



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 21 March 2012**

**18504/11  
ADD 1**

**PV/CONS 79  
TRANS 362  
TELECOM 209  
ENER 403**

**ADDENDUM to DRAFT MINUTES**

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Subject: **3134th** meeting of the council of the European Union (**TRANSPORT, TELECOMMUNICATIONS AND ENERGY**), held in Brussels on 12-13 December 2011

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## **LEGISLATIVE DELIBERATIONS**

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

### **"A" ITEMS**

**1. Regulation of the European Parliament and of the Council on statistical returns in respect of the carriage of goods by road (Recast)**

PE-CONS 61/11 STATIS 79 TRANS 286 CODEC 1798  
+ COR 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 338(1) of the TFEU).

**2. Regulation of the European Parliament and of the Council amending Regulation (EC) No 1931/2006 as regards the inclusion of the Kaliningrad oblast and certain Polish administrative districts in the eligible border area**

PE-CONS 63/11 FRONT 155 VISA 233 COMIX 714 CODEC 1988

The Council adopted the above Regulation, with the Slovenian delegation abstaining, 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: point (b) of Article 77(2) of the TFEU).

### **Joint statement by the Council and the Commission**

"The Council and the Commission hereby confirm that the present amendment of Regulation (EC) No 1931/2006, recognises both the exceptional geographic situation of the Kaliningrad Oblast of the Russian Federation as well as the specificity of the border area on the Polish side as listed in the Annex to the Regulation. The border area on the Polish side together with that on the Russian side is considered to be a single, unique and particular case. This amendment does not constitute a precedent for the future.

It is without prejudice to the general definition of the border area set out in Regulation (EC) No 1931/2006 and the rules and conditions set out in that Regulation will be fully respected.

Particular **attention** will be paid to security measures pertaining to the practical implementation of the amended Regulation in the territory of the Republic of Poland. The relevant Polish authorities will ensure the application of security safeguards, in line with the standards set out in the Regulation. The Commission will submit biennially and for the first time one year after the entry into force of this Regulation a report to the European Parliament and the Council on the implementation and functioning of the present amendment and on the bilateral agreement concluded in conformity thereof, in particular to evaluate their impact in the area of security and migration. The Commission will inform the Council at any moment about any major consequence or event observed in relation with the implementation of this Regulation."

### **Statement by Poland**

"Poland greatly appreciates the proposal for the amendment of Regulation (EC) No 1931/2006 which concerns the application of the Local Border Traffic regime to the whole of the Kaliningrad area and selected administrative districts on the Polish side. "No-precedent" policy remains the key aspect of the proposed measure. In order to provide for a high level of security and transparency while implementing possible future arrangement with the Russian Federation upon conclusion of the respective bilateral agreement to this end Poland hereby declares to:

1. Perform well-coordinated information campaigns, also on-line, targeted at persons being beneficiaries of the local border traffic regime as well as at local authorities in powiats, officers of the Municipal Police, transport authorities and tourism organisations. Particular activities would be performed by the consuls.
2. Regularly monitor the flow of holders of LBT permits thanks to the specific IT system used by the Border Guards. The statistics gathered would be provided to the European Commission for the sake of full transparency.
3. Apply specialised training scheme to the law enforcement bodies including the Border Guards, Customs administration and Police officers which would be responsible for the checks on persons. The specialised training would be organised also for the Polish consuls working in the City of Kaliningrad.
4. Make use of the enhanced risk analysis by the Border Guards and the Police concerning the movement of people in the enlarged LBT area, as well as apply when necessary the additional resources such as mobile units of the Border Guards.

Poland would engage where appropriate in the above-mentioned activities under close cooperation with the Russian Federation as well as with the particularly interested Member States."

**3. Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1083/2006 as regards repayable assistance, financial engineering and certain provisions related to the statement of expenditure**

PE-CONS 65/11 FSTR 73 FC 52 REGIO 121 SOC 986 CADREFIN 125  
FIN 870 CODEC 1992

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 177 of the TFEU).

**Statement by the Council**

"The Council confirms that considering the aim of greater legal security and clarity concerning the application of an existing practice, the amendments regarding repayable assistance shall be without prejudice for the application of such forms of assistance in the next programming period 2014-2020."

**Statement by the Commission**  
**(on the scope of definition of a credit line)**

"The Commission proposal on the amendment of Council Regulation (EC) No 1083/2006 introduces a new Section 3a on repayable assistance, including provisions on forms of repayable assistance (Article 43a) and its reuse (Article 43b).

As to the scope of the repayable assistance, the proposal provides for two distinct forms of repayable assistance: a) reimbursable grant and b) credit line, defined under Article 2 as new points 8 and 9. It is also made clear in the proposal that declarations of expenditure concerning repayable assistance are submitted in line with Article 78(1) to (5).

The Commission would like to underline that given its specific placement under a separate section, the term credit line, as defined in Article 2(9), can only be used in relation to repayable assistance."

### **Statement by the Commission**

#### **(on results of the mapping exercise relating to cases of repayable assistance)**

"The amendment reflects the results of a mapping exercise and takes account of information provided by Member States. In this mapping exercise, the Commission identified schemes or operations which are based on repayable assistance defined as reimbursable grants or credit lines, but which do not have the characteristics of financial engineering instruments as defined in Article 44 of Council Regulation (EC) No 1083/2006. This amendment aims at providing legal security to Member States which are implementing such types or schemes of operations. For these types of schemes or operations, the statement of expenditure is submitted in accordance with the rules applicable for grants as set out in Article 78(1) to (5) of the same regulation.

To the Commission's best knowledge, the new provisions cover all operations identified in the mapping exercise which have not given rise to any doubts that they fall within the definitions now laid down in the amendment."

### **Statement by the Commission**

#### **(on timely spending from financial engineering instruments)**

"New forms of finance for assistance have been developed in the 2007-2013 programming period, moving away from traditional grant-based financing to revolving forms of finance. The European Commission recognises the importance of the financial engineering instruments as vehicles for the more effective use of Structural Funds and as catalysts of public and private resources to achieve the investment levels needed to implement the Europe 2020 Strategy.

At the same time, the Commission takes note of the view of the Court of Auditors on the need to ensure a timely utilisation of the resources made available through the funds created through the financial engineering instruments.

The Commission proposal aimed to introduce a legal obligation in order to ensure that the financial contribution paid by managing authorities for establishing or contributing to financial engineering instruments is spent for eligible expenditure within a timeframe of two years from the date of the certified statement of expenditure which includes the payment into the fund.

The Commission recognises the position of the Member States not to have the above provision in the current legislation and is looking forward to the debate on timely spending in the framework of the negotiations on the cohesion policy legislative package for the 2014-2020 period."

**Statement by Slovenia, the Czech Republic, Lithuania, Hungary, Slovakia, the United Kingdom and Latvia**  
**(on application of financial engineering to the Cohesion Fund)**

"Slovenia, the Czech Republic, Lithuania, Hungary, Slovakia, the United Kingdom and Latvia fully share the view that financial engineering instruments are important vehicles for the more effective use of Structural Funds and as catalysts of public and private resources to achieve the investment levels needed to implement the Europe 2020 Strategy. With the use of financial engineering we can clearly achieve more results with the same amount of public cohesion policy funding.

Given that the scope of Cohesion Fund in 2007-2013 period has been expanded also to non-major projects, including those in the area of sustainable development, we have proposed to extend the application of financial engineering also to the Cohesion Fund. Although the proposal received wide support from the Member States it has not been included in the text of the Proposal for Regulation amending Council Regulation (EC) No 1083/2006 as regards repayable assistance, financial engineering and certain provisions related to statement of expenditure.

We see this as a missed opportunity as regards how to leverage the already disposable cohesion policy funds in the present financial framework, which will as a consequence, due to the restrictive provision of the general regulation under discussion, need to be provided as simple grants only.

We welcome the Commission's intention to make Cohesion Fund eligible for financial engineering in the 2014-2020 period. It is therefore unfortunate that we were not able to use the current period at least to introduce pilot schemes, if necessary in a limited number of fields (e.g. energy efficiency and renewable energy), thereby speeding up the start of implementation post 2014."

**Statement by Portugal, Hungary and Latvia**  
**(on reimbursements under repayable assistance operations)**

"Portugal, Hungary and Latvia consider that in order to ensure greater legal security and clarity concerning the application of an existing practice, the amounts reimbursed under repayable assistance operations, in accordance with art. 43a-b shall not be considered as deductions or withdrawals within the meaning of article 80 of the General Regulation."



**Statement by the Netherlands**  
**(on the use of financial instruments)**

"The Netherlands stresses the importance of quality of legislation and legal certainty. Whereas discussions are ongoing about the desired form and criteria for the use of financial instruments, most notably in the framework of the Financial Regulation, this particular proposal should not give precedence to any future decisions on the use of financial instruments. Only when the preconditions for the use of such financial instruments have been properly laid down in legislation following the appropriate legal procedures, should financial instruments be allowed to be set up. This urges for clearer provisions regarding the conditions under which financial instruments may be set-up and used, or not. The Netherlands reluctantly approves of this proposal on financial engineering and will negatively assess any future attempts to legalise financial instruments retroactively."

**4. Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1083/2006 as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability**

PE-CONS 66/11 FSTR 74 FC 53 REGIO 122 SOC 987 CADREFIN 126  
CODEC 1997

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 177 of the TFEU).

**Joint statement by the Commission and the Council on budgetary impact**

"The Council and the Commission consider that the subject Regulation shall also be considered in the context of the budgetary restraints facing all Member States, which should be reflected appropriately in the EU budget for 2012 and 2013. Any increased amounts for the payments consequent on the entry into force of this regulation should be accommodated through the procedure for the Commission to present updated figures concerning payment appropriations under sub-heading 1b by September 2012 and, if necessary to utilise the Global Transfer exercise for 2012, subject to other possible needs under other financial framework headings, and if then still necessary to present a draft amending budget for this sole purpose."

**Council statement on co-financing and 2014-2020 perspective**

"The Council confirms that the co-financing principle is a fundamental principle of Cohesion Policy, as it ensures ownership, responsibility and the selection of projects with the highest value added. Any relaxation of this principle should therefore be exceptional. The current amendment is justified by unprecedented crisis affecting international financial markets and the economic downturn and should be without prejudice to the outcome of the negotiations on the Cohesion Policy legislative package for the next financing period."

## **Statement of the Republic of Bulgaria**

- "1. The Republic of Bulgaria has consistently supported the opinion that resolving issues related to the financial and economic crisis requires a coordinated approach at the EU level. The crisis has put national budgets under pressure and has led to challenges for the investment process everywhere in the European Union.
2. The Republic of Bulgaria maintains serious reserve with regard to the proposal for temporary increase in the co-financing rates from the EU funds for the EU Member States which are under financial assistance programmes.
3. The proposed approach discriminates against the Member States which have put extremely important efforts in the years of the crisis to maintain financial and fiscal discipline and have avoided being in a situation of liquidity difficulties. The proposal should have also created incentive mechanisms for the efforts of the Member States which have been disciplined. It should have also encompassed the Member States which stick to financial and fiscal discipline but which because of the economic crisis also undergo temporary difficulties in safeguarding co-financing.
4. The refusal to undertake such an approach may lead to “wrong” incentives to the ones which have not maintained financial and fiscal discipline. The amendment in Article 77 could potentially have a discouraging effect on the Member States in adhering to the Stability and Growth Pact and sticking to sound and sustainable fiscal policy.
5. This position has been expressed by the Bulgarian Prime Minister at the European Council, as well as in the General Affairs Council and ECOFIN. It also has the support of the Bulgarian Parliament."

## AGENDA ITEMS

### **3. Proposal for a Directive of the European Parliament and of the Council establishing a single European railway area (Recast)**

*(Legal basis proposed by the Commission: Article 91 of the TFEU)*

- Political agreement
  - 13789/10 TRANS 238 CODEC 862
  - + COR 1
  - + REV 1 (mt)
  - 17324/11 TRANS 324 CODEC 2145

The Council reached, by qualified majority, a political agreement on the text of the Directive of the European Parliament and of the Council establishing a single European railway area (Recast), as set out in Document 17324/11.

AT and LUX voted against the political agreement. EE abstained. The Commission has a general reservation on the text of the political agreement. AT presented a statement to be entered in these minutes, as set out in the Addendum to these minutes.

#### **Statement by Austria**

"In principle, Austria supports the initiative to recast the first railway package with the aim of simplifying the regulatory environment in the European railway sector. The competitiveness of rail transport as an environmentally friendly alternative to the road is of crucial importance to Austria.

However, at European level only the framework principles should be laid down for the sector and it should be left to states to organise their rail sector within the framework of the European objectives. Any mandatory separation of bodies, beyond separate accounts and balance sheets, leads to disproportionate additional financial and organisational burdens and to disproportionate interference in railway undertakings' freedom of economic decision making, which Austria does not support.

Austria therefore rejects the wording of Article 13(2a) and (2d) and cannot accept the political agreement."

**4. Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending regulation (EC) No 561/2006 of the European Parliament and the Council (tachograph)**

- Partial general approach
  - 13195/11 TRANS 222 CODEC 1274
  - 18148/11 TRANS 352 CODEC 2317
  - + COR 1
  - + COR 2

The Council reached a partial general approach on the proposal for a Regulation on tachographs in road transport, as set out in Document 18148/11.

## **INTERMODAL ISSUES**

**5. Proposal for a Regulation of the European Parliament and of the Council on Union guidelines for the development of the Trans-European Transport Network**

- Progress report
  - 15629/11 TRANS 276 ECOFIN 688 ENV 778 RECH 336 CODEC 1699
  - + REV 1 (mt)
  - 17629/11 TRANS 333 ECOFIN 830 ENV 903 RECH 397 CODEC 2208

The Council took note of the progress report as well as of the Presidency's compromise proposals attached thereto.

## **SHIPPING**

**6. Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/106/EC of the European Parliament and of the Council on the minimum level of training of seafarers**

- General approach
  - 14256/11 TRANS 239 CODEC 1464 MAR 111 SOC 778
  - 18147/11 TRANS 351 CODEC 2316 MAR 158 SOC 1078

The Council adopted a general approach on the text of the draft Regulation as reflected in doc. 18147/11.

**7. Proposal for a Regulation of the European Parliament and of the Council on the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers (Recast)**

- General approach  
14830/11 MAR 121 ENV 718 CODEC 1548  
17025/11 MAR 145 ENV 875 CODEC 2060

The Council adopted a general approach on the text of the draft Regulation as reflected in doc. 17025/11.

**9. Proposal for a Decision of the European Parliament and of the Council establishing the first radio spectrum policy programme (RSPP) (First reading)**

- Adoption
  - (a) of the position of the Council in first reading
  - (b) of the statement of the Council reasons  
13872/10 TELECOM 91 AUDIO 26 MI 314 CODEC 872  
16226/11 TELECOM 162 AUDIO 60 MI 535 CODEC 1859 OC 24  
+ COR 1 (el)  
+ ADD 1  
17651/11 CODEC 2210 TELECOM 191 AUDIO 74 MI 610 OC 43  
+ ADD1 REV 1

The Council adopted its Position in First Reading as well as its Statement of Reasons. The BE delegation abstained from voting whereas the Commission and the NL delegation requested the inclusion to the Council minutes of a declaration, as well as the Commission.

**Statement of the Netherlands on the RSPP (supported by MT)**

On article 3(b) regarding the identification of 1200 MHz of spectrum by 2015 for wireless data traffic:

"The Netherlands confirms that due to the increasing use of mobile broadband, we should take the growing demand for spectrum into consideration. However, the additional need for spectrum can only be determined after the identification of spectrum needs and possible availability of spectrum through the inventory. In order to prevent the non-use of spectrum, the Netherlands calls upon the Commission to take into account the different spectrum needs in the Member States. As alternative types of harmonisation, the Netherlands proposes tuning ranges of spectrum or flexible harmonisation (such as Licensed Shared Access) as efficient instruments to restrict the non-use of spectrum in some Member States. Finally, the Commission should, at all times, take utmost account of the views of the RSPG as stated in article 9(2) RSPP."

## **Statements by the Commission**

"1. On insertion of a reference to RSPG in Article 9(2):

The Commission notes that Article 9(2) requires the Commission to take utmost account of the views of the Radio Spectrum Policy Group (RSPG) before adopting implementing acts in relation to the inventory. The Commission considers that in the matter of implementing acts there are no other procedural requirements than those laid down by Article 291 TFEU. The RSPG has been created by the Commission itself for the purposes of using its advice and expertise, which the Commission will continue to do considering that it plays an important advisory role and provides valuable input in regard to policy matters, but it is for the Commission to consult this group as it considers necessary.

2. On Article 10(1) regarding international negotiations:

The Commission confirms its interpretation of references to "the competence of the Member States" as competence not attributed to the European Union. It also recalls that the Treaties in their entirety remain applicable, including in particular art. 218(9) TFEU as the case may be.

3. On the procedure of adoption of implementing acts for Art. 13:

The Commission underlines that it is contrary to the letter and to the spirit of Regulation 182/2011 to invoke Article 5, paragraph 4, second subparagraph, point (b) in a systematic manner. Recourse to this provision must respond to a specific need to depart from the rule of principle which is that the Commission may adopt a draft implementing act when no opinion is delivered. Given that it is an exception to the general rule established by Article 5, paragraph 4, recourse to second subparagraph, point (b) cannot be simply seen as a "discretionary power" of the Legislator, but must be interpreted in a restrictive manner and thus must be justified."

### **10. Proposal for a Regulation of the European Parliament and of the Council on roaming on public mobile networks within the Union**

- Progress report

- Exchange of views

12639/11 TELECOM 99 COMPET 352 MI 355 CONSOM 116

CODEC 1182

+ REV 1 (en, fr, de)

17751/1/11 TELECOM 193 COMPET 563 MI 613 CONSOM 194

CODEC 2238 REV 1

17900/11 TELECOM 194 COMPET 575 MI 624 CONSOM 198 CODEC 2261

The Council held an exchange of views.

11. **Proposal for a Regulation of the European Parliament and of the Council concerning the European Network and Information Security Agency (ENISA)**

- Progress report

14358/10 TELECOM 99 MI 346 DATAPROTECT 70 JAI 794  
CAB 16 INST 361 CODEC 943

18156/11 TELECOM 203 MI 644 DATAPROTECT 148 JAI 920 CAB 56  
INST 615 CODEC 2318

The Council took note of the progress report and the Presidency compromise text as set out in doc. 18156/11.

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