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CODIF 71

OUTCOME OF PROCEEDINGS

From: Working Party on Codification of Legislation
On: 4 December 2014
To: Delegations
Subject: Outcome of proceedings of the Working Party on Codification of Legislation

The Working Party on Codification of Legislation discussed the proposals listed on the agenda for the meeting of 4 December 2014 (CM 5181/14). The basis for the discussion was a room document summarizing the comments made by delegations before the meeting and the Commission's replies.

This outcome of proceedings records only horizontal changes affecting all language versions. Comments relating to only one language version will be dealt with by the lawyer-linguists when the texts are finalized. Subsequently, the texts will be submitted for approval and adoption to Coreper and Council as I/A-items.

1. Proposal for a Regulation of the European Parliament and of the Council laying down Union procedures in the field of the common commercial policy in order to ensure the exercise of the Union's rights under international trade rules, in particular those established under the auspices of the World Trade Organisation (codification)

Master copy: EN - doc. 11674/14 + ADD1 CODIF 18 CODEC 1589 ECO 86 INST 326 MI 538 PARLNAT 203 - COM(2014) 341 final 2014/0174 (COD)

The opinion of the Consultative Working Party (doc. ST 14884/14) confirms that the proposal is a straightforward codification of existing texts, without any change in their substance.

However, the Consultative Working Party also acknowledged that after the codification proposal was adopted by the Commission a new act amending the act being codified was published in the Official Journal, i.e. Regulation (EU) No 654/2014. Regulation (EU) No 654/2014 entered into force on 17 July 2014. Its Article 11 introduced a new wording for Article 13(3) of Regulation (EC) No 3286/94, which replaced the previous wording of that paragraph. The codified text of Regulation (EC) No 3286/94 should also comprise that latest amendment. For this purpose, an amended proposal for codification should be submitted by the Commission to the European Parliament and the Council. The Commission has informed the Council Legal Service that the amended proposal will be submitted to the Council and the European Parliament by the end of this year.

In view of the above information, the WPCL concluded that it would deal with the amended proposal (which will incorporate the amendment published in OJ after the adoption of the initial proposal) when it is submitted by the Commission.

2. Proposal for a Council Regulation on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal state aid (codification)

Master copy: EN - doc. 11724/14 + ADD1 CODIF 22 CODEC 1599 ECO 91 INST 330 MI 544 PARLNAT 207 - COM(2014) 377 final 2014/0192 (NLE)

The opinion of the Consultative Working Party (doc. ST 14393/14) confirms that the proposal is a straightforward codification of existing texts, without any change in their substance.

CZ sent the following horizontal comments ahead of the meeting:

- 1) The use of the term 'state aid' should be consistent throughout the text by using 'state aid (aid)' the first time the term appears in the text and only 'aid' in the all the subsequent instances. The Commission does not agree explaining that the use of both 'state aid' and 'aid' is justified in the text depending on the context in which each of the two terms is used.
- 2) Recital 12, instead of: „[Article 42 does not apply to forestry or to products not listed in that Annex .]“, read as follows: „[Article 42 does not apply to forestry or to products not listed in Annex I to the TFEU]“. The Commission finds the wording in the proposal appropriate for the purpose of avoiding repetition.

CZ accepted the arguments of the Commission and it was agreed that the text of the codified act should not change on those two points.

UK sent the following horizontal comments ahead of the meeting:

- 1) In recital 7, a comma should be added after “*for each Member State for the grant of regional aid*”. This change ensures consistency with Regulation 733/2013, and makes it clear that the language that follows (“*is compatible with the internal market and not subject to the notification requirement*”) applies to all of the foregoing categories of aid, not just regional aid. The Commission suggests a slightly adapted recital: "*The Commission should be enabled to declare that, under certain conditions, aid to small and medium-sized enterprises, aid in favour of research, development and innovation, aid in favour of environmental protection, aid in favour of employment and training and aid that complies with the map approved by the Commission for each Member State for the grant of regional aid is compatible with the internal market and not subject to the notification requirement.*" **Delegations agreed with the wording of the recital as proposed by the Commission.**
- 2) In recital 9 'not subject to notification requirement' should be replaced by 'not subject to the notification requirement in Article 108(3) TFEU.' The change is suggested for the sake of clarity and consistency with other parts of the Regulation, which cross-refer to Article 108(3) TFEU. The Commission agrees with the change. **Delegations agreed with the change proposed by the UK.**
- 3) For recitals 11, 14 and 17, the same change is suggested as for recital 9. However, the Commission does not agree with that change in recitals 11, 14 and 17 as it would introduce unnecessary repetitions of the wording 'the notification requirement in Article 108(3) TFEU' which already appears in recital 9. **The UK accepted the argument of the Commission and delegations agreed that there should be no change to recitals 11, 14 and 17.**
- 4) In recital 28, it is suggested to introduce the word 'however' so as the beginning of the sentence to read: "*However, in the interest of transparency, the draft regulation should be published on the website of the Commission at the same time as the Commission consults the Advisory Committee for the first time,*". Without the inclusion of the word 'however', the second sentence of recital 28 appears to contradict the first sentence. The Commission agrees with the comment. **Delegations agreed with the change proposed by the UK.**

FI sent the following horizontal comments ahead of the meeting:

- 1) It is suggested to introduce as first recital the content of the original first recital of Regulation (EC) No 994/98 adapted accordingly. The Commission does not agree as that recital merely reproduces the content of a Treaty article and this practice is contrary to the rules of the Joint Practical Guide for the drafting of Union legislation.
- 2) The verb 'should' in recitals 24 and 28 is to be replaced by 'shall'. The Commission does not agree as this would be contrary to the Joint Practical guide, point 10.1.

Delegations accepted the arguments of the Commission and agreed not to change the text of the proposal on those two points.

For the rest, the text was agreed as proposed by the Commission.

3. Proposal for a Council Regulation laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (codification)

Master copy: EN - doc. 12717/14 + ADD1 CODIF 28 ECO 102 INST 390 MI 599
PARLNAT 222 - COM(2014) 534 final 2014/0246 (NLE)

The opinion of the Consultative Working Party (ST 14905/14) confirms that the proposal is a straightforward codification of existing texts, without any change in their substance. The opinion contains the observation that in the introductory wording of Article 33 of the draft codified text the words 'laid down in Article 35' should be adapted so as to read 'laid down in Article 34'. **Delegations agreed with that observation.**

CZ sent the following horizontal comment:

As the term 'firm' is used in Article 7(9) in a narrow sense and in Article 13(2) in a broad sense, it is suggested to replace 'firm' by 'undertaking' in Article 13(2), the latter term corresponding better to the notion meant by that provision. The Commission does not find that change necessary because the meaning of the term in the two provisions concerned is clear from the context. **Delegations agreed that during the legal-linguistic revision of the proposal it can be considered whether the change suggested by CZ is required.**

For the rest, the text was agreed as proposed by the Commission.

4. Proposal for a Directive of the European Parliament and of the Council relating to a reduction in the sulphur content of certain liquid fuels (codification)

Master copy: EN - doc. 12008/14 + ADD1 CODIF 25 CODEC 1637 ECO 96 INST 349 MI 557 PARLNAT 214 - COM(2014) 466 final 2014/0216 (COD)

The opinion of the Consultative Working Party (doc. ST 13346/14) confirms that the proposal is a straightforward codification of existing texts, without any change in their substance. In addition, the following observations have been made in the opinion:

- 1) In the preamble to the codified version of the directive, the text of the recital having been numbered 30 should be inserted between the recitals having been numbered 39 and 40. As a consequence thereof, the recitals having been numbered 31 to 39 should be renumbered 30 to 38, and the recital having been numbered 30 should be renumbered 39.
- 2) In Article 2(g), the existing wording of Article 2(3d) of Directive 1999/32/EC should be reinstated in a slightly adapted form so as to read as follows: “*Annex VI to MARPOL means the annex, entitled ‘Regulations for the Prevention of Air Pollution from Ships’, that the Protocol of 1997 added to MARPOL*”.

- 3) In Article 6(1), second subparagraph, the reference made to "*paragraphs 2 and 4 of this Article*" should be adapted so as to read as a reference to "*paragraphs 2 and 5 of this Article*".
- 4) The wording of Article 20 should be replaced by the following wording: "*This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union*".

Delegations agreed with those observations.

FI sent the following horizontal comment:

In Article 3(1), instead of "*Member States shall ensure that heavy fuel oils are not used within their territory if their sulphur content exceeds 1 % by mass.*", read as follows: "*Member States shall ensure that heavy fuel oils are not used within their territory if their sulphur content exceeds 1,00 % by mass.*" The Commission agrees with the comment. **Delegations agreed with the comment.**

SK sent the following horizontal comments:

- 1) In recital 40 it is suggested to refer to '*Annexes I and II to this Directive*' instead of '*Annexes to this Directive*'. The Commission agrees with the comment as the equivalent emission values for and the criteria for the use of emission abatement methods are laid down, respectively, in Annexes I and II. **Delegations agreed with the comment.**
- 2) A comment corresponding in essence to point 3 of the opinion of the Consultative Working Party of the Legal Services was made.

For the rest, the text was agreed as proposed by the Commission.

5. Proposal for a Regulation of the European Parliament and of the Council suspending certain concessions relating to the import into the Union of agricultural products originating in Turkey (codification)

Master copy: EN- doc. 13817/14 + ADD1 AGRI 609 CODIF 49 CODEC 1935 NT 7 COM(2014) 593 final 2014/0275 (COD)

The opinion of the Consultative Working Party (doc. ST 15603/14) confirms that the proposal is a straightforward codification of existing texts, without any change in their substance.

CZ sent the following comment:

In Annex 1, page 3, instead of "ex08071100", "20029031", "20029039", "20029091", "20029099", read as follows: "ex 0807 11 00", "2002 90 31", "2002

90 39”, “2002 90 91“, “2002 90 99”. The Commission agrees with the comment as this is the way the codes are laid down in the Combined Nomenclature. **Delegations agreed with that comment.**

DE sent the following horizontal comment:

Explanation is requested on the deletion of Annex I to Regulation (EC) No 1506/98. The Commission explained that Article 1 of Regulation (EC) No 1506/98 in which Annex I is referred to applied only by the end of 1998. Therefore, that provision is obsolete. **Delegations accepted that explanation.**

For the rest, the text was agreed as proposed by the Commission.

6. Proposal for a Regulation of the European Parliament and of the Council opening and providing for the administration of certain Union tariff quotas for high-quality beef, and for poultrymeat, wheat and meslin, and brans, sharps and other residues (codification)

Master copy EN: doc. 13815/14 + ADD1 AGRI 608 CODIF 48 CODEC 1933 AGRIORG 134 - COM(2014) 594 final 2014/0276 (COD)

The opinion of the Consultative Working Party (doc. ST 15604/14) confirms that the proposal is a straightforward codification of existing texts, without any change in their substance.

The text was agreed as proposed by the Commission.

7. Proposal for a Regulation of the European Parliament and of the Council on the import into the Union of agricultural products originating in Turkey (codification)

Master copy EN: doc. 14411/14 + ADD1 CODIF 54 AGRI 635 CODEC 2039 NT 8 COMER 211 - COM (2014) 586 final 2014/0272 (COD)

The opinion of the Consultative Working Party (doc. ST 15605/14) confirms that the proposal is a straightforward codification of existing texts, without any change in their substance.

The text was agreed as proposed by the Commission.

8. Proposal for a Regulation of the European Parliament and of the Council on protection against injurious pricing of vessels (codification)

Master copy EN: doc. 14236/14 + ADD1 CODIF 52 CODEC 2008 COMER 208 POLMAR 25 - COM(2014) 605 final 2014/0280 (COD)

The opinion of the Consultative Working Party is in the process of preparation and it will be distributed to delegations, once it is finalized. Following the preliminary analysis of the three Legal Services, it can be concluded that the proposal is a straightforward codification of existing texts, without any change in the substance.

CZ sent the following horizontal comments:

1) recital 5, fifth sentence:

instead of:

„...when constructing normal value...“

read as follows:

„...when constructing **the** normal value...“

2) Article 2(2):

instead of:

„...to establish normal value...“

read as follows:

„...to establish **the** normal value...“

3) Article 5(2)(a)(ii):

instead of:

„the complainant actually did so tender a bid...“

read as follows:

„the complainant actually did [**deletion**] tender a bid...“

The Commission and delegations agreed with those comments.

For the rest, the text was agreed as proposed by the Commission.

9. Proposal for a Regulation of the European Parliament and of the Council on the measures that the Union may take following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters (codification)

Master copy EN: doc. 14906/14 + ADD1 CODIF 59 CODEC 2142 COMER 216 WTO 286 - COM(2014) 660 final 2014/0305 (COD)

The opinion of the Consultative Working Party is in the process of preparation and it will be distributed to delegations, once it is finalized. Following the preliminary analysis of the three Legal Services, it can be concluded that the proposal is a straightforward codification of existing texts, without any change in the substance.

The draft opinion, however, includes the observation that a corrigendum should be published with regard to the second subparagraph of Article 9(2) of Regulation (EC) No 597/2009. In the existing wording of that subparagraph, the word ‘producer’ should be deleted. As a consequence of that necessary correction, the wording of the subparagraph referred to would read as follows: ‘For the purpose of this paragraph, one shall be deemed to

control another when the former is legally or operationally in a position to exercise restraint or direction over the latter’. **Delegations agree with the need to adopt a corrigendum.**

For the rest, the text was agreed as proposed by the Commission.

10. Proposal for a Regulation of the European Parliament and of the Council on protection against dumped imports from countries not members of the European Union (codification)

Master copy EN: doc. 14907/14 + ADD1 CODIF 60 CODEC 2143 ANTIDUMPING 56 COMER 217 WTO 287 - COM(2014) 667 final 2014/0309 (COD)

The opinion of the Consultative Working Party of Legal Services is in the process of preparation and it will be distributed to delegations, once it is finalized. Following the preliminary analysis of the three Legal Services, it can be concluded that the proposal is a straightforward codification of existing texts, without any change in the substance.

CZ sent the following horizontal comments:

1) On page 5, recital n 8, first sentence:

instead of:

„...fair comparison between export price and normal value...“,

read as follows:

„...fair comparison between **the** export price and **the** normal value...“

2) On page 14, Article 2(9), second subparagraph:

instead of:

„...incurred between importation and resale...“

read as follows:

„...incurred between **the** importation and resale...“

The Commission and delegations agreed with those comments.

For the rest, the text was agreed as proposed by the Commission.

11. AOB

The UK delegation asked for information about the Commission's work programme for 2015 as regards codification proposals. The Commission explained that it was currently working on its codification priorities for 2015 and announced that by the end of 2014 the following proposals should be submitted to the Council and the EP: a proposal for the codification of the Schengen Borders Code, the amended proposal under item 1 of this outcome of proceedings and a ‘technical recast proposal’ (i.e. a codification converted into a recast for introducing only slight amendments of a technical nature) regarding a Regulation

being part of the Trade omnibus. The Commission undertook to keep the Secretariat General of the Council and delegations updated on the planning of future codification proposals.
