



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 28 October 2011**

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ADD 1**

**PV/CONS 52**

**ADDENDUM to DRAFT MINUTES**

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Subject: **3109th** meeting of the Council of the European Union (**GENERAL AFFAIRS**),  
held in Brussels on 12 September 2011

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## PUBLIC DELIBERATION ITEMS<sup>1</sup>

Page

### "A" ITEMS list (doc. 13953/11 PTS A 77)

Item 1.	Draft amending budget No 4 to the general budget for 2011 - General statement of revenue - Statement of expenditure by Section - Section III - Commission.....	3
Item 2.	Draft amending budget No 5 to the general budget for 2011 - Statement of expenditure by Section - Section IX - European Data Protection Supervisor - Section X - European External Action Service.....	3
Item 3.	Regulation of the European Parliament and of the Council establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice .....	4
Item 4.	Directive of the European Parliament and of the Council amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures.....	5
Item 5.	Directive of the European Parliament and of the Council amending Directive 2006/116/EC on the term of protection of copyright and certain related rights .....	8
Item 6.	Proposal for a Directive of the European Parliament and of the Council amending Council Directive 78/660/EEC on the annual accounts of certain types of companies as regards micro-entities .....	10

### AGENDA ITEMS (doc. 13952/11 OJ/CONS 51)

Item 3.	Multiannual Financial Framework (2014-2020).....	11
Item 4.	Economic governance .....	11

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<sup>1</sup> Deliberations on Union legislative acts (Article 16(8) of the Treaty on European Union), other deliberations open to the public and public debates (Article 8 of the Council's Rules of Procedure).

## **LEGISLATIVE DELIBERATIONS**

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

### **"A" ITEMS**

- 1. Draft amending budget No 4 to the general budget for 2011 - General statement of revenue - Statement of expenditure by Section - Section III - Commission**  
13061/11 FIN 544 PE-L 79

The Council adopted its position on the draft amending budget No 4 to the general budget for 2011, with the German and Swedish delegations abstaining and the Netherlands and Austrian delegations voting against.

- 2. Draft amending budget No 5 to the general budget for 2011 - Statement of expenditure by Section - Section IX - European Data Protection Supervisor - Section X - European External Action Service**  
13063/11 FIN 545 PE-L 80

The Council adopted its position on the draft amending budget No 5 to the general budget for 2011 unanimously.

**3. Regulation of the European Parliament and of the Council establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice**

PE-CONS 22/11 JAI 429 SIRIS 61 VISA 106 EURODAC 13 ENFOPOL 201

EUROJUST 98 COMIX 398 CODEC 1041

+ REV 1 (fi)

+ REV 2 (nl)

The Council approved the amendment set out in the European Parliament's position at first reading and adopted the proposed act amended accordingly, with the United Kingdom delegation voting against, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 74, Article 77(2)(a) and (b), Article 78(2)(e), Article 79(2)(c), Article 82(1)(d), Article 85(1), Article 87(2)(a) and Article 88(2) of the TFEU).

**Commission statement on voting rights**

"The Commission recalls that the principle of institutional autonomy of the European Union prevents third countries (including associated countries) from being granted voting rights in the Agency. Consequently, the Commission's acceptance of the co-legislators' compromise is based on the premise that it does not grant – or create expectations to grant – voting rights to associated countries."

**Statement by the United Kingdom**

"The United Kingdom (UK) is voting against the Regulation of the European Parliament and of the Council on establishing an Agency for the operational management of large-scale IT systems in the area of freedom security and justice owing to the inclusion of Article 10(4), which specifies the seat of the Agency within the main text of Regulation.

Through its vote, the UK reaffirms its view and reiterates the position set out in the Council declaration that:

- The location of EU Agencies should continue to be made by common accord of the Representatives of the Governments of the Member States; and
- The inclusion of this text does in no way constitute a precedent for deciding on the seats of EU Agencies in the future."

**4. Directive of the European Parliament and of the Council amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures**  
PE-CONS 24/11 TRANS 193 FISC 89 ENV 549 CODEC 1044  
+ COR 1 (hu)  
+ REV 1 (cs)

The Council approved the European Parliament's amendments to the Council's position with the Spanish and Italian delegations voting against and the Irish, the Netherlands and Portuguese delegations abstaining. The Directive is deemed to have been adopted in the form of the Council's position at first reading thus amended, pursuant to Article 294(8)(a) of the Treaty on the Functioning of the European Union. (Legal basis: Article 91(1) of the TFEU).

**Statement by the Commission on Article 9(2)**

"The Commission confirms that Article 9(2) of Directive 2011/.../EU of the European Parliament and of the Council amending Directive 1999/62/EC does not impose binding obligations on the Member States."

**Statement by the Commission on recital 25**

"The term "within a reasonable distance" in recital 25 of Directive 2011/.../EU is to be construed as referring to alternative routes representing minor travel distance variations along the corridor, to which it can be demonstrated that a substantial part of the long distance traffic may be diverted as a result of the mark-up, and on which the traffic diverted due to the application of the mark-up would account for a substantial share of the long distance traffic."

**Statement by Ireland**

"Ireland notes that the proposed adoption of amendments to the Eurovignette Directive on the sole legal base of Article 91(1) of the Treaty of the Functioning of the European Union is inappropriate for a legislative measure which contains substantial fiscal provisions.

In line with observations Ireland has made in similar circumstances previously, Ireland continues to take the view that where EU legislation includes fiscal provisions the legal base should include, either solely or, where appropriate, jointly, one of the Treaty articles dealing with fiscal issues.

In this case, Ireland believes that Article 113 should have been used as a legal base for the Amending Directive.

Ireland supports the internalisation of external costs on a balanced basis for all transport modes in the interests of sustainable economic development.

However, the application of this principle must be undertaken in a manner that does not result in the targeting of any particular transport mode or transport user.

In the current economic crisis, anything that adds costs to our goods or services is a matter of serious concern to Ireland."

## **Statement by Italy**

"While agreeing with the ecological principles underlying the proposed amendment to the *Eurovignette* Directive, it is with deep regret that Italy must cast a negative vote on the text emerging from the long and complex negotiations, in the course of which, furthermore, we have never failed to make a constructive contribution. The text of the final agreement, however, raises major problems because:

The directive further adds to the impact of transport costs on the value of the goods transported, at a time of difficulty in economic recovery and without affording any certainty as regards the transfer of resources generated to assist with the identifiable necessary infrastructure works. A European system in which over 90 % of goods now move by road, while the cost of supply and transport in some cases exceeds the threshold of 25 %, is further burdened by payments which are not reinvested in the area of infrastructure networks or of the transport sector overall. This means that the directive becomes principally a piece of fiscal legislation, raising doubts as to the appropriateness of the legal basis referring to "transport" which was adopted, and is clearly in conflict with the "Europe 2020" strategy and the policy of cohesion. It also causes serious damage in the sphere of road transport, which despite expenditure of resources receives no benefit, for example in terms of improving the efficiency of the infrastructure available.

Specifically, we are very much concerned by the fact that the directive does not even introduce the provision on "*mini-earmarking*", i.e. the forecast for reinvestment in TEN networks priority projects of resources deriving from mountain multipliers of external costs.

Concern is also raised by the provision which introduces uncertainty to the legal framework for imposing *mark-up* (in the absence of specific references to an unequivocal delimitation of distance), thus allowing possible applications of such a supplementary payment in an arbitrary fashion.

Furthermore, the directive does not take into account the specificities of some countries of the European Union, such as Italy, with regard to their mountainous nature, the number of mountain passes and the high level of land use (anthropisation); and it ends up considerably affecting the competitiveness of production processes (the "mountain multipliers" actually involve large increases in the applicable external costs and penalise growth and development).

The negotiations on the amendment of the Eurovignette Directive have therefore been a lost opportunity, in open and paradoxical contradiction to the objective (reaffirmed in the recent 2011 White Paper on Transport) of creating a renewed financial framework to develop an integrated and efficient system and ensure the necessary support for the completion of the strategic infrastructures needed by the European Union.

We hope that in future, in particular with regard to dossiers of similar importance, sufficient account will be taken of the need to reconcile legitimate concerns by choosing balanced solutions which will not penalise individual Member States and will not result in the adoption of rigid positions on their part."

### **Statement by the United Kingdom and Sweden**

"The UK and Sweden note that the proposed adoption of amendments to the Eurovignette Directive on the sole legal base of Article 91(1) of the Treaty of the Functioning of the European Union is inappropriate for a legislative measure which contains substantial fiscal provisions.

In line with observations the UK and Sweden have made in similar circumstances previously, the UK and Sweden continue to take the view that where EU legislation includes fiscal provisions the legal base should include, either solely or, where appropriate, jointly, one of the Treaty articles dealing with fiscal issues.

In this case, the UK and Sweden believe that Article 113 should have been used as a legal base for the Amending Directive.

The support of the UK and Sweden for this Directive is without prejudice to their stance on similar measures in the future."

### **Statement by the Commission on correlation tables**

"The Commission recalls its commitment towards ensuring that Member States establish correlation tables linking the transposition measures they adopt with the EU directive and communicate them to the Commission in the framework of transposing EU legislation, in the interest of citizens, better-law making and increasing legal transparency and to assist the examination of the conformity of national rules with EU provisions.

The Commission regrets the lack of support for the provision included in the proposal for a Directive of the European Parliament and of the Council amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures (Eurovignette), which aimed at rendering the establishment of correlation tables obligatory.

The Commission, in a spirit of compromise and in order to ensure the immediate adoption of that proposal, can accept the substitution of the obligatory provision on correlation tables included in the text with a relevant recital encouraging Member States to follow this practice. It will inform within twelve months after adoption of this agreement in plenary and make a report at the end of the transposition period on the practice of Member States to draw up, for themselves and in the interests of the Union, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

However, the position followed by the Commission in this file shall not be considered as a precedent. The Commission will continue its efforts with a view to finding together with the European Parliament and the Council an appropriate solution to this horizontal institutional issue."

## **Statement by the Hungarian, Polish, Danish and Cypriot Presidencies of the Council**

"It is hereby declared that the agreement reached between the Council and the European Parliament in the trilogue of 23 May 2011 concerning the Directive of the European Parliament and of the Council amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures (Eurovignette) does not prejudice the outcome of interinstitutional negotiations on correlation tables."

### **5. Directive of the European Parliament and of the Council amending Directive 2006/116/EC on the term of protection of copyright and certain related rights**

PE-CONS 16/11 PI 27 CULT 23 CODEC 593

+ REV 1 (sv)

The Council approved the amendments set out in the European Parliament's position at first reading and adopted the proposed act amended accordingly, with the Czech, Slovakian, Luxembourg, Swedish, Romanian, Slovenian, Belgian and the Netherlands delegations voting against and the Austrian and Estonian delegations abstaining, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Articles 53(1), 62 and 114 of the TFUE).

### **Statement by Sweden**

"Throughout the negotiations, Sweden has had strong reservations regarding the commissions proposal to extend the term of protection for sound recordings.

As regards copyright regulation in general Sweden has always stressed the importance of taking all relevant aspects and involved interests into account, in order to maintain a fair balance in the copyright system. We believe this to be essential if we are to successfully uphold respect for the copyright system in the future.

Extending the term of protection for sound recordings as proposed is neither fair nor balanced. It therefore risks undermining the respect for copyright in general even further. Such a development is very unfortunate for all those who depend on copyright protection to make a living.

Sweden believes there to be good reasons for measures aiming at improving the situation for those professional musicians and other artists who often operate under economically difficult conditions. Extending the term of protection will however not primarily be of benefit to this group.

Against this background Sweden regrets the decision to adopt the proposal amending Directive 2006/116/EC of the European Parliament and of the Council on the term of protection of copyright and certain related rights."



## **Statement by Belgium**

"With regard to the proposal for a directive on the term of protection of copyright and certain related rights, Belgium believes that a term extension is not an appropriate measure to improve the situation of the performing artists. Furthermore, we believe that the negative consequences the proposal entails do not outweigh the advantages it brings. We can therefore not support this proposal.

It seems that the measure will mainly benefit record producers and not performing artists, will only have a very limited effect for most of the performing artists, will have a negative impact on the accessibility of cultural material such as those contained in libraries and archives, and will create supplementary financial and administrative burdens to enterprises, broadcasting organisations and consumers. Therefore, the overall package of the proposal appears, as demonstrated by a large amount of academic studies<sup>1</sup>, unbalanced.

Finally, one has to observe that several initiatives which have clear links with and impact on the proposal, have recently been adopted or announced by the Commission in its Communication of 24 May 2011<sup>2</sup>. These initiatives include for example a proposal for a directive on orphan works, a new initiative on collective management, and a new initiative on online distribution of audiovisual works. Taking into account this global approach of copyright issues in the internal market, we think that it would only be reasonable to re-examine the merits of this proposal in the context of this global approach."

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<sup>1</sup> See e.g. "The Proposed Directive for a Copyright Term Extension – A backward-looking package" Centre for Intellectual Property Policy & Management (CIPPM, Bournemouth University), the Centre for Intellectual Property & Information Law (CIPIL, Cambridge University), the Institute the Institute for Information Law (IViR, University of Amsterdam), and the Max Planck Competition and Tax Law (Munich); N. HELBERGER, N. DUFFT, S. VAN GOMPEL, B. HUGENHOLTZ, 'Never forever: why extending the term of protection for sound recordings is a bad idea', *EIPR* 2008, 174; S. DUSOLLIER, 'Les artistes-interprètes pris en otage', *Auteurs & Media* 2008, 426.

<sup>2</sup> Communication from the Commission of 24 May 2011, A Single Market for Intellectual Property Rights Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe, COM (2011) 287

**6. Proposal for a Directive of the European Parliament and of the Council amending Council Directive 78/660/EEC on the annual accounts of certain types of companies as regards micro-entities**

- Adoption of
    - a) the Council's position
    - b) the statement of the Council reasons
- 10765/11 DRS 87 COMPET 217 ECOFIN 294 CODEC 917  
+ COR 1 (de)  
+ COR 2 (de)
- 10765/11 ADD 1 DRS 87 COMPET 217 ECOFIN 294 CODEC 917  
13133/11 CODEC 1255 DRS 93 COMPET 362 ECOFIN 527  
+ ADD 1

The Council approved its position at first reading, in accordance with Article 294(5) of the Treaty on the Functioning of the European Union, with the German and Portuguese delegations abstaining (Legal basis: Article 44(1) of the TFEU).

**Statement by Germany**

"Germany supports the reduction of accounting and financial reporting requirements for micro-entities in order to reduce unnecessary administrative burdens.

Germany therefore supported the original proposal of the Commission. That proposal provided the Member States with the necessary options for providing exemptions and is consistent with the general efforts to reduce administrative burdens, which have been repeatedly expressed at the European level as well.

The current draft position of the Council will achieve considerable reduction of regulatory requirements for micro-entities in the area of accounting. However, Germany would have preferred to set the thresholds as high as in the Commission proposal. This would have given Member States the option to exempt more small companies. Furthermore, the current text no longer includes real possibilities for exemptions from the publication requirement, which would have substantially reduced administrative burdens. Therefore, Germany cannot accept the current package, which has strayed too far from the Commission proposal. Germany will continue to advocate for a more ambitious reduction of administrative burdens."

## AGENDA ITEMS

### **3. Multiannual Financial Framework (2014-2020)**

- State of play
  - a) Fiche on the technical clarifications brought in the Friends of the Presidency group  
13127/11 CADREFIN 63 POLGEN 124
  - b) Questionnaire on duration, structure and flexibility  
12342/11 CADREFIN 47 POLGEN 123

The Council took note of information provided by the Presidency on the works of the Friends of PRES group on the MFF and of the Informal Ministerial Meeting in Sopot.

### **4. Economic governance**

- State of play

The Presidency informed the Council of the state of play regarding the economic governance package. The plan was to have EP voting on this package during the second September Plenary. To this effect, the Presidency would aim to receive Member States' backing for a compromise proposal at the Informal Ecofin meeting, to be held in Wroclaw on 16/17 September.

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