



Council of the  
European Union

013861/EU XXVI. GP  
Eingelangt am 07/03/18

Brussels, 7 March 2018  
(OR. en)

6606/18  
PV CONS 9

**DRAFT MINUTES**  
COUNCIL OF THE EUROPEAN UNION  
(General Affairs)  
27 February 2018

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## 1. Adoption of the agenda

The Council adopted the agenda set out in 6335/18.

## 2. Approval of "A" items

### a) Non-legislative list

6336/18

The Council adopted the "A" items listed in 6336/18 including COR and REV documents presented for adoption. Statements related to these items are set out in the Addendum.

### b) Legislative list (Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

6338/18

## Economic and Financial Affairs

### 1. **EIB Guarantee Fund**

*Adoption of the legislative act*

approved by Coreper, Part 2, on 21.02.2018



6067/18

PE-CONS 66/17

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 209 and 212 TFEU).

### 2. **EIB External Lending Mandate**

*Adoption of the legislative act*

approved by Coreper, Part 2, on 21.02.2018



6068/18

PE-CONS 65/17

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 209 and 212 TFEU).

## Internal Market and Industry

### 3. **Regulation on geo-blocking**

*Adoption of the legislative act*

approved by Coreper, Part 1, on 23.02.2018

6054/18 + ADD 1  
+ ADD 2 REV 1  
PE-CONS 64/17

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with the Austrian delegation abstaining, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 114 TFEU).

#### Statement by the Commission

"The Commission takes note of the text of Article 9 agreed by the European Parliament and the Council.

Without prejudice to its right of initiative pursuant to the Treaty, the Commission wishes in this context to affirm that, in accordance with Article 9, in its first evaluation of this Regulation, due within two years after the entry into force of the Regulation, it will thoroughly assess the way in which the Regulation has been implemented and has contributed to the effective functioning of the internal market. In so doing, it will take account of the increasing expectations of consumers, especially of those with no access to copyright-protected services.

As part of the evaluation, it will also perform a substantive analysis of the feasibility and potential costs and benefits arising from any changes to the scope of the Regulation, in particular with regard to the possible deletion from Article 4(1)(b) of the exclusion of electronically supplied services, the main feature of which is the provision of access to or use of copyright-protected works or other protected subject matter, where the trader has the required rights for the relevant territories, taking due account of the likely impacts any extension of the scope of the Regulation would have on consumers and businesses, and on the sectors concerned, across the European Union. The Commission will also carefully analyse whether in other sectors, including those not covered by Directive 2006/123/EC which are also excluded from the scope of the Regulation pursuant to Article 1(3) thereof, such as services in the field of transport and audiovisual services, any remaining unjustified restrictions based on nationality, place of residence or place of establishment should be eliminated.

If in the evaluation the Commission comes to the conclusion that the scope of the Regulation needs to be amended, the Commission will accompany it with a legislative proposal to that effect."

### **Statement by Luxembourg**

"In order to create a fully functioning Digital Single Market, there is a need to remove the current legal fragmentation. Otherwise businesses, in particular SMEs and micro-enterprises, will not sell throughout the Single Market because of legal uncertainty and disproportionate compliance costs. As a result, consumers will not have access to the goods and services they want to buy.

Luxembourg remains skeptical as to the added value of the Regulation, which does not provide for legal certainty and which confirms, rather than removes, existing barriers. It obliges traders to sell everywhere in the EU without providing for any improvements and clarifications as regards the determination of the applicable law and the competent court. Businesses will not be able to protect themselves against legal and economic risks by restricting their sales to their domestic market or a limited number of markets, as they can today.

However, Luxembourg appreciates the efforts of the Estonian Presidency to provide for more clarity, in particular through new provisions in the Regulation's review clause. Two years after the entry into force of the Regulation, the Commission will have to assess the additional costs faced by businesses when selling across borders and which are due to legal fragmentation, including with respect to the existing rules on applicable law.

The review clause also invites the Commission to consider ways of facilitating consumers' access to electronic services protected by copyright – the “geoblocking” of which is a major issue for consumers today.

Therefore, Luxembourg can support the compromise text resulting from the trilogues with the European Parliament. Luxembourg hopes that the review of the Regulation will provide for ambitious and concrete results as soon as possible."

### **Statement by Germany**

"In the German Federal Government's view, it should go without saying that any review of the scope will always be accompanied by a comprehensive impact assessment - particularly since the European Commission, in its statement, agrees to a review with regard to audiovisual services. We request that the following statement be entered in these minutes relating to Article 9, 'Review clause':

'Any review of the scope of this Regulation in accordance with Article 9 must be preceded by a detailed impact study by the European Commission.'

### **Statement by France**

"The French authorities support the statement by the German authorities on the Regulation addressing unjustified geoblocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2016/2004 and Directive 2009/22/EC.

For the French authorities, it is essential that any proposal to amend the Regulation's scope of application be underpinned by a detailed impact study."

## Environment

4. **Directive on the ETS revision**  
*Adoption of the legislative act*  
approved by Coreper, Part 1, on 23.02.2018

 6053/1/18 REV 1  
 + REV 1 ADD 1  
PE-CONS 63/17

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with the Hungarian, Croatian and Polish delegations abstaining, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 192(1) TFEU).

### Statements by the Commission

#### Linear Reduction Factor (LRF)

"The EU ETS is the EU's key instrument to achieving the EU climate goal of limiting global average temperature increase to well below 2 degrees Celsius above pre-industrial level as also agreed in the context of the Paris Agreement. In line with this objective and the 2030 climate and energy policy framework, the revision of the EU ETS and the increase of the linear reduction factor from 1.74% to 2.2% are the first steps in delivering on the EU's target to reduce greenhouse gas emissions by at least 40% domestically by 2030. The Commission acknowledges that further efforts and more ambition are needed to achieve the EU's 2050 GHG objective to reduce GHG emissions in line with reaching the long-term targets of the Paris Agreement and its Impact Assessment accompanying the 2030 climate and energy framework states that the cap equal to this level would require a further increase of the linear reduction factor until 2050. As part of any future review of this Directive, the Commission undertakes to consider an increase of the linear reduction factor in the light of international developments calling for an increased stringency of Union policies and measures."

#### Maritime emissions

"The Commission takes note of the European Parliament's proposal. In April 2018, the IMO is expected to decide on the initial GHG emission reduction strategy for ships. The Commission will swiftly assess and duly report on this outcome, in particular the emission reduction objectives and list of candidate measures to achieve them, including the timeline for adoption of such measures. When doing so it will consider which next steps are appropriate to ensure a fair contribution of the sector, including the way forward proposed by Parliament. In the context of new legislative measures on maritime greenhouse gas emissions, the Commission will duly consider amendments in this regard adopted by the European Parliament."

### **Just transition in coal and carbon-intensive regions**

"The Commission re-iterates the commitment to develop a dedicated initiative which will provide tailor made support for the just transition in coal and carbon-intensive regions in Member States concerned.

To this end, it will work in partnership with the stakeholders of these regions to provide guidance, in particular for the access to and use of relevant funds and programmes, and encourage exchange of good practices, including discussions on industrial roadmaps and re-skilling needs."

### **CCU**

"The Commission takes note of the European Parliament's proposal to exempt emissions verified as captured and used ensuring a permanent bound from surrender obligations under the EU ETS. Such technologies are currently insufficiently mature for a decision on their future regulatory treatment. In view of the technological potential of CO<sub>2</sub> Carbon Capture and Use (CCU) technologies, the Commission undertakes to consider their regulatory treatment in the course of the next trading period, with a view to considering whether any changes to the regulatory treatment are appropriate by the time of any future review of the Directive. In this regard, the Commission will give due consideration to the potential of such technologies to contribute to substantial emissions reductions while not compromising the environmental integrity of the EU ETS."

### **Statement by Slovenia and Portugal**

"Slovenia and Portugal support the reform of the EU emissions trading system (EU ETS) and recognize that the agreement on the Phase 4 (2021–2030) legislation significantly strengthens the functioning of the EU ETS.

The most important adjustments in the EU ETS, which are necessary to deliver the EU target of cutting greenhouse gas emissions by at least 40% by 2030, as agreed under the 2030 climate and energy framework, are the increase of the Linear Reduction Factor, as well as adjustments to the Market Stability Reserve and the distribution of free allocation. Slovenia and Portugal also welcome the agreement that provisions of the new ETS directive will be kept under regular review, including carbon leakage rules and the LRF, and that the Commission will assess the need for additional policies or measures in the context of each stock take under the Paris Agreement.

Despite the mentioned positive elements of reform of the EU ETS, the agreement reached in triilogue exceeds the agreement on the 2030 climate and energy framework in elements connected to the Modernisation Fund (MF). Slovenia and Portugal believe that the conditional increase of the MF beyond the 2% of total cap as agreed by the European Council in October 2014, is not justified as an element of solidarity, as the MF benefits only Member States with a GDP of less than 60% of the EU average. As other elements of the EU ETS also benefit exclusively these same Members States, the agreed conditional increase disrupts the balance of the agreement of the European Council.

Considering that the mentioned threshold is arbitrary and excludes other less developed Member States such as Slovenia and Portugal, with a GDP per capita quite under the EU average, which also have challenges in the transformation of the energy sector, we hope this increase will not be made, but moreover that any future reform of the EU ETS will restore the initially agreed balance as regards solidarity mechanisms included in the EU ETS.

Furthermore, in the final compromise the conditional increase of the MF was also meant to address the concerns of the European Parliament regarding just transition to low carbon societies. We would like to stress that such a transition will be challenging for the whole EU. Therefore, the future reviews of the legislation should address just transition in a wider scope and not only in the context of the least developed EU Member States."

### **Statement by Croatia**

"The Republic of Croatia supports the goals and objectives of the proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, since we consider the proposal to be of crucial importance for the EU's climate policy and for the successful implementation of the Paris Agreement.

However, the Republic of Croatia considers that the current text of Directive 2003/87/EC and the current proposal on amendments to Directive 2003/87/EC put Croatia on an unequal footing as regards the total amount of allowances to be auctioned by Member States, and appropriate changes were therefore requested during negotiations.

The Republic of Croatia still considers it necessary to amend the second subparagraph of Article 10(2) of Directive 2003/87/EC, given that the current provision does not cover the calculation of the Croatian share of auctioning rights. The provision in question stipulates from which year verified emissions should be used for Member States which did not participate in the Community scheme in 2005. In this regard, at the Environment Council on 28 February 2017, the Republic of Croatia put forward a proposal to delete the wording 'under the Community scheme' from the second subparagraph of Article 10(2) of Directive 2003/87/EC.

We recall that in 2013, the European Commission calculated the Republic of Croatia's auctioning rights without taking into consideration all of the parameters agreed on during negotiations on the Republic of Croatia's accession to the European Union. To calculate the Republic of Croatia's auctioning rights, the European Commission used the Republic of Croatia's total amount of greenhouse gas emissions under the trading system, as fixed for inclusion in the total amount of EU emissions, rather than the verified emissions for 2007, as had been agreed during the negotiations. It should be stressed that the total amount for the Republic of Croatia is lower, and results in fewer auctioning rights for the Republic of Croatia. Furthermore, while the total amount is lower for all other Member States, all other Member States' auctioning rights were calculated based on verified emissions for either 2005 or 2007 or the 2005-2007 average, depending on which was more favourable to them.

We therefore proposed the above amendment so as to avoid potentially different interpretations as regards the application of the provisions of Directive 2003/87/EC to the Republic of Croatia and, accordingly, to ensure the consistent and uniform application of point (a) of Article 10(2) of the Directive in all Member States, including the Republic of Croatia. Since the above amendment was not included in the final compromise text, the Republic of Croatia will abstain in relation to the adoption of this legislative proposal."

## Non-legislative activities

### 3. Presentation of the priorities of the Bulgarian Presidency

The Presidency outlined the priorities for its term, in particular as regards the work of the General Affairs Council.

The Council addressed the following non-legislative discussion items. (4-6)

4. **Annotated draft agenda for the European Council on 22-23 March 2018**  6184/18  
*Exchange of views*
5. **Rule of Law in Poland / Article 7(1) TEU Reasoned Proposal**  16007/17  
*Presentation by the Commission*
6. **Any other business**

- 
-  First reading
-  Item based on a Commission proposal
-  Public debate (Article 8(3) of the Council's Rules of Procedure)
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