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European Union

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CRS/CRP 44

SUMMARY RECORD

Subject: 2517th meeting of the PERMANENT REPRESENTATIVES COMMITTEE
held in Brussels on 5, 6 and 7 November 2014

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1. Adoption of the provisional agenda and "I" items

doc. 15005/14 OJ/CRP1 38 + COR 1
15044/1/14 REV 1 OJ/CRP2 38

The above-mentioned agendas are approved with the following changes :

The following item is **withdrawn** :

(Coreper Part 2, under I)

48. EU-Chile Association Council

- **Definition of the position that the European Union will adopt during the Sixth Session of the EU-Chile Association Council**
14104/14 COLAC 66 PESC 1028

The following CRP1 agenda item has been **transferred** from Part II to Part I and should read as follows:

28. Proposal for a Council Decision on the position to be adopted on behalf of the European Union at the International Maritime Organization during the 94th session of the Maritime Safety Committee on the adoption of amendments to the 2011 Enhanced Survey Programme Code

- **Adoption**
14267/14 MAR 160 TRANS 475
14814/14 MAR 166 TRANS 493
14555/14 MAR 161 TRANS 483

The Committee approved the "I" items as set out in the summary. Details are contained in the document quoted under item 1.

A statement is made on the following item by PL, SI and DE:

18. Proposal for a Directive of the European Parliament and of the Council on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (First reading) (Legislative deliberation + Statement)

– **Adoption of the legislative act**

PE-CONS 80/14 RC 8 JUSTCIV 80 CODEC 961

14680/14 CODEC 2083 RC 24 JUSTCIV 257

+ ADD 1

"The Directive on certain rules governing actions for damages under national law for infringements of the competition law provisions should i.a. minimise discrepancies between rules applicable to antitrust damages actions in Member States and ensure that victims of infringements of EU competition law can obtain full compensation for the harm they have suffered. Our delegations fully support this.

The final compromise is far from those objectives. The civil law principle of joint and several liability, to which controversial exceptions were introduced already in the text of general approach adopted by the Council in December 2013, has been even more restricted due to the inclusion of new para. 2 in Article 11. It will reduce the injured parties' - frequently small and medium enterprises - opportunity to seek full compensation. It will also lead to legal uncertainty and unequal treatment due to differences in the definition of small and medium enterprises among the Member States.

The Polish, Slovenian and German delegations are of the opinion that such compromise does not merit the support and shall abstain from supporting the text as it stands."

Coreper Part 1

II

19. **Setting of the provisional agenda for the Council meeting (Education, Youth, Culture and Sport) on 25 November 2014**

The Committee agreed to the provisional agenda for the forthcoming Council meeting (Education, Youth, Culture and Sport) as set out in 15569/14.

20. **Setting of the provisional agenda for the Council meeting (Transport, Telecommunications and Energy) on 27 November 2014**

In spite of objections and concerns raised by several Member States concerning the objective of reaching a general approach on the proposal on a Single Telecom Market, the provisional agenda was approved.

21. **Proposal for a Directive of the European Parliament and of the Council amending Council Directive 96/53/EC laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic (First reading) (Legislative deliberation)**

- **Presidency debriefing on the outcome of the informal trilogue**

The Committee took note of the information provided by the Presidency on the outcome of the informal trilogue of 3 November 2014.

22. **4th Railway Package (First reading) (Legislative deliberation)**

- Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004**
- Proposal for a Directive of the European Parliament and of the Council on the interoperability of the rail system within the European Union (Recast)**
- Proposal for a Directive of the European Parliament and of the Council on railway safety (Recast)**

- **Preparation for the informal trilogue**
14759/1/14 TRANS 491 CODEC 2098 REV 1

The Committee confirmed the mandate for the second trilogue as set out in 14759/1/14 REV 1.

23. Preparation of the ICCAT Annual Meeting (Genoa, Italy, 10-17 November 2014)

– **European Union coordination of a common position**

14505/14 PECHE 478

+ COR 1

14697/14 PECHE 494

14941/14 PECHE 505

The Presidency tabled a compromise proposal (doc. 14941/14) noting that all aspects other than those dealt with in the compromise were agreed as set out in the non-paper (doc. 14505/14 + COR 1).

The Spanish delegation did not support the compromise as regards the TAC. It wanted to see the increase of the TAC for Eastern Bluefin tuna reach the level of 23 256 tonnes over two years, and not the three years as set out in the compromise. It considered a slower rate of increase to be politically unacceptable in view of the sacrifice fishermen had made over recent years. It also highlighted the inconsistency in the level of precaution applied in the management of Eastern Bluefin tuna in comparison with the Western Bluefin tuna stock or the bluefin tuna stocks in the Pacific, where the stocks are close to collapse.

The Netherlands delegation entered a Parliamentary scrutiny reserve with regard to the TAC for Eastern Bluefin tuna. With regard to skipjack tunas and shortfin mako sharks it would have preferred the Commission non-paper as presented.

The United Kingdom shared the concerns of the Netherlands in relation to skipjack tuna and shortfin mako shark. However, should the Commission confirm that the Bluefin tuna TAC as proposed would be in line with the scientific advice, it could support the compromise.

The Maltese delegation understood the Spanish concerns; it would also have preferred an increase of two years, but could accept the compromise noting that annual reviews would take place.

The Swedish delegation could support the compromise while noting that its main priority was that the EU position was in line with the CFP.

The French delegation could support the compromise. It highlighted the importance of rewarding fishermen for their efforts, but also of having a coherent EU position so as to be able to withstand pressures to re-open the allocation key for Bluefin tuna. It supported the idea of maintaining current management measures for skipjack as it did not see a need for catch limits.

Likewise, the Croatian, Cyprus, Danish, German and Greek delegations supported the compromise.

The Presidency concluded that there was a very wide support within the Committee in favour of the Commission's non-paper, as amended by the Presidency compromise, with the exception of notably Spain regarding the Bluefin tuna TAC, and that this would be the basis for the Union's position at the ICCAT Annual Meeting in Genoa.

- 24. Proposal for a Directive of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging waste to reduce the consumption of lightweight plastic carrier bags (First reading) (Legislative deliberation)**
– **Presidency debriefing on the outcome of the informal trilogue**

The Committee took note of information by the Presidency on the outcome of the second informal trilogue (4 November 2014) where the EP suggested a possible way forward on the main open issues (i.e. very lightweight plastic bags, targets, pricing and oxo-degradable plastic materials). A revised mandate will be presented to the Committee at its meeting on 14 November 2014 with a view to the third informal trilogue (17 November 2014).

- 25. Proposal for a Directive of the European Parliament and of the Council concerning measures to ensure a high level of network and information security across the Union (First reading) (Legislative deliberation)**
– **Preparation for the informal trilogue**

The Committee gave the Presidency a mandate for the 2nd trilogue on 11 November 2014, on the basis of document 14850/14 + COR1, while a few delegations raised concerns to which the Committee may have to return (DE on the role of the Commission in the Cooperation group; ES/FR, opposed by DK/UK, on the inclusion of "internet enablers" in the scope, SK/PL, opposed by DE/DK, called for strengthening operational cooperation).

26. Proposal for a Regulation of the European Parliament and of the Council concerning type-approval requirements for the deployment of the eCall in-vehicle system and amending Directive 2007/46/EC (First reading) (Legislative deliberation)

- **Preparation for the informal trilogue**
14860/14 ENT 245 MI 826 CODEC 2134

The Presidency informed the Committee that at the second trilogue agreement was expected on a large number of issues and requested a mandate for further negotiations with the European Parliament. There followed a largely positive debate. Several Member States stressed that they remained attached to having implementing acts for data protection and to a date of application of the Regulation which would give enough time to the industry to prepare.

The Presidency concluded that the mandate was given and that there was some flexibility on the part of Member States concerning the date of application.

27. Draft Council Decision authorising the Commission to open negotiations for an agreement enlarging the scope of the agreement on the international occasional carriage of passengers by coach and bus, the "Interbus Agreement", and to cover the international regular carriage of passengers by coach and bus

- **Preparation for adoption**
17412/10 TRANS 367 PECOS 8 RESTREINT EU
14877/14 TRANS 496 PECOS 4 RESTREINT EU

The Committee examined the draft Decision above-mentioned and will submit it, as amended, to a forthcoming Council meeting.

Coreper Part 2

II

55. Preparation of the Council meeting (General Affairs) on 18/19 November 2014

- **Strengthening interinstitutional annual and multiannual programming**
= **Information from the Presidency and way forward**

Presidency informed the Committee that contacts with the EP and the Commission in view of agreeing to the modalities for interinstitutional programming, had started.

- **Other items in connection with the Council meeting**

Presidency informed the Committee that an additional item has been added to the agenda on Article 10 of Protocol 36 to the Treaties.

56. Presentation of the agenda of the Council meeting (Foreign Affairs/Trade) on 21 November 2014

The Chairman informed the Committee about the provisional agenda of the above-mentioned meeting (legislative items; WTO Doha Development Agenda; EU-US TTIP negotiations; Council conclusions on trade; bilateral trade negotiations).

Delegations commented in particular on the issues related to the "TDI modernisation" dossier (legislative item) and Council conclusions on the TTIP. On TDI modernisation, several expressed a strong preference for aiming at an orientation debate instead of a general approach.

The Committee would return to the preparations for the above-mentioned Council at its next meeting.

57. Proposal for a Regulation of the European Parliament and of the Council on interchange fees for card-based payment transactions (First reading)

- **General approach**
14773/14 EF 281 ECOFIN 983 CONSOM 216 CODEC 2107
14774/14 EF 282 ECOFIN 984 CONSOM 217 CODEC 2108

The Committee agreed the general approach as set out in 14773/14 on the basis of which the Presidency will start negotiations with the European Parliament.

Following the statement from the Presidency and the Commission as set out below, the Chair announced that the French delegation agreed not to have the item for discussion at the ECOFIN.

The Committee noted the following statements:

Statement by the Italian presidency and the Commission

- "During the trilogue discussions, the Presidency and the Commission will take into account the concerns related to domestic universal cards which currently do not allow distinguishing whether they are debit or deferred debit cards, with a view to negotiate a transitional period to allow those card schemes to adapt to the obligations set by the Regulation.
- Solutions can for instance be explored along the following lines:
 - the special provisions on universal cards will expire after a transitional period of up to two years that will be used by Member States to ensure that all domestic card transactions shall be either debit or credit cards and will be subject to the corresponding provisions in the Regulation;
 - during the transitional period, all new cards issued (including renewed cards) will be identified as either debit or credit, consumer or commercial, and will be subject to the corresponding provisions in the Regulation; and
 - during the transitional period, existing cards will be replaced by new cards at least as quickly as is currently scheduled to avoid any undue use the transitional regime.
- The Presidency and Commission will keep Member States informed of the progress on this issue during the trilogue discussions."

Statement by Estonia

"Estonia strongly supports an open, innovative and efficient market for card payments in Europe. However Estonia finds it disproportionate to cap interchange fees, using this method as a primary regulatory measure for the card payment market. Instead of capping interchange fees, Estonia prefers a step-by-step approach starting with the application of transparency requirements for fees followed by gradually strengthening requirements. All related fees for card payments should rather be cost-based in order to ensure sustainable functioning of the card payments' business models. This would contribute to achieving a level playing field for the card payments market, enhance free competition and would provide better possibilities for new service providers to enter the market."

Statement by Finland

"Finland can in general support the proposal presented by the Presidency for general approach regarding the proposal for the Regulation of the European Parliament and of the Council on interchange fees for card-based payment transactions.

However, Finland would like to point out that the wording for cross-border and default domestic interchange fee caps diverge, which can be seen as being in conflict with the requirements on harmonized SEPA-wide pricing set out in Article 1 of Regulation EU 924/2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 according to which it lays down rules on cross-border payments within the Community, ensuring that charges for cross-border payments within the Community are the same as those for payments in the same currency within a Member State. Finland proposes that this inconsistency in the proposed Council's General Approach with Regulation 924/2009 would be remedied during the trilogy negotiations.

In addition, we consider that the clarity and drafting of the compromise text in Articles 3, 10 and 15 could be improved as well as in recital 19a."

58. Proposal for a Directive of the European Parliament and of the Council on insurance mediation (IMD) (First reading)

- **General approach**

14969/14 ECOFIN 1004 CODEC 2149 SURE 38 EF 288

14791/14 ECOFIN 985 CODEC 2114 SURE 37 EF 283

The Committee reached a general approach on the package, which allows the Presidency to pursue negotiations with the EP with a view to reaching an agreement at first reading. France, Hungary, Luxembourg and United Kingdom issued the following statements :

Statement by France

"France would like to thank the Presidency's efforts to reach an agreement on the proposal for a directive on insurance distribution.

Despite the significant improvements included in the compromise text, France regrets that the level of consumer protection provided by this new text is not raised sufficiently:

- (i) the scope is not large enough, as the exclusions for ancillary intermediaries remain too wide ;
- (ii) the conduct business rules have maintained the provision of advice as an option, even for complex investment products, whereas mandatory advice on all insurance products would be more adapted.

Besides, concerning information disclosed to customers (Article 24.7c), France considers that the obligations go unnecessarily further than PRIIPs and MIFID rules, and are not adapted to fit the insurance distribution specificities, especially as regards the disclosure of the cost of advice which is irrelevant.

Therefore France expects that these issues can be revisited during the negotiations between the European Parliament, the Commission and the Council."

Statement by Hungary

"Hungary generally supports the compromise text, particularly including the rules relating the insurance-based investment products. Generally Hungary does not oppose the additional rules of information requirements relating to ancillary distribution which is exempted from the application of the Directive [Art. 1(2b)].

It has to be noted though that the proposal contains rules on an issue which is out of the scope of the Directive and is generally resolved by Article 15c and by the Solvency 2 Directive [Art. 183–185]. An ancillary intermediary is exempted from the application of the Directive because its main activity is other than insurance, and it makes available standard, typified, basic insurances covers for the safety and comfort of the customer. These insurance covers cannot be tailor-made and cannot suit special demands. Therefore para (2b) in Article 1 raises concerns of legal inconsistency and will be counterproductive in practice.

- If the ancillary intermediaries (and its activities) are exempted from the Directive then it cannot contain rules regarding those (legal inconsistency, especially in Article 1 point 2b.b).
- As the ancillary insurance is standard, typified, basic insurance with bound conditions then it cannot be a tailor-made insurance, suiting special demands (contradiction in the rules).

In case of any mediated insurance policies the insurer is always responsible in general that the information has to be made available to the customer prior to the conclusion of the contract, and we believe that the information provided to the customer is the key element. We believe that the necessary corrections can be made as part of the further negotiations with the European Parliament, to fix the above concerns."

Statement by Luxembourg

"Luxembourg understands the new Article 7c as an anti-abuse provision allowing Member States to take appropriate measures only in case such measures are needed to counter circumvention of national legislation which is not harmonized in the proposed Directive. Luxembourg considers that such a provision is not the most appropriate solution in the context of a harmonizing legislation and would have welcomed further harmonization of national laws instead.

In any case, the application by Member States of this provision has to be in line with the Treaties and the applicable case law of the Court of Justice of the European Union. The applicable legislation should be justified by legitimate general interest and the measures taken by national competent authorities should be proportionate, objectively necessary and apply in non-discriminatory manner. Those measures should not be an obstacle to the freedom to provide services and the freedom of establishment, or an access barrier for cross-border activity."

Statement by the UK

"The UK supports alignment of IMD 2 and MiFID 2 so that a level playing field exists and there is consistent protection of consumers buying investment products. In particular, the wording for Article 24(10) in the 6th Presidency Compromise of the Insurance Distribution Directive will weaken the protection given to consumers buying insurance based-investment products relative to those buying other investment products. Protection for consumers against conflicts of interests arising from inducements is important and should be consistent across investment products. As the provision on inducements is not consistent with MiFID 2 this will cause difficulties for Member States when they try and implement these Directives together. We believe that this will need to be further considered at the trilogue stage."

59. Commission Delegated Regulation (EU) No .../. of 12.8.2014 on the transmission format for research and development expenditure data, as referred to in Regulation (EU) No 549/2013 of the European Parliament and of the Council on the European System of national and regional accounts in the European Union

14456/2/14 REV 2 STATIS 109 ECOFIN 937 UEM 340 DELACT 199

12515/14 STATIS 85 ECOFIN 778 UEM 304 DELACT 154

The Committee noted that AT, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, LT, LV, MT, NL, PL, PT, RO, SE, SK, SI and UK intended to object to the delegated act in question.

Consequently, the Committee suggested that the Council confirmed the intention to object to the delegated act as set out in 12515/14, and to inform the Commission and the European Parliament thereof.

60. State of play of budget negotiations

- **Information from the Presidency and the Commission**

The Committee held an exchange of views with the Commission on the revision of the VAT and GNI own resources balances for the years 1995 to 2013 and the resulting exceptionally high fiscal implications for several Member States, as well as on the state of the negotiations on the pending draft amending budgets relating to 2014 and the draft budget for 2015.

The Presidency indicated that it will submit a note on a request to the Commission to submit a proposal for an amendment to Council Regulation (EC, Euratom) No 1150/2000 to take account of such exceptional circumstances, which would be discussed by the ECOFIN Council on 7 November 2014.

The Presidency informed that the Committee would come back to the issue of outstanding draft amending budgets relating to 2014 at its next meeting on 10 November 2014.

61. Preparation of the Council meeting (Economic and Financial Affairs) on 7 November 2014

- Other items in connection with the Council meeting

The ECOFIN agenda was to be revised, after the Committee discussion the following day, to include an item on the state of play of budget negotiations. The labelling of this item remained to be confirmed.

The Presidency also confirmed that the ECOFIN breakfast would start at 9h30 (Eurogroup debrief; ECB assessment and stress tests; SRM equivalent treatment) and the Council would run from 10h30 to 14h00.

62. UN draft modalities resolution on a multilateral legal framework for sovereign debt restructuring in reference to UN General Assembly resolution 68/304 of 9 September

On the basis of a joint Commission/EEAS note, the Committee was asked to discuss and agree on a common position to the United Nations discussions on the multilateral legal framework for Sovereign Debt Restructuring.

Member States did not reach an agreement on the proposed position. Commission/EEAS were asked to revise the note on the basis of Member States comments, with a view to attempt reaching consensus.

63. Relations with Georgia and the Republic of Moldova

- **Council and Commission Decision on the Union position to be adopted in the Association Council established by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, in relation to the adoption of the rules of procedure of the Association Council and of the Association Committee, to the establishment of two specialised subcommittees, and to the delegation of certain powers by the Association Council to the Association Committee in Trade configuration**
- **Council and Commission Decision on the Union position to be adopted in the Association Council established by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, in relation to the adoption of the rules of procedure of the Association Council and of the Association Committee, to the establishment of two specialised subcommittees, and to the delegation of certain powers by the Association Council to the Association Committee in Trade configuration**

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The Committee discussed chairing arrangements of the Association Councils with Georgia and the Republic of Moldova, particularly the issue of replacement of the High Representative in his/her absence (Article 2 of the draft Council and Commission Decisions). The Committee tasked the EEAS/Commission to come with a proposal for a solution at its next meeting, in order to allow for the timely adoption of the Decisions.

– Any other business

- **Proposal for a Regulation of the European Parliament and of the Council amending Directive 2001/18/EC as regards the possibility for the Member States to restrict or prohibit the cultivation of GMOs in their territory (Second reading) (Legislative deliberation)**
 - **Information from the Presidency**

The Committee took note of the calendar of meetings presented by the Presidency concerning the negotiations with the European Parliament on this legislative file.