Political Agreement/Common Position
9482/99 DRS 18 CODEC 368
+ COR 1 (nl)

The Council took note that negotiations on the outstanding question were still going on between the parties concerned and that positive results were envisaged in the near future. The Council instructed the Permanent Representatives Committee to resume work on this dossier immediately after the Helsinki European Council on 10 and 11 December 1999, with a view to enabling the Council to reach agreement, possibly at a further Council meeting (Internal Market) before the end of the year.

12. **Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EEC) n° 2913/92 establishing the Community Customs Code**

- Political Agreement/Common Position
13316/99 UD 123 CODEC 723
12751/99 UD 118 CODEC 665
9478/98 UD 84 CODEC 342
+ COR 1 (f,d,en)

The Council adopted the Conclusions as set out in Annex II.

13. **Amended proposal for a Directive of the European Parliament and of the Council concerning the distance marketing of consumer financial services and amending Directives 97/7/EC and 98/27/EC**

- Council Conclusions
13470/99 CONSOM 75 ECOFIN 261 CODEC 735

The Council adopted the Conclusions as set out in the annex to 13470/99.

14. **Parallel imports/Exhaustion of trademark rights**

- Oral report from the Commission

The Council took note of an oral report from the Commission and of the intervention of the Swedish delegation.

15. **Public procurement**

- Progress report presented by the Commission

The Council took note of the Commission's intention to present, in the early months of 2000, to amend the legislative framework for public procurement in the Community, and of its intention to produce interpretative communications regarding, firstly, the relationship between public procurement and the protection of environment and, secondly, the treatment of concessions in public procurement, as well as of its intention to produce a communication about SMEs and public procurement.

16. Review of chemical policy

- Oral report from the Commission

The Commission reported on the state of play concerning the revision of the chemical product policy which forms part of the ongoing review of the Union's chemical policy and which is a follow-up to the Conclusions of the Council (Environment) on 24 June 1999.

The Council took note of this report and agreed to revert to this matter at a forthcoming session.

17. Follow-up to the Council Resolution on standardisation

- Commission Statement
12686/99 MI 111 ECO 365

The Council took note of a presentation by the Commission regarding future work on standardisation in the light of the Resolution adopted on 28 October 1999, and expressed its strong interest in being kept regularly informed about further progress in the implementation of the Resolution.

18. Vertical Directives on foodstuffs:

- a) **Proposal for a Council Directive relating to certain partly or wholly dehydrated preserved milk for human consumption**
 - b) **Proposal for a Council Directive relating to certain sugars intended for human consumption**
 - c) **Proposal for a Council Directive relating to fruit juices and certain similar products intended for human consumption**
- = Political Agreement
13698/99 DENLEG 31
+ COR 1 (en)
+ ADD 1
+ ADD 2
+ ADD 3
+ ADD 3 COR 1

1. The Council reached agreement:

- with regard to item (a), by a qualified majority, on the text as set out in 13698/99 DENLEG 31 ADD 1, the Belgian delegation having stated its intention of voting against the Directive when it is finally adopted;

- with regard to item (b), unanimously, on the text as set out in 13698/99 DENLEG 1 ADD 2;
- with regard to item (c), by a qualified majority, on the text as set out in 13698/99 DENLEG 31 ADD 3 + COR 1, the Netherlands delegation having stated its intention of abstaining and the Belgian delegation its intention of voting against the Directive when it is finally adopted,

on the understanding that the European Parliament will be consulted again on the three proposals as the change made by the Council to the committee procedure initially proposed by the Commission must be considered a substantive amendment.

2. The Council also noted the statements as set out in Annex III to be entered in the minutes of the Council meeting at which the Directives are finally adopted.

19. Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the institutions and bodies of the European Community and on the free movement of such data

- Progress report
13102/99 ECO 382 CODEC 702
11144/99 ECO 298 CODEC 500

On the basis of the progress report set out in doc. 13102/99, the Council took note of progress achieved on this proposal and instructed the Permanent Representative Committee to actively take matters forward with a view to a rapid adoption of this Regulation, if possible, at the end of the first reading.

20. Other Business

No items were raised under this heading.

STATEMENTS FOR THE COUNCIL MINUTES

Re item 9 of the agenda

- a) **The three declarations included in Appendix II to document 13655/99, with the 2nd declaration on consumer confidence amended as follows:**

"The Council recalls its resolution of 19 January 1999 in which it considers that, in order to develop consumer confidence in Information Society services and to promote the development of electronic commerce, consumers should, in the case of cross-border transactions, within the framework of Community law and of the Brussels and Rome Conventions, be able to benefit from the protection afforded by the legislation of their country of habitual residence and to have easy access to redress procedures, in particular within their country of habitual residence."

- b) **Statement by the representatives of the Governments of the Member States meeting within the Council:**

"Without prejudice to Community law, the representatives of the Governments of the Member States meeting within the Council, hereby undertake to take all necessary steps to ensure that their criminal legislation does not obstruct internal market principles in the directive on Certain Legal Aspects of Electronic Commerce in the Internal Market, where necessary by amending their criminal legislation."

- c) **Declaration by the Belgian, German, Danish and Swedish delegations**

"Regarding the implementation of the Joint Commission and Council Declaration on Commercial Communications, the Belgian, German, Danish and Swedish delegations declare that they are looking forward to a legislative initiative of the Commission in the year 2000 which shall aim to ensure that commercial communications will not contain misleading statements concerning business circumstances and will fulfil the standard of fair business practice, taking into consideration the fundamental values inherent in the legislation of Member States, namely freedom of competition and freedom of advertising."

d) Unilateral declaration by the German delegation

- "1. The German delegation declares that the relationship between the Directive on certain legal aspects of electronic commerce and specific Directives on freedom of services concerning regulated professions is of a cumulative nature.
2. Article 3 paragraphs 1 and 2 of this Directive is without prejudice to the provisions of those Directives and provisions of national legislation being in conformity with Community law."

e) Commission Declaration concerning the Council Declaration on consumer protection

"The Commission recalls its declaration to the minutes of the Consumer Council of 3 November 1998 relating to the Council Resolution on the Consumer Dimension of the Information Society. In this declaration the Commission underlined that the application of the law of the consumer's country of residence to consumer-contracts should be without prejudice to Community law, which includes the present Directive. Furthermore, the Commission reserved its position concerning future legislative proposals."

f) Commission declaration on cyber crime

"The Commission recognises the importance of the fight against cyber crime and the need to continue to develop a coherent approach throughout the different Community policies concerned. In addition to forthcoming Commission initiatives in this field, the Commission will give the fight against cyber crime particular attention within the context of the regular reports on the application of this Directive and the need for its adaptation to legal and technological developments."

Re item 12 of the Agenda

Council Conclusions on Community Customs Code

"The Council,

- RECOGNISING the difficulties which could arise if it officially confirms the political agreement on the draft regulation amending Regulation (EEC) No 2913/92 establishing the Community Customs Code, as set out in 12751/99, on which there is unanimity among the Member States,
- EMPHASISES the importance of the proposal to amend the above-mentioned Regulation for the purpose of modernising customs legislation;
- TAKES NOTE OF the considerable progress which has been achieved towards a compromise agreement on the proposed Regulation;
- NOTES that some further reflection is needed;
- AGREES to request the Permanent Representatives Committee, in consultation with the Commission, to continue its efforts to arrive at a solution in the near future."

STATEMENTS FOR THE COUNCIL MINUTES**Re items 18(a), (b) and (c) of the agenda****Statement by the Commission concerning Articles 4 (sugars), 5 (milk) and 6 (fruit juices)**

1. "The delegation of powers to adapt Community acts to technical progress is a general principle whereby the legislator provides for a simplified procedure for adapting Community acts to developments in science and technology. Consequently, this principle also affects other sectors than that of foodstuffs in the strict sense. Thus the principle has been very widely followed in the past, not only for all "technical barriers" directives, but also for other important Community acts.
2. The Commission believes that speedy adaptation of legislation to technical progress is vital for the competitiveness of the European sectors concerned and that the committee procedure is the appropriate instrument to achieve this. Moreover, economic operators want the Community to speed up its decision-making process when new technical or scientific data become known.
3. The Commission is therefore of the opinion that the provisions of Articles 4 (proposal for a Directive on sugars), 5 (proposal for a Directive on preserved milk) and 6 (proposal for a Directive on fruit juices and similar products) are the most appropriate means of meeting these needs.
4. The Commission has analysed the Directives relating to preserved milk, sugars and fruit juices. In each of these Directives, the Commission takes account of adaptation to technical progress.
 - In the proposal on sugars, for example, the Directive makes reference to methods of analysis dating from 1969, which are now out of date; decisions on the adaptation of those methods could thus be made through a rapid committee procedure.
 - For the proposal on preserved milk, adaptations of the criteria of composition and treatment are laid down in Annexes I and II. The provision concerning the particular recommendation of use for infants is covered by the basic act.
 - For the proposal on fruit juices, for example: if a particular designation became necessary as the result of a new accession, it should be possible to take a decision on it through a rapid committee procedure. The same applies if it is necessary to lay down the precise substances used for the processing authorised in the manufacture of fruit juices and nectars.

In these three cases, "adaptation to technical progress" therefore does not apply to the scope of the Directives or to the product definitions contained in the Annexes."

Re item 18(a)

Statement by the Commission concerning the proposal relating to certain preserved milk

"The Commission states that it will closely monitor developments on the preserved milk market and in particular aspects concerning protein content. In doing so, it will examine the consequences in particular in regard to:

- the competitiveness of European undertakings;
- the provisions on preserved milk adopted in the framework of the Codex Alimentarius;
- the product image;
- the advisability of appropriate labelling;
- the impact on the Community budget.

The Commission will report to the Council during 2000. If necessary, it will propose an adaptation of the present Directive."

Re item 18(b)

Joint Council/Commission statements concerning methods of analysis (proposal relating to certain sugars)

- (a) "The method described in Chapter B of the Annex to this Directive might need to be updated. The Commission undertakes to examine this question as soon as possible and will adopt measures where necessary.
- (b) Commission Directive 79/796/EEC on methods of analysis is out of date. The Commission will take appropriate measures in this area."

Re item 18(c)

Statement by the Commission re ANNEX I – I – 1. (a) (b) (Proposal relating to fruit juices)

"Although it considers that the compromise solution reached on product definitions achieves a satisfactory balance between the interests of producers and consumers, the Commission undertakes to examine, before the final adoption of the act, the possible impact of the definition of fruit juice and fruit juice from concentrate on the market and on international trade.

**Council and Commission statement concerning ANNEX I, Part II, last indent
(Proposal relating to fruit juices)**

"The Council and the Commission agree that it will be necessary to examine the impact of Part II, last indent of Annex I, and in particular the question of the content in oligosaccharides, and to submit proposals, if necessary."

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