



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 23 November 2012

**14828/12
ADD 1**

**PV CONS 51
COMPET 611
RECH 365
ESPACE 40**

ADDENDUM to DRAFT MINUTES

Subject: **3190th MEETING OF THE COUNCIL OF THE EUROPEAN UNION
"COMPETITIVENESS" (Internal market, Industry, Research and Space)**
held in Luxembourg, on 10 and 11 October 2012

PUBLIC DELIBERATION ITEMS¹

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"A" ITEMS (doc. 14607/12 PTS A 78)

Directive of the European Parliament and of the Council on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (Recast) [First reading] (LA+S) 3

AGENDA ITEMS (doc. 14450/12 OJ/CONS 50 COMPET 589 RECH 360 ESPACE 38)

- Item 3. Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) 294/2008 establishing the European Institute of Innovation and Technology (EIT) [First reading]
Interinstitutional file: 2011/0384 (COD) 7
- Item 4. Proposal for a Regulation of the European Parliament and of the Council laying down the rules for participation and dissemination in 'Horizon 2020' – The Framework Programme for Research and Innovation (2014-2020) [First reading]
Interinstitutional file: 2011/0399 (COD) 7

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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

Directive of the European Parliament and of the Council on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (Recast) [First reading] (LA+S)

PE-CONS 50/12 DRS 102 CODEC 1983 OC 444
+ REV 1 (lt)

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 50(1) and (2)(g) of the TFEU).

Joint statement by the Commission and the Council

"Article 6(2) of Directive 77/91/EEC addressed i.a. the short-term volatility of national currencies against the ECU and the time necessary for legislative adaptation where needed. When compliance with Article 6(1) is examined due account will be taken of those conditions."

AGENDA ITEMS

3. Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) 294/2008 establishing the European Institute of Innovation and Technology (EIT) [First reading]

- Partial general approach
18090/11 RECH 418 COMPET 588 EDUC 285 CODEC 2305
+ REV 1(e1)
14021/12 RECH 346 COMPET 567 EDUC 270 CODEC 2185
+ COR 1

The Council reached a partial general approach as set out in doc. 14851/12.

4. Proposal for a Regulation of the European Parliament and of the Council laying down the rules for participation and dissemination in 'Horizon 2020' – The Framework Programme for Research and Innovation (2014-2020) [First reading]

- Partial general approach

17934/11 RECH 411 COMPET 579 ATO 151 CODEC 2274

14295/12 RECH 356 COMPET 577 ATO 132 CODEC 2244

The Council reached a partial general approach as set out in doc. 14846/12 + COR 1 (fr, de, sk). AT and Commission asked for statements to be annexed to the Council minutes. All the statements are reproduced below.

Statement by Austria

"Austria would point out that its agreement to the partial general approach on the Horizon 2020 participation rules does not constitute a change in its fundamental position on the funding of research using human embryonic stem cells.

Austria therefore wishes to emphasise again that it cannot accept the possibility of funding for research using human embryonic stem cells as provided for in Article 16(4) of the partial general approach on the Horizon 2020 Regulation."

Statements by the Commission

"The Commission fully reserves its position on the partial general approach. Its reservation pertains in particular to: the reference to "measurable parameters" in the recital on the selection and award criteria (footnote 2, Article 14); the recital on the two-stage submission procedure (footnote 3, Article 15); the verification of the financial capacity by means that are compatible with national law (Article 14.5), the reference to drawing up the model grant agreement in close cooperation with Member States (Article 16.1a), the reference to 'in duly justified cases' (Article 16.6); the adoption of grant decision in duly justified cases (Article 17); the inclusion in the Regulation of an obligation for the Commission to publish guidelines (Article 20.2); Article 22a on direct eligible personnel costs; the recital referring to reimbursement rates at 100% or 70% (footnote 11, Article 23); the inclusion of 100% funding for non-profit legal entities for close-to-market actions (Article 23.5); the flat rate of 25% (Article 24.1); the contribution to the Participant Guarantee Fund of "up to 5%" (Article 32.5); the inclusion of having regard to geographical balance when appointing independent experts (Article 37.2); the recital on reciprocity (footnote 14, Article 40.1)."

Commission statement regarding articles 3 and 4 in the RfP of Horizon 2020

"It is the intention of the Commission to include references to national law in the grant agreement regarding public access to documents and confidentiality, in view of finding an appropriate balance between the different interests."

Commission statement on Collective entities

"It is the intention of the Commission to offer guidance to participants in relation to issues they may address in their consortium agreement. One of those issues concerns possible additional intellectual property rights (IPR) related provisions regarding the involvement of third parties in the action, in particular where these third parties carry out an important part of the work."

Commission statement on guidelines for moving some indirect costs to direct costs for large research infrastructures

"For large research infrastructures, the Commission will, based on best practices, issue guidelines how some indirect costs can be moved to direct costs, i.e. where those costs can be directly attributed to the project."

Commission Statement on eligibility of non recoverable VAT with reference to Article 22

"The Commission recalls that, according to the provisions of Financial Regulation expected to be applicable as from 1 January 2013 and its delegated act, value added tax ("VAT") where it is not recoverable under the applicable national VAT legislation is an eligible cost for all public bodies where they carry out research and innovation activities under conditions not different from those applying to private bodies, not acting in their function as public authorities."

Commission Statement on eligibility of personnel costs with reference to article 22

"The Commission confirms that, in view of the errors linked to the claim of personnel costs under FP7, the general eligibility criteria applicable to personnel costs, in particular those relating to direct taxes and social charges, will be specified in the model grant agreement of Horizon 2020, in order to ensure predictability and stability of the regulatory framework for the participants and for the whole Horizon 2020 period.

In addition, the Commission confirms that, as under FP7, personnel costs of national administrations will be considered as eligible under Horizon 2020, subject to the Rules of Participation and the Financial Regulation."

Commission Statement on the annual productive hours and their recording with reference to article 25

"Considering the large simplification potential linked to the treatment of personnel costs, the Commission confirms that:

- (1) When defining the method for establishing the number of annual productive hours to be used for the calculation of the hourly personnel rates as foreseen in Article 25(3)(b), national legislation and/or sector agreements applying to the participant and its usual accounting practices will be taken into account to the greatest possible extent.
- (2) In the exceptional case when a participant is not able to prove the actual hours through a time recording system, it will be allowed to substantiate the cost claimed by other reasonable means giving an equivalent level of assurance, to be assessed by the Commission.
- (4) Regarding the time recording system, requirements applying to the participant will be proportionate and limited to the necessary elements to ensure reliability and accuracy of time recording."

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