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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. Regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation [EU] No 648/2012 [First reading] (LA+S) PE-CONS 22/14 EF 31 ECOFIN 88 CODEC 235

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 114 of the TFEU).

Statements by the Commission

Non-discriminatory access to central counterparties, trading venues and benchmarks (Articles 35 - 37 MiFiR)

"One of the main purposes of the Commission proposal is to ensure the prohibition of discriminatory practices and the removal of barriers that limit competition in the clearing of financial instruments in order to increase competition for clearing of financial instruments so as to lower investment and borrowing costs, eliminate inefficiencies and foster innovation in European markets.

While agreeing that a gradual transition towards a complete opening may be useful, the agreement reached by the co-legislators will not reach the purpose intended by the Commission proposal. Transitional periods of more than two years after the entry into application - 30 months have been agreed by the co-legislators, would further consolidate vested market positions."

Transparency on non-equity financial markets (Article 9 MiFiR)

"Whereas the Commission has constructively worked with co-legislators to define limited exemptions from the proposed transparency regime to cater for overarching public interests such as to avoid affecting the refinancing of Member States, it regrets that its ambitious proposals to achieve fully transparent non-equity financial markets, in particular for derivatives, have not been endorsed by the co-legislators.

It will review this matter again in the near future against the objective of achieving effective and fair price formation on financial markets and make legislative proposals if appropriate."

Empowerments for delegated acts (Articles 64, 65, 66 MiFID and Articles 7, 11, 35, 36, 37 MiFIR)

"The Commission notes that many empowerments for delegated acts under Articles 290 TFEU in its proposals have been changed into regulatory technical standards under Article 10 of Regulation 2010/1095 ("ESMA Regulation"). These amendments do not respect the limitations set out in that Regulation in so far as technical standards can only cover aspects requiring technical expertise and cannot imply strategic decisions or policy choices."

Statement by Italy

"Italy appreciates the global agreement reached on the revision of the Markets in Financial Instruments Directive (MiFID/MiFIR). Nevertheless Italy seconds the Commission in regretting that some of the proposals aiming at enhancing the transparency of non-equity financial markets, including the sovereign debt market, have not been endorsed by the co-legislators.

Italy is in favour of a proper review of the mentioned matter in the future, with a view to fulfilling the ambitious objectives of the Commission initial proposal."

Statement by Sweden

"Access to data traffic records held by providers of public electronic communications networks by public authorities amounts to a serious interference with the right to respect of private and family life and the right to protection of personal data. Issues of privacy and surveillance are highly sensitive topics that need to be dealt with in a consistent manner across all EU policy areas. Such powers should be restricted to investigations of crimes. Sweden is worried that this power is spreading to financial market files which do not deal with such matters. The judgment of the European Court of Justice on the 8th of April in which the ECJ declares the Data Retention Directive (2006/24/EC) to be invalid further reinforces this view (see Cases C-293/12 and C-594/12)."

Statements by France

Transparency on non-equity financial markets (Article 8 of the Regulation)

"France regrets that the ambitious proposals drafted by the European Commission to enhance the transparency of non-equity financial markets, in particular for derivatives, have not been endorsed by the Council and the European Parliament.

France favours a review of this matter in the near future, aimed in particular at guaranteeing fair and effective price formation on financial markets."

Commodities

"Under Article 57 of the Directive the European Securities and Markets Authority (ESMA) must determine the method of calculating the position limits to be applied by the competent national authorities. France recalls its commitment to ensuring that this mechanism is applied under the same conditions throughout the European Union and to all derivatives markets with commodities as underlying instruments.

As regards Annex C to the Directive laying down the list of financial instruments, France regrets that certain categories of physically settled commodity derivative traded on the OTFs have been withdrawn from the scope of the financial instruments. France will focus in particular on ensuring that this exemption is as precisely defined as possible, notably by means of the delegated act of the Commission provided for in recital (10)."

Sanctions

"The generalised use of administrative sanctions is key to strengthening investor protection and market integrity and to deepening the European internal market.

That is why France deeply regrets that it has not been possible to achieve harmonisation of the administrative sanctions in the MIF II Directive. We therefore wish to emphasise that, where sanctions are concerned, MIF II cannot be regarded as a reference or a precedent."

Statement by Spain

"Spain supports the texts approving the revision of Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments (MiFID) and its associated Regulation. Nevertheless, Spain must express its concerns about the confusion that could arise in the Spanish version of this legislation in relation to the term used to refer to trading that takes place outside a regulated market, multilateral trading facility, organised trading facility or systematic internaliser. Whereas this is usually referred to as over-the-counter (OTC) trading, the Spanish version uses the term "*extrabursátil*", previously used in Regulation (EU) No 648/2012. As terms can sometimes be ambiguous, it should be noted that there can be differences between what Regulation (EU) No 648/2012 defines as "OTC derivatives" and what the future legislation refers to as "OTC" (for example "OTC trading"). We would like to put it on the record that we consider "OTC" to be a better term to describe transactions outside a regulated market, multilateral trading facility, organised trading facility or systematic internaliser."

2. Directive of the European Parliament and of the Council on markets in financial instruments amending Directive 2002/92/EC and Directive 2011/61/EC (Recast) [First reading] (LA+S)

PE-CONS 23/14 EF 32 ECOFIN 89 CODEC 236

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 53(1) of the TFEU).

The statements made in relation to item 1. were also made in relation to this item.

3. Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer [First reading] (LA+S)

PE-CONS 58/14 MIGR 27 SOC 172 DRS 33 WTO 93 SERVICES 23
CODEC 635

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with the Spanish, Hungarian and Austrian delegations 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 United Kingdom delegations did not participate in the vote. (Legal basis: Article 79(2) of the TFEU).

Statement by the Council, the Parliament and the Commission

"This Directive establishes an autonomous mobility scheme providing for specific rules, adopted on the basis of Article 79(2), points (a) and (b) TFEU, regarding the conditions of entry, stay and freedom of movement of a third-country national for the purpose of work as an intra-corporate transferee in Member States other than the one that issued the intra-corporate transferee permit, which are to be considered as a *lex specialis* with respect to the Schengen acquis.

The European Parliament and the Council take note of the Commission's intention to examine whether any action needs to be taken in order to enhance legal certainty as regards the interaction between the two legal regimes, and in particular to examine the need for updating the Schengen Handbook."

Statements by the Commission

– **on the definition of "specialist"**

"The Commission considers that the definition of "specialist" in Article 3 (f) of this Directive is in line with the equivalent definition ("person possessing uncommon knowledge") used in the EU's schedule of specific commitments of the WTO's General Agreement on Trade in Services (GATS). The use of the word "specialised" instead of "uncommon" does not entail any change or extension of the GATS definition and is only adapted to the language now in use."

– **on the bilateral agreements referred to in Article 18(2), points c) and d)**

"The Commission will monitor the implementation of Article 18(2), points (c) and (d), of this Directive in order to assess the possible impact of the bilateral agreements referred to in that Article on the treatment of intra-corporate transferees and on the application of Regulation (EC) No 1231/2010 and take, where necessary, any appropriate measure."

Statement by Hungary

"Hungary expresses its serious disappointment regarding the adopted text in Article 18(2) and Recital (38) since it precludes the practical applicability of bilateral social security agreements and limits Member States in their competence when concluding such agreements.

Based on the Treaties social security policy belongs to the competence of Member States. We believe that the purpose of all secondary legislation should respect this. The aim of equal treatment harmonisation is to be interpreted in light of the competence rules of the Treaties. This Directive cannot restrict, nor impair the sovereignty of Member States in this area.

In addition in our view the reference to more favourable provisions in bilateral social security agreements is ambiguous, and thus does not ensure legal certainty. Finally Hungary regrets that the compromise text adopted could create a situation with significant negative impact on the investment readiness in certain economic relations. This may harm economic recovery, could hinder the stimulation of growth and the enhancement of competitiveness, which is a common priority for the EU."

Statement by Austria

"Austria has repeatedly raised severe objections to the way equal treatment in the field of social security is dealt with under the "Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer." We did not succeed in formulating a text which is consistent with the other EU instruments and the wording contained in the text might give rise to many problems for national transposition, misunderstandings and misinterpretation at national and EU level. Especially in the field of family benefits the text does not sufficiently reflect the necessity for third country nationals of having acquired the necessary integration into the society of the host member state before entitlement to benefits have to be opened. Therefore, we request a detailed examination of all existing and any future texts concerning equal treatment in the field of social security before we can agree on such provisions. Austria therefore abstains from voting on the directive."

4. Regulation of the European Parliament and of the Council establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Members States of the European Union [First reading] (LA+S)

PE-CONS 35/14 FRONT 36 COMIX 97 CODEC 390

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, 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 United Kingdom delegations did not participate in the vote. (Legal basis: Article 77(2)(d) of the TFEU).

Statement by the Federal Republic of Germany

"The Federal Republic of Germany continues to give its express support to the objective of ensuring that recognised standards of international and European law are mandatorily taken into account by the competent EU Member States in FRONTEX-coordinated sea operations in an effort to establish more clarity and predictability.

Germany welcomes the fact that these operations, which have so far been governed by guidelines, will in future be regulated more specifically by a regulation.

That said, the Federal Republic of Germany wishes to recall that search and rescue at sea falls within the sphere of responsibility of the Member States, which carry out such activities within the framework of international conventions; it would also draw attention to the following:

The activities referred to in Articles 9 and 10 of Regulation No *** describe international obligations already incumbent on Member States as their own responsibility under the applicable international law concerning search and rescue at sea. Those international obligations also exist with regard to any operations undertaken by the Member States which are coordinated by FRONTEX. Regulation No *** neither specifies nor expands those obligations. Rather, Articles 9 and 10 of Regulation No *** merely repeat the content of the SAR provisions in international law in a purely declaratory manner. This means that the responsibility of the Member States arising from their obligations under the applicable international law is not affected by Regulation No ***."

5. Regulation of the European Parliament and of the Council establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters [First reading] (LA)

PE-CONS 34/14 JUSTCIV 34 CODEC 368

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, 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 and United Kingdom delegations did not participate in the vote. (Legal basis: Article 81(2)(a), (e) and (f) of the TFEU).

6. Regulation of the European Parliament and of the Council amending Regulation (EU) No 525/2013 as regards the technical implementation of the Kyoto Protocol to the United Nations Framework Convention on Climate Change [First reading] (LA+S)

PE-CONS 76/14 CLIMA 29 ENV 303 ENER 135 TRANS 167 IND 111 ONU 30
AGRI 235 ECOFIN 284 ISL 15 CODEC 843

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 192(1) of the TFEU).

Statement by the Commission

"The Commission underlines that it is contrary to the letter and to the spirit of Regulation 182/2011 (OJ L 55 of 28.2.2011, p. 13) 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."

Statement by Poland, Hungary and Romania

"Throughout the negotiations between the European Parliament and the Council, Member States had been consistently pointing out that the proposed recital 11 does not belong to the scope of the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 525/2013 as regards the technical implementation of the Kyoto Protocol to the United Nations Framework Convention on Climate Change. The text referring to the cancellation of units as a means to increase mitigation ambition pursuant to Decision 1/CMP.8 is dissociated from the objectives of this Regulation and any such consideration may only be determined in the Joint Fulfilment Agreement.

In this context Poland, Hungary and Romania can only understand the text of recital 11 as a reference to the right of any individual Member State to consider cancellation of its AAUs, CERs and ERUs in order to increase its individual level of mitigation ambition."

7. Directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') [First reading] (LA+S)

PE-CONS 19/14 SOC 52 MI 77 COMPET 49 CODEC 198

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with the Latvian and Hungarian delegations voting against and the Estonian delegation abstaining, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 53(1) and Article 62 of the TFEU).

Joint statement by the European Parliament, the Council and the Commission on Article 4(3)(g)

"The fact whether or not the post to which the posted worker is temporarily assigned to carry out his/her work in the framework of the provision of services was filled by the same or another (posted) worker during any previous periods constitutes only one of the possible elements to be taken into account while making an overall assessment of the factual situation in case of doubt.

The mere fact that it can be one of the elements should in no way be interpreted as imposing a ban on the possible replacement of a posted worker by another posted worker or hampering the possibility of such a replacement, which may be inherent in particular to services which are provided on a seasonal, cyclical or repetitive basis."

Statement by Hungary and Latvia

"Hungary and Latvia appreciate the efforts to reach an agreement on the *proposal for a Directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services*. However, despite some improvements that have been introduced, Hungary and Latvia still have serious concerns about the new Directive.

Hungary and Latvia considers that, despite the aim of the legislative process, the directive as adopted by the European Parliament and the Council will not bring a uniform application of Directive 96/71/EC, instead it is likely to create additional grounds and possibilities for restricting the posting of workers within the internal market. The new Directive opens up new ways and possibilities to introduce control and other administrative measures in each Member State to be imposed on the posting of workers from other Member States, without harmonising the conditions applicable to them and which are going to be subject to only a limited ex-post monitoring by the European Commission. This will decrease legal certainty both for companies and workers and will hamper the cross-border provision of services within the internal market. Moreover, the new Directive is considered to be a serious set-back for the internal market and could undermine the achievements created through the Services Directive and the established case-law of the Court of Justice."

8. Directive of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to making available on the market of pressure equipment (Recast) [First reading] (LA+S)

PE-CONS 38/14 ENT 50 CONSOM 54 CODEC 416

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with the Bulgarian delegation abstaining, 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

"The Commission regrets the adoption of Article 44 paragraph 5 and the corresponding recital 54 concerning the Committee which have the potential to create confusion and legal uncertainty. The role of the Committees which ensure control by Member States on the Commission's exercise of implementing powers is defined only by Regulation No (EU) 182/2011, adopted on the basis of Article 291, third paragraph, TFEU. Therefore, no other secondary legislative act should alter or specify further this role. In particular, the rules of procedures of committees are adopted by the committees on the basis of Regulation No (EU) 182/2011. As such they are to be applied when the Committees exercise their role defined by Regulation No (EU) 182/2011. Any reference to rules of procedures outside this context is superfluous and inappropriate. It also risks complicating the functioning of the committees.

With regard to the recital 55 and the possibility of the European Parliament to be invited to meetings of expert groups, the Commission will proceed in accordance with its practice in the implementation of point 15 of the Framework agreement on relations between the European Parliament and the European Commission. Meetings of comitology committees are explicitly excluded under this arrangement. Concerning the reference to infringements in the same recital, the Commission considers this misleading as infringements proceeding are discussed with Member States in the context of the procedures set out under Article 258 TFEU."
