



**COUNCIL OF
THE EUROPEAN UNION**

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17597/09

CRS/CRP 48

SUMMARY RECORD

**Subject : 2300th meeting of the PERMANENT REPRESENTATIVES COMMITTEE
held in Brussels on 16, 17 and 18 December 2009**

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1. Adoption of the provisional agenda and items "I"

doc. 17496/09 OJ/CRP1 44 + AMD 1

17539/09 OJ/CRP2 44 COMIX 960 + CM 5364/09

The above mentioned agenda is approved with the following changes :

The following items are **added** :

(Coreper Part 2, under I)

71. Proposal for a new denomination for the Coordinating Committee in the area of police and judicial cooperation in criminal matter (CATS)

17611/09 CATS 139 COMIX 963

72. Implementation of Article 102A of the Convention Implementing the Schengen Agreement during the year 2008

- **Draft report to be submitted to the European Parliament in accordance with Article 102A(4) of the Convention Implementing the Schengen Agreement (CISA)**

17432/09 SIRIS 181 SCHENGEN 66 ENFOPOL 316 COMIX 954

73. Union for the Mediterranean

- **Draft EU Guidelines and Proposal for a Work Programme for 2010**

17594/1/09 REV 1 MED 49

74. Implications of the Treaty of Lisbon provisions for the JHA working structures

17653/09 POLGEN 239 JAI 931

The Committee approves the "I" items as set out in the summary. Details are contained in the document quoted under item 1.

(Coreper Part 2, under I)

59. Enlargement

- **Accession Negotiations with Croatia**

- **Chapter 3 : Right of establishment and freedom to provide services**

17491/09 ELARG 114

60. Enlargement

- **Accession Negotiations with Croatia**

- **Chapter 19 : Social policy and employment**

17492/09 ELARG 115

The SI delegation made statements on the above-mentioned items which can be found in 17597/09 LIMITE.

The BE delegation made a statement on the following item :

36. Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy

17464/09 PESC 1746 RELEX 1211 CONUN 145 COARM 78 FIN 576

17592/09 PESC 1762 RELEX 1210 CONUN 144 COARM 77 FIN 580

"La Belgique ne souhaite pas bloquer l'adoption du texte des Lignes Directrices sur la Mise en Œuvre et l'Evaluation des Mesures Restrictives mais relève les problèmes qu'entraîne la rédaction de l'actuel paragraphe 70,6 des Lignes Directrices pour un pays hôte des institutions européennes. Cette disposition sert de base à la rédaction de textes légalement contraignants en matière d'exemptions par rapport à l'interdiction de séjour.

La Belgique demande à ce que les organes du Conseil examinent dès janvier 2010 ses propositions pour soit mandater la Haute Représentante pour les Affaires étrangères et la Politique de Sécurité pour initier une procédure d'exemption, soit considérer les réunions organisées par l'Union européenne comme une base légale possible pour initier une procédure d'exemption.

La Belgique reste ouverte à toute proposition de ses partenaires de nature à résoudre le problème auquel elle est confrontée au titre d'Etat hôte des institutions européennes.

La Belgique se réserve de proposer de telles dispositions à l'occasion du renouvellement des mesures restrictives autonomes de l'UE en 2010."

The Presidency also made a statement for the above mentioned item :

"We take duly note of the Belgian concerns with regard to exemptions in relation to Belgium's role as host country of the EU institutions and we recommend in this context that the Relex Working Group will revert to these questions in January 2010 and carefully examine the Belgian proposals on the role of the High Representative for Foreign Affairs and Security Policy and on the grounds for exemptions."

The DE delegation made a statement on the following item :

53. Adoption of the Council Decision amending the Schengen consultation Network (Technical Specifications)

16648/2/09 REV 2 VISA 412 COMIX 892

15702/09 VISA 386 COMIX 833 + COR 1

"The German delegation in principle welcomes the necessary amendment of the Schengen Consultation Network in respect of the Visa Code.

The fact that we do not, however, agree to the existing proposals for amendments is due to the situation that the proposal also provides that in the framework of the consultation procedure a reply of either "yes" or "no" shall be sent to the national units within a period of seven days. Until now it has by contrast been possible to extend the seven-day consultation period by another seven or, if necessary, even more days in case of hits which require further scrutiny to eliminate doubts ("soft hits").

Germany holds the view that even after the entry into force of the Visa Code it must still be possible to carry out a thorough examination in the framework of the consultation procedure. Otherwise one would be compelled in all cases where doubts have arisen in the framework of the consultation procedure to report these concerns which would result in a rejection of the visa application. This would not only run counter to the interests of the visa applicants but, taking into account the new procedure pursuant to Article 32 of the Visa Code, according to which the decision on refusal shall be notified to the applicant, it would also result in an increased administrative burden for all Schengen States. This would be in contrast to the objective of ensuring a lean and uniform Schengen visa procedure.

Germany holds the view that Article 22 of the Visa Code does not imply a legal requirement for the planned change of the consultation procedure in the framework of the Schengen Consultation Network. Article 22 paragraph 2 of the Visa Code merely stipulates the following: "the central authorities consulted shall reply definitively within seven calendar days after being consulted".

The way Germany sees it, this requirement is also fulfilled if the central authority consulted reports that there are doubts and therefore requests an extension of the consultation period. Furthermore, Article 23 of the Visa Code expressly provides for the possibility of extending the decision-making deadline in individual cases. In our view, Articles 22 and 23 of the Visa Code must be read together. It is therefore not understandable why the possibility of extending the decision-making period, which is expressly provided for under Article 23, should not be applicable to cases of doubt in the context of the consultation procedure."

Coreper Part 1

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- 16. Amended proposal for a Council (EC, EURATOM) Regulation adjusting with effect from 1 July 2009 the remuneration and pensions of officials and other servants of the European Communities and the correction coefficients applied thereto (This item will be discussed in restricted session)**

- **Adoption**
16172/09 STAT 31 FIN 474
16488/09 STAT 32 FIN 519

Following further discussions on the Commission proposal at its meetings on 16 and 18 December, the Committee agreed on the Presidency compromise proposal set out in 16488/3/09 REV 3 with a view to its adoption by the Council.

- 17. Preparation of the Council meeting (Environment) on 22 December 2009**

- **International Biological Diversity beyond 2010 (Non-legislative activity)**
 - **Adoption of Council conclusions**
17349/09 ENV 881 AGRI 559 DEVGEN 357 PI 143 FORETS 129 ONU 113
PECHE 377 MAR 179 RECH 458

The Committee forwards the draft Council conclusions as set out in document 17349/09 and as amended on the basis of the discussions to the Council (Environment) for adoption at its meeting on 22 December 2009.

- 18. Proposal for a Directive of the European Parliament and of the Council laying down the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other transport modes (First reading)**

- **Analysis on the provisions on delegated acts**
16986/09 TRANS 490 TELECOM 261 IND 180 CODEC 1412

The Committee examined the Presidency proposal on the application of the delegated acts procedure in the context of the ITS Directive.

- 19. Proposal for a Directive of the European Parliament and of the Council on the energy performance of buildings (recast) (First reading)**
- **Analysis of the provisions on delegated acts**
17472/09 ENER 443 ENV 893 CODEC 1449

The Committee reached agreement on a negotiating mandate on the basis of the Presidency's text set out in document 17472/09 supplemented with a new provision (art. 20a(1a)) limiting the conferral to the Commission of the power to adopt delegated acts to 31 December 2012 and with a recital on advance consultation (see item 20).

- 20. Proposal for a Directive of the European Parliament and of the Council on the indication by labelling and standard product information of the consumption of energy and other resources by energy related products (recast) (First reading)**
- **Analysis of the provisions on delegated acts**
17484/09 ENER 445 ENV 895 CONSOM 239 CODEC 1451

The Committee reached agreement on a negotiating mandate on the basis of the Presidency's text set out in document 17484/09 supplemented with a recital on advance consultation that shall be inserted in all acts that foresee delegated acts. This recital reads as:

"It is of particular importance that the Commission consults experts in the preparatory work, in accordance with the commitment of the Commission undertaken in the Communication of 9 December 2009 on the implementation of Article 290 of the Treaty on the functioning of the European Union."

- 21. Proposal for a Directive of the European Parliament and of the Council on the protection of animals used for scientific purposes (First reading)**
- **Analysis of the provisions on delegated acts**
17490/09 AGRILEG 233 VETER 67 ENV 896 RECH 464 CODEC 1452

The Committee confirmed the text presented in document 17490/09, as modified at the meeting, as Presidency mandate for negotiations with Parliament on the adaptations to the comitology-related parts of the draft Directive necessitated by the entry into force of the Lisbon Treaty.

Coreper Part 2

II

62. Implementation of the Treaty of Lisbon (restricted session)
= EU Delegations

The Presidency presented a report on the upgrade of EU delegations. A representative of the HR presented views on the way forward as regards the upgrading of EU delegations. The Committee was also informed of the first meeting of High level Group on the EU delegations, which will be chaired by HR Ashton.

63. Draft Council Decision supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of the operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders
17511/09 FRONT 120 COMIX 958

Le Comité a décidé de reprendre la discussion de ce point lors de sa prochaine réunion.

64. Applicable procedures with the European Parliament on Agreements signed on the basis of Articles 24 and 38 of the TEU as in force before the Lisbon Treaty
16415/09 JUR 483 JAI 860 CATS 127
17178/09 JAI 905 CATS 134
17613/09 JAI 927 CATS 140

The Committee decided that the seven Agreements should be transmitted to the European Parliament in order to seek its consent under Article 218(6) TFEU.

Several delegations insisted that the Council Legal Service would issue a written opinion on the question as to whether, for these Agreements, Member States could continue to follow constitutional proceedings in accordance with the statements made under Article 24(5) TEU in the light of the shared competence between the Union and Member States in this regard.

65. Follow up to the European Council on 10/11 December 2009

The Presidency informed the Committee on the follow-up to the European Council meeting.

66. Follow up to the Council meeting (General Affairs) on 7/8 December 2009

Le Comité est informé du suivi que la présidence entend donner à la session du Conseil.

67. Follow up to the Council meeting (Foreign Affairs) on 7/8 December 2009

Le Comité est informé du suivi que la présidence entend donner à la session du Conseil.

68. Presentation of the agenda of the Council meeting (Economic and Financial Affairs), on 19 January 2010

The Committee agreed the provisional agenda for this Council meeting.

69. Proposal for a Council Decision on the allocation of financial intermediation services indirectly measured (FISIM) for the establishment of the gross national income (GNI) used for the purposes of the European Unions' budget and its own resources
16730/09 FIN 536 RESPR 2

The Committee concludes that there is a unanimous political agreement on the text as recorded in document 16730/09.

70. Proposal for a directive of the European Parliament and of the Council amending directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market
17451/09 EF 196 ECOFIN 879 DRS 79 CODEC 1447
17453/09 EF 197 ECOFIN 880 DRS 80 CODEC 1448 + ADD 1

The Committee agreed a general approach on the draft Directive amending the Prospectus Directive as set out in document 17451/09, subject to the integration, into the text, of the follow-up changes necessary to take into account the entry into force of the Lisbon Treaty.

The Committee took note of the following statements:

- By France, Italy, Poland, Portugal and Spain:

"Statement from France, Italy, Poland, Portugal and Spain on the Prospectus Directive
Article 2.1.m (ii) of Directive 2003/71/EC establishes the possibility of issuers of non equity securities whose denomination per unit amounts to at least 1000 euros to choose the home Member State among those Member States where the issuer has its registered office, or where the securities were or are to be admitted to trading on a regulated market, or where the securities are offered to the public.

Portugal, Poland, Italy, France and Spain remark the detrimental effects of "forum shopping" on investor protection. The competent authority of the Member State where the issuer has its registered office is better suited to assess the information provided to retail investors by non equity issuers. As the practice shows, there are important differences between prospectuses approved in different jurisdictions. Those differences often reflect the different nature of the markets (retail vs institutional). Authorities based in countries where a huge retail market exists have a different approach towards the needs of investors than that of authorities specialised in wholesale markets. To better cater for the needs of the different types of investors Portugal, Poland, Italy, France and Spain would like to increase the threshold in article 2 (1)(m)(ii) in a measure that gives reasonable assurance that securities will not be offered mainly to retail investors."

- By Belgium:

"Statement from Belgium on the Prospectus Directive

Firstly, Article 2.1.m (ii) of Directive 2003/71/EC establishes the possibility of issuers of non equity securities whose denomination per unit amounts to at least 1000 euros to choose the home Member State among those Member States where the issuer has its registered office, or where the securities were or are to be admitted to trading on a regulated market, or where the securities are offered to the public.

Belgium remarks the detrimental effects of "forum shopping" on investor protection. The competent authority of the Member State where the issuer has its registered office is better suited to assess the information provided to retail investors by non equity issuers. As the practice shows, there are important differences between prospectuses approved in different jurisdictions. Belgium would like to increase the threshold in article 2 (1)(m)(ii) in a measure that gives reasonable assurance that forum shopping is not allowed for offers addressed to retail investors.

Secondly, Article 3.2.c) and d) provides that the obligation to publish a prospectus shall not apply to an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100 000 per investor, for each separate offer; or to an offer of securities whose denomination per unit amounts to at least EUR 100 000.

Belgium is concerned that the amount of 100.000 euros seems not be the appropriate threshold in order to distinguish retail investors from other investors. Therefore, an increase of this threshold will enhance the information of individual investors and, thereby, their protection.

Thirdly, Belgium is of the view that informing appropriately the investor implies providing him with a single document summarising all the key information relating to the issuer and to the issue, including the key information included in the final terms. Belgium considers that this principle should be enshrined in the directive, in particular in Article 5.4."

- By Cyprus:

"Cyprus appreciates the Presidency's efforts to reach a compromise and agrees with the general approach reflected in the text.

However, Cyprus notes its concerns on the issue of the definition of a company with reduced market capitalization, in article 2 (1) (t).

The vast majority of Cypriot companies listed on a regulated market have a market capitalization of less than €100 million and will therefore be able to prepare a prospectus with reduced information.

Cyprus notes its concerns on the potential impact on investors, given the size and characteristics of its market, as well as the fact that in most cases investors will not have all the necessary information available, in order to make an informed assessment of assets and liabilities, financial position, profit and losses, and prospectus of the issuer."

- **Any other business**

- **Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 998/2003 on the animal health requirements applicable to the non-commercial movement of pet animals (First reading)**

The Committee took note of the information provided by the Presidency in relation to the statements made by the Commission and by the five Member States currently benefiting from a transitional regime for certain diseases and as set out respectively in documents 17609/09 and 17610/1/REV1.

Several delegations had made their support of the prolongation of the transitional regime until to 31 December 2011 conditional, subject to the content of these statements (CZ maintained a scrutiny reservation and SI indicated that they would abstain during the vote on the Regulation).
