



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 17 April 2013

**7416/13
ADD 1**

**PV/CONS 14
JAI 203
COMIX 159**

ADDENDUM to DRAFT MINUTES

Subject: **3228th** meeting of the Council of the European Union (**JUSTICE AND HOME AFFAIRS**), held in Brussels on 7 and 8 March 2013

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¹ 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. Council Regulation on the electronic publication of the Official Journal of the European Union

10222/5/11 REV 5 JURINFO 34 INF 76 JUR 238

The Council adopted the above regulation. (Legal basis: Article 352 of the Treaty on the Functioning of the European Union)

2. Cohesion Policy legislative package [First reading]

- Elements of a partial general approach
6816/13 FSTR 11 FC 7 REGIO 26 SOC 129 AGRISTR 23 PECHE 73
CADREFIN 44 CODEC 419
5609/1/13 REV 1 FSTR 4 FC 3 REGIO 8 SOC 45 AGRISTR 6 PECHE 24
CADREFIN 14 CODEC 136
5609/13 ADD 1 REV 1 to ADD 5 REV 1
+ ADD 1 REV 1 COR 1
+ ADD 4 REV 1 COR 1 (pl)
approved by Coreper, Part 2, on 20.02.2013

The Council agreed:

- on the following elements for a partial general approach concerning:
 - a) Recitals, as set out in ADD 1 REV 1 to document 5609/1/13 REV 1,
 - b) Delegations of power, implementing, transitional and final provisions as set out in ADD 2 REV 1 and
 - c) Other pending articles, as set out in ADD 3 REV 1 and
- on the EGTC amending Regulation, as set out in ADD 4 REV 1 to doc. 5609/1/13 REV 1 and to mandate the Presidency to enter into negotiations with the European Parliament on that basis.

The Council decided to enter into its minutes the statements hereafter (and set out in doc. 5609/1/13 ADD 5 REV 1).

Statement by the Commission
on the phasing of operations under Cohesion Policy operational programmes of the 2007-2013 programming period in the 2014-2020 programming period

"As a general principle, Member States have to ensure that all operations are functioning, meaning completed and in use, by the time of submission of the closure documents in order to declare the related expenditure as eligible. It is recalled that each operation should be selected and implemented in order to contribute to the achievement of the objectives of a particular programme and priority axis.

Member States are responsible for defining each operation, including its scope, objectives and outputs. This provides Member States with the flexibility necessary to select for support operations which will be functioning by the end of a programming period.

Exceptionally and in duly justified circumstances, the Member States may need to adjust a selected operation which cannot be completed by the end of the period by phasing its implementation over two programming periods. The Commission confirms that this flexibility exists subject to the conditions laid down for the purposes of programme closure (guidelines on the closure of operational programmes adopted for assistance from the European Regional Development Fund, the European Social Fund and the Cohesion Fund (2007-2013)). In such a case the two phases constitute separate operations each of which will be implemented under the rules applicable for the respective programming periods, although the overall objective to be achieved after implementation of both phases in order to ensure the functioning of the operation should be set out for each phase.

In addition the Commission may approve the phasing of major projects where the implementation period is expected to be longer than the programming period either in the decision approving a major project or in a subsequent amendment thereto."

Statements by Poland

a) on recital (62) of the CPR (concerning cross-financing as defined in Art. 88 CPR)

"Poland understands that in compliance with rules determined in Art. 88 CPR it should be possible to use cross-financing between the ERDF and the ESF in mono-fund priority axis (irrespective of mono- or multi- fund character of the programme) making it possible to finance a part of an operation, which is eligible from the other fund, including where all parts of the operation are eligible from the other fund."

b) on cash in-flows and revenues

"Poland understands that for the purposes of Article 54 and Article 55(6) of the CPR the following cash in-flows do not meet the conditions established in the provisions of those articles and therefore should not be considered as revenue and should not be deducted from the eligible expenditure of an operation:

- any incidental income which may appear during project implementation, such as sales of materials found on a construction site such as stones, wood, scrap metal,
- compensation collected on a performance bond."

c) on beneficiary

"Poland understands that in accordance with current practice for the period 2007-2013 and consistently with the definition of beneficiary used in article 2(10) of the CPR it is up to a Member State to define an operation and to decide on which body is selected as the beneficiary and becomes one of the parties of the co-financing agreement. In particular:

- it is fully admissible that an operation may be implemented in an institutional structure consisting of a beneficiary and several entities (partners) authorized to incur eligible expenditure, among which the division of tasks related to initiation and implementation of the operation occurs. In such a situation, expenditure which has been incurred and paid by the partners may be considered as incurred and paid by a beneficiary within the meaning of Article 55(2).
- a municipal company or another responsible entity initiating and conducting a public procurement procedure may incur eligible expenditure for an operation - as referred to in Article 55(2) - even if the operation was originally initiated by a public authority.
- in the context of state aid schemes, the body transferring the aid to third parties, in particular the provider of advice or training or a business support institution, such as business incubator, industrial park, etc. could be considered the sole beneficiary (even if due to the fact that the services are provided for free or below market value they may constitute State aid). In such cases where the aid is transferred by this body to other bodies not being parties of the co-financing agreement, the Member State may decide not to treat the latter as beneficiaries, despite the fact that they may receive state aid."

d) on recital 50 and Art. 2 CPR (systemic irregularity)

"Poland understands that without prejudice to Article 135 CPR, when a systemic irregularity is detected and corrected by Member State or the Commission it should mean that any irregularities of an individual nature connected to the systemic irregularity should not be corrected by the Commission on case by case basis."

AGENDA ITEMS

3. **Smart Borders Package**

- a) **Proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union [First reading]**
6928/13 FRONT 13 VISA 51 CODEC 450 COMIX 130
 - b) **Proposal for a Regulation of the European Parliament and of the Council establishing a Registered Travellers Programme [First reading]**
6930/13 FRONT 14 VISA 52 CODEC 451 COMIX 131
 - c) **Proposal for a Regulation of the European Parliament and of the Council amending Regulation 562/2006 as regards the use of the Entry/Exit System (EES) and the Registered Traveller Programme (RTP) [First reading]**
6931/13 FRONT 15 VISA 53 CODEC 452 COMIX 132
- Presentation by the Commission

The Presidency referred to the presentation by the Commission of its "Smart Borders Package" and the exchange of views on that package in the Mixed Committee at Ministerial Level. The Council asked its preparatory bodies to start working on the proposals.

4. **Any other business**

- Information from the Presidency on current legislative proposals

The Council took note of the state of play of the legislative proposals in the field of asylum, legal migration and MFF.

10. **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 and on the free movement of such data (General Data Protection Regulation) [First reading]**

- Orientation debate
6607/1/13 REV 1 DATAPROTECT 18 JAI 125 MI 116 DRS 30 DAPIX 28
FREMP 13 COMIX 108 CODEC 359

The Council engaged in a debate on the Presidency note, focusing on the topics of the risk-based approach and flexibility for the public sector. Regarding the latter, the need to reduce burdens on enterprises, in particular regarding small and medium-sized enterprises (SMEs), was raised by many delegations. The UK delegation distributed a note on this topic.

Whilst there appeared to be a majority of Member States in favour of controllers engaging in prior consultation with the supervisory authority where their risk assessment indicates that envisaged processing operations are likely to present a high degree of specific risk. A large majority of Member States thought that the designation of a data protection officer should be optional rather than mandatory. There was general support for incentivising the linkage of approved codes of conduct and the use of approved data protection certification mechanisms by establishing linkages with the risk assessment process.

COREPER and DAPIX were instructed to continue work on the risk-based approach, inter alia, by further developing criteria for enabling the controller and processor to distinguish risk levels and by further exploring the use of pseudonymous data as a means of calibrating controllers' and processors' data protection obligations.

The Council also instructed these preparatory bodies to continue work on flexibility for the public sector, inter alia, by clarifying throughout the Regulation the details that can be regulated under Member State law, on the understanding that it is only after this work that the assessment whether the Regulation is capable of accommodating the required level of flexibility for Member States' public sector can be made.

11. Proposal for a Directive of the European Parliament and of the Council on the protection of the euro and other currencies against counterfeiting by criminal law [First reading]

- Presentation by the Commission / Orientation debate
6713/13 DROIPEN 21 JAI 129 ECOFIN 133 UEM 28 GAF 9 CODEC 392
6152/13 DROIPEN 11 JAI 81 ECOFIN 92 UEM 18 GAF 3 CODEC 268

The Council had an exchange of views on the recent proposal for a Directive on the protection of the euro and other currencies against counterfeiting by criminal law on the basis of a presidency paper, following the presentation by the Commission. Delegations welcomed the proposal. However, several delegations expressed concerns about the suggested introduction of minimum penalties. The Council instructed its preparatory bodies to start the discussions on this proposal.

12. Proposal for a Regulation of the European Parliament and of the Council on mutual recognition of protection measures in civil matters [First reading]

- Confirmation of the agreement reached with the European Parliament
6838/13 JUSTCIV 41 COPEN 27 CODEC 424
+ COR 1 (fi)

The Council confirmed the compromise text of the draft Regulation as agreed in informal trilogues with the European Parliament (set out in doc. 6838/13).

13. Any other business

- **Information from the Presidency on current legislative proposals**

- = **Proposal for a Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest [First reading]**

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

The Commission thanked the Presidency for the very important work that has been carried out on this file so far and noted that three main issues, namely derogations, confidentiality and remedies, remain for the time unsolved. Ministers were urged to make a last effort in order to be able to reach an agreement with the European Parliament.

- = **Initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the Republic of Austria, the Republic of Slovenia, and the Kingdom of Sweden regarding the European Investigation Order [First reading]**

The Council took note of the information provided by the Presidency. The Polish delegation drew the attention of the Council to the letters signed by a number of Ministers of Justice as set out in doc. 6532/13

- = **Proposal for a Regulation of the European Parliament and of the Council establishing for the period 2014 to 2020 the Justice Programme [First Reading]**
- = **Proposal for a Regulation of the European Parliament and of the Council establishing for the period 2014 to 2020 the Rights, Equality and Citizenship programme [First Reading]**

The Council took note of the state of play of negotiations.

- = **Proposal for a Directive on freezing and confiscation of proceeds of crime in the EU [First Reading]**

The Council took note of the current state of play of the proposal in relation to which the orientation vote of the EP LIBE Committee is expected in order to launch the negotiations with the EP in the context of the ordinary legislative procedure as soon as possible.

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