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15100/16
ADD 1 REV 2

PV/CONS 64
TRANS 476
TELECOM 265
ENER 415

DRAFT MINUTES

Subject: **3505th** meeting of the Council of the European Union
(Transport, Telecommunications and Energy),
held in Brussels on 1, 2 and 5 December 2016

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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).

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LEGISLATIVE DELIBERATIONS

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

TRANSPORT

Aviation

3. Proposal for Regulation of the European Parliament and of the Council on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and repealing Regulation (EC) No 216/2008 of the European Parliament and of the Council [First reading]

Interinstitutional file: 2015/0277 (COD)

= General approach

14469/16 AVIATION 231 CODEC 1668 RELEX 949

+ ADD 1–2

14991/15 AVIATION 152 CODEC 1667 RELEX 1014

+ ADD 1

The Council reached a general approach on the Regulation on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and repealing Regulation (EC) No 216/2008 of the European Parliament and of the Council.

Statement by the Czech Republic, Poland and Slovenia

"The Czech Republic, Poland and Slovenia, in spite of accepting the compromise included in the general approach at the moment, are calling for higher MTOM limit for landplanes excluded from applicability of the Regulation in Annex I(1)(e) [hereafter "ULA"]. We are convinced that the limit of 575 kg MTOM combined with the limit of 350 kg empty mass, excluding fuel or energy storage and airframe mounted recovery parachute, as well as stall speed limit of 45 knots, would bring significant benefits to the ULA sector in terms of safety, environmental performance, administrative and financial burden and international competitiveness of the EU industry.

The existing weight limits have been in place for many years while national and EU wide requirements for equipment of ULAs are ever developing. In practice the current MTOM limit is often exceeded resulting in illegal flight operations.

The advance in technology has enabled many technical solutions that can be introduced in the ULAs in order to benefit their safety, practicality and environmental performance [electric propulsion systems, more efficient internal combustion engines, improved airframe features, shock absorption zones/seats, avionics etc.].

The weight limit proposed in this declaration also permits for safe implementation of electric propulsion systems, which are completely disregarded in the current situation and should be implemented in line with the challenges of Flightpath 2050 and goals for emission reduction. Implementation of small aircraft will permit the industry and regulators to identify the path forward to implement electric propulsion on large aircraft by deadlines defined in White paper 2011 and Strategy Transport 2050.

In a number of Member States domestic ULA-specific systems of regulation and administration proved to be highly effective and ensure sufficient level of safety. An adaptation of the EU law framework for such systems in line with recent trends in technology represents the most reasonable solution."

Statement by Germany

"On the occasion of the TTE Council on 1 December 2016 on the proposal for a Regulation of the European Parliament and of the Council on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and repealing Regulation (EC) No 216/2008 of the European Parliament and of the Council.

In principle, the Federal Government welcomes the objective of the proposal for a regulation and the progress made so far in the negotiations. This refers to an enhanced appropriateness of rules and thus to improving the economic efficiency in businesses and companies as well as to improving aviation safety in Europe.

However, as before with the other EU agencies, the Federal Government rejects the option of extending the term of office of the Executive Director by up to five years, as provided for in Article 92 (4). Because serving a term of office of at least ten years would entail considerable financial obligations for the agency in accordance with Article 77 of the Staff Regulations of Officials of the European Union, which should be avoided, also with regard to the substantial retirement pension costs the EU has to bear (in 2015: 64 billion euros). Therefore, the term of office of an Executive Director should be shorter.

With regard to Article 109(5) of the proposal for a Regulation of the European Parliament and of the Council on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and repealing Regulation (EC) No 216/2008 of the European Parliament and of the Council, Germany recalls the communication from the commission to the European parliament and the council, concerning the programming of human and financial resources for decentralized agencies 2014-2020, whereby implementing a decision of the Heads of State and Government from 7th / 8th February 2013, according to which no distinction is made between fee financed activities and posts and such financed from the EU budget. Germany considers itself bound by this, so its agreement to the current wording should therefore not be seen as a precedent for the future foundation / revision of the founding acts of agencies, and it requests the Commission to take this into account in the future when preparing comparable proposals.

For Germany, it is important that in the discussions in the Council on Article 76, consensus was reached that the EASA's activities in the area of aviation security should be limited to issues concerning the overlap between aviation security and flight safety."

Statement by Ireland on Recital 28a

"Ireland believes that it is imperative that all information gathered in the course of a Safety Investigation is protected from disclosure or discovery and that it should only be used for the purpose of the Safety Investigation for which it was gathered. Failure to provide such protection could have serious implications for the availability of such sensitive information in the future.

In Ireland all information gathered and all analysis conducted during an Investigation is treated as confidential. Any information that is revealed will be provided in the publicly available Final Report or such other Preliminary and interim reports as may be published.

Regulation (EU) No 996/2010 20 October 2010 provides for the sharing of de-identified information with other relevant parties such as ICAO and EASA. Ireland does not believe that an extension of entitlements to confidential information to other bodies is warranted or necessary. Consequently, Ireland strongly objects to any change in the current situation".

Statement by Italy, Belgium, Denmark and Finland

"Italy, Belgium, Denmark and Finland have tried to save article 109(f) proposing two compromise texts aimed at reaching the rational use of resources and cost neutrality with respect to Eurocontrol charges, for airspace users.

Italy, Belgium Denmark and Finland support that regulatory tasks, other than rulemaking activities, performed by EASA under the ATM/ANS performance system, are to be financed by Member States contribution funded through aviation user charges without prejudice of other revenues under the discretion of the Member States.

At the same time, Italy, Belgium, Denmark and Finland acknowledge the need for extra funding to EASA to deal with ATM/ANS rulemaking activities. This can be financed as well on a temporary basis by Member States contribution funded through the user charge system, provided the cost neutrality is guaranteed. However the possibility for financing of rulemaking activities by member States contribution through user charges should be, , extended for symmetry as to the other aviation domains.

In addition to those Member States which supported our second compromise proposal, Italy, Belgium, Denmark and Finland also acknowledge that a group of Member States expressed their intention to keep this option and establish their final position on the basis of the Commission-EASA-Eurocontrol pan-European roadmap whose purpose was to clarify the tasks that have been transferred from Eurocontrol to EASA in order to avoid overlapping between the two institutions.

The EASA activities funded through part of the national cost bases of Members States should be determined in accordance with the procedures of the ATM/ANS Performance System, and be subject to a specific EASA Performance Plan.

Italy, Belgium, Denmark and Finland also acknowledge that art. 109 (f) was supported by the European Parliament, namely the vast majority of the political Groups and national delegations during the vote on EP Transport Committee last 10 November 2016."

4. Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/45/EC on safety rules and standards for passenger ships [First reading]
Interinstitutional file: 2016/0170 (COD)

= General approach

14361/16 MAR 284 CODEC 1645

9953/16 MAR 160 CODEC 846

The Council reached a general approach on the above proposal, as set out in 14361/16, with Ireland abstaining, and took note of the statements in Annex.

Statement by Germany and Ireland concerning sailing ships

"The stated aims of Directive 2009/45/EC of the European Parliament and of the Council on safety rules and standards for passenger ships is for the attainment of a high level of safety and the removal of barriers to trade, by setting harmonised safety standards at an appropriate level for passenger ships and craft operating domestic services.

However, Ireland and Germany consider that the Refit proposal does not achieve these goals. This is because the refit exercise removes sailing ships from the scope of the directive and it thus removes the harmonised safety standards and consequently introduces barriers to trade. The safety of sailing ships continues to be a major safety concern. There have been several high profile and very serious maritime casualties involving such ships including recently the Sail Training Vessel "Astrid" which sank off the coast of Ireland. Fortunately due to heroic rescue efforts all of the young passengers and crew on-board were rescued. The report of this casualty was published by the Marine Casualty Investigation Board of Ireland and all are encouraged to read this to see how close we came to a major maritime tragedy. This report highlighted many of the grave safety concerns associated with such ships and we should take this as a warning to urgently address the safety of these ships which carry so many young people. It is also notable that the casualty with the "Astrid" occurred when it was using its engine and so we consider that there is no justification for attempts in the proposed Refit to make a distinction between ships with sails and an engine and ships with just an engine as it is well known that these so-called sailing ships use their engines for significant amounts of time, even when under sail. The European public will not forgive us if there is a tragedy with such ships.

Additionally, Ireland and Germany highlight that removing such sailing ships from the scope of the directive will introduce barriers to their use throughout the EU as the existing harmonised standards will be replaced by a mix of varying national requirements. This will have an adverse impact on the use of such ships in cultural events such as tall ship races. It will also adversely impact in the market for the supply and sale of such ships.

It is also to be noted that such sailing ships fitted with an engine are within scope of the IMO SOLAS convention and are required to hold an international passenger ship safety certificate for international voyages between EU member states. This will not change if the refit amendments are adopted. As such sailing ships are within the scope of SOLAS, the EU Directive on Port State Control 2009/16/EC applies and they must be inspected in accordance with this Directive and entered into Thetis. Therefore, there is nothing to be gained by removing these ships from the Refit directive as doing so reduces maritime safety and introduces barriers to trade for such ships."

Statement by Ireland concerning offshore service vessels

"Ireland wishes to recall that the stated aims of Directive 2009/45/EC of the European Parliament and of the Council on safety rules and standards for passenger ships is for the attainment of a high level of safety and at removing barriers to trade, by setting harmonised safety standards at an appropriate level for passenger ships and craft operating domestic services.

Currently offshore service vessels are within the scope of the EU passenger ship directive and by removing them as proposed in this refit exercise Ireland is of the view that the aims of the directive will not be achieved. That is to say there will be a reduction in the safety of personnel transported on such ships and there will be barriers to trade introduced by removing the harmonised safety standards.

We have always considered that any ship constructed of steel, or equivalent, and carrying more than twelve passengers engaged on domestic voyages is within the scope of the Directive on domestic passenger ships. This is particularly the case when the people being carried are being taken to or from their place of work. Of course we do agree that the specially trained industrial personnel being transported are not the same as members of the general public. Ireland also acknowledges that the arrangements of the ships transporting them may require special consideration to fulfil their purpose.

However, the fundamental issue is that industrial personnel being transported on offshore service vessels are passengers and anything which leads to them being treated as a new category of person on-board ships will potentially introduce considerable uncertainty in the long established maritime regulatory framework where there are only two such categories i.e. seafarers and passengers.

We also consider that the definition of an offshore service vessel in the proposed directive is so wide that it could be used by unscrupulous operators to exempt large amounts of domestic passenger ships and this would have significant adverse maritime safety consequences. We are of the view that the objective of facilitating the development of the sector is best achieved by introducing industrial personnel as a category of passenger and that such ships are passenger ships but that they can have special consideration applied to them. This will achieve the aims of the directive for a high level of maritime safety and the reduction in barriers to trade."

5. Proposal for a Directive of the European Parliament and of the Council amending Council Directive 98/41/EC on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community and amending Directive 2010/65/EU of the European Parliament and of the Council on reporting formalities for ships arriving in and/or departing from ports of the Member States [First reading]

Interinstitutional file: 2016/0171 (COD)

= Progress report

13848/16 MAR 279 CODEC 1558

9964/16 MAR 161 CODEC 847

The Council examined and took note of the Presidency's progress report on the above proposal, as set out in 13848/16.

6. Proposal for a Directive of the European Parliament and of the Council on a system of inspections for the safe operation of ro-ro ferry and high-speed passenger craft in regular service and amending Directive 2009/16/EC of the European Parliament and of the Council on port State control and repealing Council Directive 1999/35/EC [First reading]

Interinstitutional file: 2016/0172 (COD)

= General approach

14362/16 MAR 285 CODEC 1646

9965/16 MAR 162 CODEC 848

+ ADD 1

The Council reached a general approach on the above proposal, as set out in 14362/16.

7. Any other business

a) Results of the 39th Assembly of the International Civil Aviation Organisation (ICAO) and of the International Maritime Organisation's Marine Environment Protection Committee (MEPC 70)

= Information from the Commission

14494/16 AVIATION 232 MAR 286 OMI 67 RELEX 954 ENV 717 CLIMA 155

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

b) Draft common aviation area agreement between the Republic of Turkey, of the one part, and the European Union and its Member States of the other part

= Information from the Cyprus delegation

14283/16 AVIATION 226 RELEX 933 NT 27

The Council took note of the information provided by the Cyprus delegation.

Statement by Cyprus

"Cyprus engaged constructively in the consultations and gave its consent, during the Transport Council of June, for the opening of negotiations for a Comprehensive Air Transport Agreement between Turkey and the European Union and its Member States. As clarified in our statement of 7.06.2016, this consent does not in any way imply any change of the position of the Republic of Cyprus on the serious aviation problems that Turkey creates in the Southeastern Mediterranean region, including safety. Cyprus maintains its firm position that Turkey must proceed, without further delay, to the establishment of communication with the Republic of Cyprus and take all necessary actions, in accordance with its contractual obligations and in conformity with EU and international law and most notably ICAO Standards and Recommended Practices, towards resolving these issues.

According to the negotiating directives and Commission's relevant June statement, the Commission assumed the responsibility to negotiate, on behalf of the Member States, the aforesaid Agreement and to "continue supporting efforts to tackle the serious aviation safety issues in the Southeastern Mediterranean region as a matter of priority. The Commission expressed its "commitment to continue impressing Turkey the importance and the urgency of resolving aviation safety issues, in line with the international applicable law, including the provisions of the Convention of the International Civil Aviation (Chicago Convention) and the importance of establishing full and effective cooperation between the competent authorities for air traffic control in the Ankara and Nicosia Flight Information Regions". In addition, the Commission committed to "continue guiding and monitoring to ensure that these issues are resolved satisfactorily, in accordance with the EU and international law, in the context of the negotiations on the said Agreement".

Cyprus calls upon the Commission to pursue the resolution of these problems within this framework, taking all necessary and appropriate actions, in order to fully and effectively address Cyprus' concerns. The Government of the Republic of Cyprus reserves its right to take the necessary action in full accordance with the relevant EU treaties in order to protect its legitimate rights and interests under international and EU law should Turkey fail to resolve these issues before concluding these negotiations."

c) **The upcoming road initiatives: Addressing the challenges for the road haulage sector**

= Information from the Commission, requested by the French and German delegations
14600/16 TRANS 437

The Council took note of the information provided by the Commission and requested by the French and German delegations.

Statement by Bulgaria, Czech Republic, Estonia, Hungary, Lithuania, Latvia, Poland, Romania and Slovenia

"Transport, in particular road transport, is essential for economic development of the EU and smooth functioning of the Internal Market depends on transport of goods and persons.

High mobility of workers makes this sector very specific so it cannot be compared to other sectors in terms of working conditions and social rules.

Therefore a balanced approach towards EU road transport market regulation and its social rules is fundamental.

The unique nature of road transport with its highly mobile workers require specific approach to regulate working conditions and other related social aspects through the sector specific legislation. In this respect, taking into consideration the statement of the Commission and the Member States from 1996², any further legislation and regulations in this area cannot be based on Directive 96/71/EC on Posted Workers.

²

10048/96 ADD1

The special status of transport is enshrined in Article 58(1) of the TFEU stating that freedom to provide services in the field of transport is governed by the provisions of Title on transport. It is imperative that this is taken into account by the Commission while preparing the Road Initiatives proposals announced in the Commission Work Programme³.

The current legislation on cabotage should be seen as a step towards the final goal of a liberalized road transport market in line with the White Paper 2011⁴. At this stage Road Initiatives should aim at improving clarity and better enforcement of existing rules to eliminate fraud and illegal practices.

The practice of letterbox companies is an issue that requires to be addressed with an aim to eliminate this phenomenon. In spite of the difficulty to determine and assess the scale of the problem all measures to tackle it should be evidence based and focused on strengthening enforcement.

All drivers performing international transport within the EU should be granted the possibility of having adequate rest. Taking this and provisions of Regulation 561/2006/EC into account sufficient flexibility should be allowed for the driver to decide where to spend the regular weekly rest considering the availability of affordable accommodation and safe and secure parking facilities across the EU."

d) Evolution of the EU-type approval legislation: Progress report by the European Commission on the implication of the "emissions irregularities"

= Information from the Commission, requested by the German delegation
14486/16 TRANS 430 ENV 716 CLIMA 154 COMPET 591

The Council took note of the information provided by the Commission and requested by the German delegation.

e) Security in the transport sector

= Information from the Commission on the state of play
14705/16 TRANS 446

The Council took note of the information provided by the Commission on the state of play.

f) Road safety

= Information from the Commission
14706/16 TRANS 447

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

g) Cooperation in the field of connected and automated driving: Follow-up to the Declaration of Amsterdam

= Information from the Netherlands delegation
14724/16 TRANS 449

The Council took note of the information provided by the Netherlands delegation.

³ COM (2016) 710 final

⁴ COM (2011) 144 final

- h) Women in transport**
= Information from the Commission
14929/16 TRANS 463

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

- i) GALILEO**
= Information from the Commission on the state of play
14882/16 TRANS 461 EU-GNSS 40 MAR 295 AVIATION 240 ESPACE 64
RELEX 996 CSC 351

The Council took note of the information provided by the Commission on the state of play.

- j) European Strategy for Low Emission Mobility**
= Oral presentation by the Commission

The Council took note of the oral presentation provided by the Commission.

- k) Work programme of the incoming Presidency**
= Information from the Maltese delegation
14685/16 TRANS 444

The Council took note of the information provided by the Maltese delegation.

TELECOMMUNICATIONS

8. Review of the Regulatory Framework

- a) **Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast) [First reading]**

Interinstitutional file: 2016/0288 (COD)

- b) **Proposal for a Regulation of the European Parliament and of the Council establishing the Body of European Regulators for Electronic Communications [First reading]**

Interinstitutional file : 2016/0286 (COD)

= Policy debate

14501/16 TELECOM 237 COMPET 592 MI 723 CONSOM 281 AUDIO 126
CODEC 1672

12252/1/16 TELECOM 165 COMPET 486 MI 578 CONSOM 215
IA 72 CODEC 1269

+ ADD 1 REV 1

12257/16 TELECOM 166 COMPET 489 MI 579 CONSOM 216 IA
73 CODEC 1273

+ COR 1

The Council held a policy debate on the Connectivity package on the basis of the questions set out in 14501/16.

NON-LEGISLATIVE ACTIVITIES

(Public debate in accordance with Article 8(2) of the Council's Rules of Procedure)

9. Review of the Regulatory Framework

- a) **Communication from the Commission on "5G for Europe: An Action Plan"**
b) **Communication from the Commission on "Connectivity for a Competitive Digital Single Market – Towards a European Gigabit Society"**

= Policy debate

14501/16 TELECOM 237 COMPET 592 MI 723 CONSOM 281 AUDIO 126
CODEC 1672

12279/16 TELECOM 171 COMPET 491 MI 580 CONSOM 217 AUDIO 99

12259/16 TELECOM 170 FC 53 CODEC 1275

The Council held a policy debate on the Connectivity package on the basis of the questions set out in 14501/16.

LEGISLATIVE DELIBERATIONS

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

10. Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets [First reading]

Interinstitutional file: 2016/0185 (COD)

= General approach

14516/16 TELECOM 238 COMPET 595 MI 726 CONSOM 282 CODEC 1679
+ COR 1

10329/16 TELECOM 121 COMPET 381 MI 458 CONSOM 154
CODEC 898

The Council reached a general approach on the Regulation of wholesale roaming markets (14516/16), necessary to end roaming on 15 June 2017, and with the view to beginning the negotiations with the EP. Finland was against whereas Poland abstained. A joint statement was made by 13 Member States.

Statement by Austria, Belgium, Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, the Netherlands, Poland, Romania, Slovenia and Sweden

"It remains our ultimate political priority to abolish roaming surcharges for the European consumers by 15 June 2017. However, we firmly believe that substantially lower roaming wholesale caps are still needed if this objective is to be achieved in a sustainable manner avoiding negative impacts for competition and consumers.

We therefore encourage the Presidency, all Member States and the European Commission to keep the objective of substantially lower roaming wholesale caps in mind for the coming trilogue negotiations in order to ensure that the co-legislators reach a timely and fair agreement allowing the EU and its Member States to deliver on the joint political promise of 'roam like at home' by next year."

11. Proposal for a Regulation of the European Parliament and of the Council on cross-border parcel delivery services [First reading]

Interinstitutional file: 2016/0149 (COD)

= Progress report

14401/16 POSTES 18 TELECOM 231 MI 713 COMPET 586 DIGIT 130
CONSOM 278 IA 111 CODEC 1655

+ COR 1

9706/16 POSTES 4 TELECOM 110 MI 407 COMPET 348 DIGIT 65
CONSOM 135 IA 35 CODEC 795

+ ADD 1

The Council took note of the Presidency's progress report as set out in 14401/16.

12. Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of internet connectivity in local communities [First reading]

Interinstitutional file : 2016/0287 (COD)

= Partial general approach

14442/1/16 TELECOM 232 FC 75 CODEC 1659 REV 1

12259/16 TELECOM 170 FC 53 CODEC 1275

The Council reached a general approach on the Regulation as regards the promotion of internet connectivity in local communities, with Sweden and Spain against and Germany and the Netherlands abstaining.

Sweden made the following statement: SE regretted that no impact assessment had been undertaken prior to the proposal and expressed serious concerns with regard to the adverse long term effects on investments and competition. SE noted that competition and investments are crucial factors in view of future 5G roll out. SE expressed that this type of regulation, including its accompanying financial parts, is better done at national level. Because of the aforementioned reasons, Sweden could not give its support to the partial general approach.

13. Any other business

a) Fair use policy in the context of roaming services

= Information from the Commission, requested by the Polish delegation

14988/16 TELECOM 259 COMPET 622 MI 755 CONSOM 293

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

b) Digital Single Market initiatives

= Information from the Commission

14772/16 TELECOM 253

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

c) Developments on internet governance

= Information from the Commission

14780/16 TELECOM 254

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

d) Work programme of the incoming Presidency

= Information from the Maltese delegation

14497/16 TELECOM 235

The Council took note of the information of the work programme of the incoming Presidency as set out in 14497/16.

ENERGY

14. Proposal for a Regulation of the European Parliament and of the Council concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 [First reading]

Interinstitutional file: 2016/0030 (COD)

= Policy debate

14874/16 ENER 404 CODEC 1743

6225/16 ENER 29 CODEC 174 IA 6

The Council held a policy debate on the above on the basis of discussion note and options set in 14874/16. Presidency conclusions were set in 15273/16.

15. The Energy Union package

= Presentation by the Commission

The Council listened to the presentation by the Commission.

NON-LEGISLATIVE ACTIVITIES

17. Any other business

a) Current legislative proposals:

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

i) Proposal for a Regulation of the European Parliament and of the Council setting a framework for energy efficiency labelling and repealing Directive 2010/30/EU [First reading]

Interinstitutional file: 2015/0149 (COD)

ii) Proposal for a Decision of the European Parliament and of the Council on establishing an information exchange mechanism with regard to intergovernmental agreements and non-binding instruments between Member States and third countries in the field of energy and repealing Decision No 994/2012/EU [First reading]

Interinstitutional file: 2016/0031 (COD)

= Information from the Presidency on the state of play

14582/16 ENER 390 ENV 720 CONSOM 284 CODEC 1690

The Council took note of the information from the Presidency on the state of play as set out in 14582/16.