



Council of the
European Union

Brussels, 24 October 2017
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12513/17
ADD 1 REV 1

PV/CONS 49

DRAFT MINUTES

Subject: **3560th** meeting of the Council of the European Union (**General Affairs**),
held in Brussels on 25 September 2017

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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 (12341/17 PTS A 60)

1. Regulation of the European Parliament and of the Council establishing the European Fund for Sustainable Development (EFSD), the EFSD Guarantee and the EFSD Guarantee Fund [First reading]

= Adoption of the legislative act

PE-CONS 43/17 DEVGEM 157 ACP 74 RELEX 599 ECOFIN 614

CADREFIN 82 ASIM 83 MAMA 122 COEST 166 COAFR 196

CODEC 1194

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with the Hungarian and Luxembourg delegations abstaining, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union.

(Legal basis: Article 209(1) and 212(2) TFEU).

Statement by Luxembourg

"In relation to the 'Proposal for a Regulation of the European Parliament and of the Council on the European Fund for Sustainable Development (EFSD) and establishing the EFSD Guarantee and the EFSD Guarantee Fund', Luxembourg takes the view that giving the Member States more time to analyse the negotiating briefs and prepare the Coreper meetings could undoubtedly have resulted in a stronger regulatory framework, taking fuller account of the positions of the Council.

Luxembourg regrets that the proposed package attaches too much importance to migration as opposed to development cooperation and that, rather than restricting its focus to irregular migration like the Council's partial general approach, it continues to refer to migration in the broad sense.

As regards the management of assets, Luxembourg is particularly disappointed that the European Union's development bank was not assigned this task. The tasks of the different European institutions must not be mixed and it is not appropriate for the European Commission to manage assets in this context. Furthermore, the European Investment Bank is a financial institution subject to all the international and European rules that apply to governance with clearly defined responsibilities and Chinese walls, including in respect of risk management and internal control.

As a result, Luxembourg is unable to give its agreement to the proposed package and has therefore decided to abstain on this matter, which must not set a precedent for such instruments in future."

2. **Draft Directive of the European Parliament and of the Council amending Council Framework Decision 2004/757/JHA in order to include new psychoactive substances in the definition of ‘drug’ and repealing Council Decision 2005/387/JHA [First reading]**

= Adoption of the Council's position at first reading and of the statement of the Council's reasons

11655/1/17 REV 1 CODEC 1309 CORDROGUE 106 DROIPEN 110 JAI 737
SAN 309

+ REV 1 ADD 1

10537/17 CORDROGUE 86 DROIPEN 91 JAI 624 SAN 265 CODEC 1103

+ COR 1

+ ADD 1

approved by Coreper, Part 2, on 20.09.2017

The Council approved its position at first reading, in accordance with Article 294(5) of the Treaty on the Functioning of the European Union, and the statement of the Council's reasons, with the Austrian delegation voting against. In accordance with the relevant Protocols annexed to the Treaties, the Danish and the United Kingdom delegations did not participate in the vote. (Legal basis: Article 83(1) TFEU).

Statement by the Austrian delegation

"We support the main goal, that is "to extend the application of the Union criminal law provisions that apply to illicit drug trafficking to new psychoactive substances posing severe public health and, where applicable, social risks" (recital 9).

However, we think that not all provisions of Framework Decision 2004/757/JHA should apply to new psychoactive substances.

Among the conduct described in sub-paragraphs (a), (c) and (d) of Art. 2 paragraph 1 of FD 2004/757, we think that Member States should be given the discretion if the conduct described under (c) – possession or purchase – should be criminalized or not. As the Directive contains minimum standards, any Member State is free to go further – but Member States should not be obliged, by virtue of Union Law, to criminalize such behaviour.

Such a more limited approach of the Union legislator would be in line with the principle of subsidiarity in general and also with the conditions foreseen by the Treaties for legislating in criminal law:

'The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions **in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.**' (Art. 83 paragraph 1 TFEU)

We think that the possession or purchase of new psychoactive substances in itself do not fulfil the cited (highlighted) criteria of the Treaty."

Statement by the United Kingdom

"The United Kingdom considers that both Protocol (No. 19) and Protocol (No. 21) to the Treaties apply to the Directive amending Council Framework Decision 2004/757/JHA laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, as regards the definition of drug.

In accordance with Article 7 of Protocol (No. 21), Protocol (No. 21) is without prejudice to the Protocol (No. 19) on the Schengen acquis integrated into the framework of the European Union. Therefore in accordance with Article 5(2) of Protocol (No 19) to the Treaties on the Schengen Acquis, the United Kingdom has indicated that it does not wish to take part in the Directive.

For the avoidance of doubt, the United Kingdom is not exercising its right, in accordance with Article 3(1) of the Protocol (No. 21) to the Treaties on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, to take part in the adoption and application of the Directive.

Accordingly, the United Kingdom is not taking part in the adoption and application of this Directive."

3. Proposal for a Regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets, repealing Council Regulation (EC) No 1006/2008 (First reading)

= Political agreement

11583/17 PECHE 306 CODEC 1298

approved by Coreper, Part 1, on 20.09.2017

The Council adopted the political agreement set out in the Annex of 11583/17.

"B" ITEMS

4. Presentation of the Priorities of the Estonian Presidency

The Presidency outlined the priorities for its term, in particular as regards the work of the General Affairs Council. This item was taken in public session.