



053220/EU XXIV.GP
Eingelangt am 07/06/11

**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 16 February 2011

**16455/10
ADD 1 REV 1**

**PV CONS 61
ECOFIN 736**

ADDENDUM to DRAFT MINUTES

Subject: **3045th** meeting of the Council of the European Union (**ECONOMIC and FINANCIAL AFFAIRS**), held in Brussels on 17 November 2010

PUBLIC DELIBERATION ITEMS¹

Page

"A" ITEMS list (doc. 16212/10 PTS A 94 + ADD 1)

Item 1.	Proposal for a Directive of the European Parliament and of the Council amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate	4
Item 2.	Council Regulation conferring specific tasks upon the European Central Bank concerning the functioning of the European Systemic Risk Board	4
Item 3.	Regulation of the European Parliament and of the Council on Community macro prudential oversight of the financial system and establishing a European Systemic Risk Board	4
Item 4.	Regulation of the European Parliament and of the Council establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC	5
Item 5.	Regulation of the European Parliament and of the Council establishing a European Insurance and Occupational Pensions Authority	6
Item 6.	Regulation of the European Parliament and of the Council establishing a European Securities and Markets Authority	7
Item 7.	Directive of the European Parliament and of the Council amending Directives 1998/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC, and 2009/65/EC in respect of the powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority (Text with EEA relevance)	8

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).

Item 8.	Regulation of the European Parliament and of the Council amending Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, as regards the European External Action Service	9
Item 9.	Regulation of the European Parliament and of the Council amending the Staff Regulations of officials of the European Communities and the conditions of employment of other servants of those communities	9
Item 10.	Regulation of the European Parliament and of the Council amending Directive 2009/42/EC of the European Parliament and of the Council on statistical returns in respect of carriage of goods and passengers by sea	10

AGENDA (doc. 16167/10 OJ/CONS 60 ECOFIN 721)

Item 3.	Proposal for a Council Directive and Regulation as regards the VAT treatment of insurance and financial services	11
Item 4.	Proposal for a Council Directive on administrative cooperation in the field of taxation	11

o
o o

LEGISLATIVE DELIBERATIONS:

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

"A" ITEMS

- 1. Proposal for a Directive of the European Parliament and of the Council amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate**

– General approach

15593/10 EF 153 SURE 63 ECOFIN 661 CODEC 1144

+ ADD 1

15592/10 EF 152 SURE 62 ECOFIN 660 CODEC 1143

The Council agreed on the general approach, as set out in the document 15592/10 EF 152 SURE 62 ECOFIN 660 CODEC 1143.

- 2. Council Regulation conferring specific tasks upon the European Central Bank concerning the functioning of the European Systemic Risk Board**

13694/10 EF 108 ECOFIN 527 SURE 52

The Council adopted the above Regulation. (Legal basis: Article 127(6) of the Treaty on the Functioning of the European Union)

- 3. Regulation of the European Parliament and of the Council on Community macro prudential oversight of the financial system and establishing a European Systemic Risk Board**

PE-CONS 39/10 EF 103 ECOFIN 522 SURE 47 CODEC 833

The Council approved the amendment set out in the European Parliament's position at first reading and adopted the proposed act amended accordingly, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 114 of the TFEU).

4. Regulation of the European Parliament and of the Council establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC
PE-CONS 40/10 EF 104 ECOFIN 523 SURE 48 CODEC 834
+ REV 1 (it)

The Council approved the amendment set out in the European Parliament's position at first reading and adopted the proposed act amended accordingly, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 114 of the TFEU)

Commission statements

Statement in relation to Articles 290 and 291 TFEU

"As regards the process for the adoption of regulatory standards, the Commission emphasizes the unique character of the financial services sector, following from the Lamfalussy structure and explicitly recognized in Declaration 39 to the TFEU. However, the Commission has serious doubts whether the restrictions on its role when adopting delegated acts and implementing measures are in line with articles 290 and 291 TFEU."

Statement in relation to supervisory powers on credit rating agencies and other areas

"The Commission notes that agreement has been found on granting certain supervisory powers to ESMA with regard to credit rating agencies. The Commission considers that it could in future be useful to entrust supervisory competences to the European Authorities in other areas. In particular, this could concern market infrastructure. The Commission will examine these questions in depth and will make the legislative proposals which it considers appropriate."

Statement in relation to crisis management and resolution

"In its Communication of 26 May 2010 on Bank Resolution Funds, the Commission emphasized that 'an appropriate first step could be a system based around the establishment of a harmonized network of national funds linked to a set of coordinated national crisis management arrangements."

The Commission confirms that it intends to make legislative proposals for a complete set of tools for prevention and resolution of failing banks in Spring 2011. This will ensure that public authorities are able to resolve failing financial institutions whilst minimizing the impact of failures on the financial system, limiting damage to the economy and the use of public sector resources.

The Commission confirms that the ESAs should play an important role in these areas and that it will examine which powers concerning the tools for prevention and resolution of failing banks should be conferred upon it.

These arrangements are a first step and would be reviewed by 2014 with the aim of creating Union integrated crisis management and supervisory arrangements, as well as a Union Resolution Fund in the longer term."

5. Regulation of the European Parliament and of the Council establishing a European Insurance and Occupational Pensions Authority

PE-CONS 41/10 EF 105 ECOFIN 524 SURE 49 CODEC 835

+ REV 1 (it)

The Council approved the amendment set out in the European Parliament's position at first reading and adopted the proposed act amended accordingly, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 114 of the TFEU)

Commission statements

Statement in relation to Articles 290 and 291 TFEU

"As regards the process for the adoption of regulatory standards, the Commission emphasizes the unique character of the financial services sector, following from the Lamfalussy structure and explicitly recognized in Declaration 39 to the TFEU. However, the Commission has serious doubts whether the restrictions on its role when adopting delegated acts and implementing measures are in line with articles 290 and 291 TFEU."

Statement in relation to supervisory powers on credit rating agencies and other areas

"The Commission notes that agreement has been found on granting certain supervisory powers to ESMA with regard to credit rating agencies. The Commission considers that it could in future be useful to entrust supervisory competences to the European Authorities in other areas. In particular, this could concern market infrastructure. The Commission will examine these questions in depth and will make the legislative proposals which it considers appropriate."

Statement in relation to crisis management and resolution

"In its Communication of 26 May 2010 on Bank Resolution Funds, the Commission emphasized that 'an appropriate first step could be a system based around the establishment of a harmonized network of national funds linked to a set of coordinated national crisis management arrangements.

The Commission confirms that it intends to make legislative proposals for a complete set of tools for prevention and resolution of failing banks in Spring 2011. This will ensure that public authorities are able to resolve failing financial institutions whilst minimizing the impact of failures on the financial system, limiting damage to the economy and the use of public sector resources.

The Commission confirms that the ESAs should play an important role in these areas and that it will examine which powers concerning the tools for prevention and resolution of failing banks should be conferred upon it.

These arrangements are a first step and would be reviewed by 2014 with the aim of creating Union integrated crisis management and supervisory arrangements, as well as a Union Resolution Fund in the longer term."

6. Regulation of the European Parliament and of the Council establishing a European Securities and Markets Authority

PE-CONS 42/10 EF 106 ECOFIN 525 SURE 50 CODEC 836

+ REV 1 (it)

The Council approved the amendment set out in the European Parliament's position at first reading and adopted the proposed act amended accordingly, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 114 of the TFEU)

Commission statements

Statement in relation to Articles 290 and 291 TFEU

"As regards the process for the adoption of regulatory standards, the Commission emphasizes the unique character of the financial services sector, following from the Lamfalussy structure and explicitly recognized in Declaration 39 to the TFEU. However, the Commission has serious doubts whether the restrictions on its role when adopting delegated acts and implementing measures are in line with articles 290 and 291 TFEU."

Statement in relation to supervisory powers on credit rating agencies and other areas

"The Commission notes that agreement has been found on granting certain supervisory powers to ESMA with regard to credit rating agencies. The Commission considers that it could in future be useful to entrust supervisory competences to the European Authorities in other areas. In particular, this could concern market infrastructure. The Commission will examine these questions in depth and will make the legislative proposals which it considers appropriate."

Statement in relation to crisis management and resolution

"In its Communication of 26 May 2010 on Bank Resolution Funds, the Commission emphasized that 'an appropriate first step could be a system based around the establishment of a harmonized network of national funds linked to a set of coordinated national crisis management arrangements.

The Commission confirms that it intends to make legislative proposals for a complete set of tools for prevention and resolution of failing banks in Spring 2011. This will ensure that public authorities are able to resolve failing financial institutions whilst minimizing the impact of failures on the financial system, limiting damage to the economy and the use of public sector resources.

The Commission confirms that the ESAs should play an important role in these areas and that it will examine which powers concerning the tools for prevention and resolution of failing banks should be conferred upon it.

These arrangements are a first step and would be reviewed by 2014 with the aim of creating Union integrated crisis management and supervisory arrangements, as well as a Union Resolution Fund in the longer term."

7. Directive of the European Parliament and of the Council amending Directives 1998/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC, and 2009/65/EC in respect of the powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority (Text with EEA relevance)

PE-CONS 43/10 EF 107 ECOFIN 526 SURE 51 CODEC 837
+ COR 1 (sv)

The Council approved the amendment set out in the European Parliament's position at first reading and adopted the proposed act amended accordingly, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 50, Article 53(1) and Articles 62 and 114 of the TFEU)

Commission declarations

Omnibus Directive / Adaptation to the Lisbon Treaty

Mifid: "The Commission is reviewing the Markets in Financial Instruments Directive (MiFID) and, if necessary, will propose improvements of the Directive. In this context, the Commission will examine, among other things, ways to strengthen pre- and post-trade transparency, including the rules and arrangements required from regulated markets, and any necessary amendments to adjust the Directive to the Lisbon Treaty."

MAD: "The Commission is reviewing Market Abuse Directive (MAD). In this context, the Commission will examine, among other things, any necessary amendments to adjust the Directive to the Lisbon Treaty."

Financial Conglomerates Directive: "The Commission is reviewing the financial conglomerates directive (FICOD). In this context, the Commission will examine, among other things, any necessary amendments to adjust the Directive to the Lisbon Treaty."

Declaration in relation to Omnibus amendment on transparency directive / country-by-country reporting:

"The Commission intends to prepare a Communication evaluating the feasibility of requesting certain issuers of shares whose securities are admitted to trading in a regulated market and which prepare consolidated accounts, to disclose in the annual financial report, key financial information regarding their activities in third countries. This Communication could identify the type of issuers that could be concerned; the financial information which would be meaningful to investors and other stakeholders as well as how this information could be presented. The Commission could take due account of the progress made on this issue by the IASB. The Commission intends to prepare the Communication by 30 September 2011, after having consulted ESMA. The Communication could also address the possible impact of these measures, and could be taken into account when carrying out the revision of the Directive 2004/109/EC."

8. Regulation of the European Parliament and of the Council amending Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, as regards the European External Action Service

PE-CONS 53/10 FIN 459 POLGEN 149 INST 378 CODEC 992

The Council approved the amendment set out in the European Parliament's position at first reading and adopted the proposed act amended accordingly, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 322 of the TFEU and Article 106a of the Treaty establishing the European Atomic Energy Community)

Commission statement

"The Commission will address the issue of the European Development Fund instrument with a view to integrate it in the Union budget in the framework of its proposals relating to the next multiannual financial framework."

9. Regulation of the European Parliament and of the Council amending the Staff Regulations of officials of the European Communities and the conditions of employment of other servants of those communities

PE-CONS 52/10 POLGEN 148 INST 377 STAT 22 CODEC 991

The Council approved the amendments set out in the European Parliament's position at first reading and adopted the proposed act amended accordingly, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 336 of the TFEU)

Statement by the High Representative on geographical balance in the EEAS

"The High Representative attaches the highest importance to the recruitment on the broadest possible geographical basis from among the nationals of the Member States of the Union, as well as to ensuring an appropriate presence of nationals from all Member States in the Service. The EEAS should profit fully from the diversity and wealth of experience and expertise developed in the various Foreign Services in the Union.

The High Representative will use all the possibilities offered in the application of the EEAS appointment procedure to achieve these objectives. She will dedicate a section on the issue in her yearly report on the occupation of posts in the EEAS."

Statement by the High Representative on gender balance in the EEAS

"The High Representative attaches the highest importance to the promotion of gender balance in the staffing of the EEAS.

A key to the promotion of gender balance is the encouragement of applications from women for posts in the EEAS and the removal of barriers in this respect. On the basis of the experience of the appointment procedure for the 2010 rotation of Heads of Delegation, the EEAS will examine how to take the often non-linear patterns of female application better into account in future appointment procedures and how to remove other possible obstacles. The High Representative will also identify best practices from national diplomatic services and apply them whenever possible to the EEAS.

The High Representative will make full use of all the possibilities offered by Article 1d(2) and (3) of the Staff Regulation in promoting the employment of women in the Service. The High Representative will dedicate a section on the issue of gender balance in her yearly report on the occupation of posts in the EEAS."

Statement by the Commission re Article 95(2)

"The Commission will duly motivate vis-à-vis the High Representative any negative opinion it might express concerning a person on the list of candidates."

**10. Regulation of the European Parliament and of the Council amending Directive 2009/42/EC of the European Parliament and of the Council on statistical returns in respect of carriage of goods and passengers by sea
PE-CONS 54/10 STATIS 78 MAR 101 CODEC 1017**

The Council approved the amendments set out in the European Parliament's opinion and adopted the proposed act amended accordingly, the German Delegation voting against, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 338(1) of the TFEU)

Statement by the Council

"The Council confirms that amendment of this directive does not imply that the regulatory procedure with scrutiny should automatically be transformed in delegation of powers under the treaty on the functioning of the EU."

AGENDA ITEMS

3. Proposals for a Council Directive and Regulation as regards the VAT treatment of insurance and financial services

= Policy debate

15578/10 FISC 129

+ COR 1 (et)

The Council had an orientation debate on proposals to modernise VAT exemption for insurance and financial services and endorsed the orientations as set out in doc. 15578/10 FISC 129. The further work will take into account the comments made by France, which urged to make progress on the "option to tax", in parallel to the Council work on definitions of exempt services, and the comments made by Germany, which stressed the importance of avoiding the widening of the definitions of exempt services.

4. Proposal for a Council Directive on administrative cooperation in the field of taxation

= Progress report

The Presidency informed the delegations about its latest compromise proposals on the remaining open issues, i.e. automatic exchange of information and the details for the requests for the information. Austria stressed that it could not accept the date mentioned in Article 17(2) (doc. 14297/1/10) and urged to align it with the entry into force of the Directive.

=====