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THE EUROPEAN UNION**

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ADDENDUM to DRAFT MINUTES

Subject: **3118th** meeting of the Council of the European Union (**ENVIRONMENT**),
held in Luxembourg on 10 October 2011

PUBLIC DELIBERATION ITEMS¹

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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)

1. Proposal for a Regulation of the European Parliament and of the Council on energy market integrity and transparency

PE-CONS 34/11 ENER 265 ECOFIN 506 CODEC 1178

+ REV 1 (sk)

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 194(2) of the TFEU).

Commission statement

"The Commission considers that the thresholds for reporting transactions within the meaning of Article 8(2)(a) and information within the meaning of Article 8(6)(a) cannot be set through implementing acts.

Where appropriate the Commission will come forward with a legislative proposal to set such thresholds."

Council statement

"The EU legislator has conferred on the Commission implementing powers in accordance with Article 291 TFEU in relation to measures foreseen in Article 8. That is legally binding for the Commission despite the declaration it made in respect to Art. 8(2)(a) and 8 (6)(a)."

European Parliament/Council/Commission Joint Declaration on Penalties

"The Commission will further pursue its work on reinforcing sanctioning regimes in the financial sector and intends to make proposals on how to reinforce national sanctioning regimes in a consistent manner in the context of upcoming legislative initiatives in the financial services sector. The penalties to be adopted under this Regulation will reflect the final decisions taken by the legislator on the Commission proposals referred to above."

Declaration by Ireland on Article 18 (Penalties)

"Article 18 of the Regulation on energy market integrity and transparency provides for criteria in respect of the application of penalties that exceed the recognised "effective, dissuasive and proportionate" criteria.

Because of this Ireland has concerns that the provisions of Article 18 may impact adversely on judicial discretion at a national level.

Ireland places particular emphasis on recital 31 of Regulation, which provides that the application of penalties for breaches of the Regulation should occur in accordance with national law."

2. **Proposal for a Decision of the European Parliament and of the Council on the detailed rules for access to the public regulated service offered by the global navigation satellite system established under the Galileo programme**

PE-CONS 40/11 TRANS 214 MAR 101 AVIATION 188 CAB 42 ESPACE 53

CODEC 1218

+ REV 1 (hu)

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 172 of the TFEU).

Statement by the Council regarding the involvement of Member States security experts

"Considering the security implications in respect of the PRS, the Council underlines that it is essential that the Commission consults the relevant security experts of the Member States and takes full account of their opinion, when preparing, drawing-up and amending PRS common minimum standards for updating the Annex of the PRS Decision by delegated acts.

The Council stresses the intention of the Member States to designate as experts in this process the representatives of their respective national authorities in the Security Board for the European GNSS Systems, established by Commission Decision 2009/334/EC. It also stresses the position of the Member States that these experts should advise the Commission on the basis of consensus, as far as possible. The Council welcomes the Commission's intention to work together with these experts to this end.

The Council reiterates the importance of the above consultations and the need for the Commission to take full account of the Member States experts' opinion. The Council reserves the right to consider the options provided for under this PRS Decision, in particular the expression of objection to the respective delegated acts."

Commission statement

"1. The Commission will, when preparing the delegated acts, ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council and carry out appropriate and transparent consultations well in advance, in particular with experts from the national authorities of all the Member States which will be responsible for implementing these delegated acts once they have been adopted or amended.

2. In view of the fact that questions of national security are particularly relevant when preparing, drawing up and amending PRS common minimum standards by delegated acts referred to in Article 8a, the Commission welcomes the intention by Member States to designate as experts in this process the representatives of their respective national authorities in the Security Board for the European GNSS Systems, established by Commission Decision 2009/334/EC, and also welcomes the position of the Member States that these experts, working together with the Commission, should endeavour, as far as possible, to advise the Commission on the basis of consensus."

3. **Proposal for a Directive of the European Parliament and of the Council on consumer rights**

PE-CONS 26/11 CONSOM 108 JUSTCIV 181 CODEC 1065

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 Spanish delegation voting against, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 114 of the TFEU).

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 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, 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.

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 Malta

"Malta acknowledges the added value of the compromise text for a Directive on Consumer Rights which is currently being tabled for adoption. We believe that overall there will be benefits for both consumers and traders as they will have easier access to cross border markets, and consequently Malta votes in favour.

However, Malta regrets that this Directive will not be applicable to all sectors, in particular to that of gaming which has been excluded from the draft text being submitted for adoption. This approach together with the repeal of Directive 97/7/EC on distance contracts will result in the de-regulation of online gaming from consumer protection rules regulating distance contracts. The revocation of and failure to provide harmonised rules in this sector are not in the interest of consumers nor of the internal market. Malta, therefore considers that since Member States are not taking this opportunity to provide consumer protection in the gaming sector, this should be addressed further to the Commission Green Paper on on-line gambling in the internal market."

Statement by Spain

"Spain is opposed to adoption of the consolidated text of the proposal for a Directive as it means depriving Spanish consumers of some of the rights already accorded to them under national law, as a result of the principle of maximum harmonisation which governs a large number of the Directive's provisions.

The principle of maximum harmonization also leaves the Member States no room for manoeuvre at a time when they are facing new challenges arising from the presence on the market of new forms of business and, therefore, of contracting, which would for instance involve pre-contractual information requirements that differ from or are more demanding than those provided for by the Directive in the case of distance contracts or off-premises contracts. In dealing with contracts of this type, the Directive now envisages two distinct sets of rules for pre-contractual information, one with maximum harmonisation in the case of traders who provide services in Spain but are not resident on national territory, and another which can be different and more demanding for businesses established in Spain. This would, in our view, create problems with regard to competition among businesses and cause confusion among consumers.

The problem is compounded by the lack in some cases of consistency with our civil law. When, for example, the trader fails to meet the delivery date for the goods which are the subject of the contract, there is no provision obliging the consumer to contact the trader in order to grant it an extension of the delivery period.

There are also other questions of particular concern to Spain for which a satisfactory solution has not been found in the Presidency text, e.g. the fact that the consumer can be charged for normal use of the goods during the withdrawal period. This means a reduction in the level of consumer protection afforded not only by Spanish legislation but also by the Directive in force, as is clear from the case-law of the Court of Justice, and is therefore unacceptable. That is why Spain has throughout negotiations been insisting on the need to seek a balanced solution to the effect that the consumer can only be charged for use of the goods where visible damage or wear occurs for which the consumer is responsible.

Finally, the new wording of the consolidated text raises serious doubts about the possibility of the Member States making it compulsory in their national legislation for traders to maintain a telephone helpline and telephone number, both free of charge, for customer service, as is required by a bill on customer service which is currently going through the Spanish Parliament, since the Directive in such cases guarantees only, on the principle of maximum harmonisation, that the consumer cannot be charged more than the basic price."

4. Proposal for a Regulation of the European Parliament and the Council amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)

PE-CONS 37/11 FRONT 92 COMIX 458 CODEC 1201

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. In accordance with the relevant Protocols annexed to the Treaties, the Danish, Irish and the United Kingdom delegations did not participate in the vote. (Legal basis: Article 74 and points (b) and (d) of Article 77(2) of the TFEU).

Council Declaration

"The Council welcomes the full support the United Kingdom is giving to the development of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, as well as the United Kingdom's willingness to participate in Frontex operational activities pursuant to Regulation (EC) 2007/2004. The Council invites Member States to form bilateral arrangements with the UK that deliver to UK border guards supporting Frontex joint operations and other operational activities as special advisers, equivalent protections to the guest officers of the Member States in relation to civil and criminal liability."

Commission Declaration on the monitoring of return operations

"The Commission undertakes to report to the European Parliament and the Council on an annual basis on the implementation of the monitoring of return operations as referred to in Article 9(3).

The report will be based on all relevant information made available by the Agency, its Management Board, and the Consultative Forum established by the draft Regulation. In this context it should be noted that the Consultative Forum has full access to all information concerning the respect for fundamental rights in accordance with Article 26a.

The report will pay in particular attention to the application of the "objective and transparent criteria" that need to be observed during return operation carried out by the Frontex Agency.

The first annual report should be presented by the end of 2012."

Commission Declaration on the creation of a European system of border guards

"The Commission undertakes to launch a feasibility study regarding the creation of a European system of border guard, as referred to in the Stockholm programme, within one year from the adoption of this Regulation. The outcome of the study will feed into the evaluation foreseen by Article 33(2a) of this Regulation.

The Commission also undertakes to analyse if there is a need for a technical amendment of Regulation Nr 863/2007- establishing the Rapid Border Intervention Teams - with regard to the use of the name "European Border Guard Teams."

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