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European Union

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16887/14

PV/CONS 69  
SOC 866  
EMPL 202  
SAN 486  
CONSOM 278

## DRAFT MINUTES

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Subject: **3357th** meeting of the COUNCIL OF THE EUROPEAN UNION  
**(EMPLOYMENT, SOCIAL POLICY, HEALTH AND CONSUMER  
AFFAIRS)** held in Brussels on 11 December 2014

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1. **Adoption of the provisional agenda**

16320/14 OJ CONS 69 SOC 848 EMPL 193 SAN 462 CONSOM 268

The Council adopted the above agenda.

**NON-LEGISLATIVE ACTIVITIES**

2. **Approval of the list of "A" items**

16519/14 PTS A 96

The Council approved the list of "A" items as set out in doc. 16519/14.

The title of item 3 should read as follows:

3. Governing Board of the European Agency for Safety and Health at Work  
Appointment of Mr Václav PROCHÁZKA, member for Czech Republic, in place of  
Mr Miroslav KOSINA, who has resigned
- Adoption

3. **Proposal for a Council Directive implementing the European Agreement concluded by the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF) concerning certain aspects of the organisation of working time in inland waterway transport**

*(Legal basis proposed by the Commission: Article 155(2) of the TFEU)*

- Political agreement  
*(Public deliberation in accordance with Article 8(1) of the Council's Rules of Procedure)*

11688/14 SOC 558 EMPL 95 SAN 282 TRANS 355

+ ADD 1

16031/14 SOC 829 EMPL 180 SAN 451 TRANS 559

+ ADD 1

+ ADD 2

The Council reached political agreement on the text of the proposal, as set out in Addendum 1 to doc. 16031/14.

A group of Member States (CY, CZ, EE, EL, HU, IE, MT and UK) entered a statement into the Council minutes. Two other statements (one from HU, MT and UK, the other from DK+SI) were entered into the minutes. All 3 statements are set out in the Annex.

## **LEGISLATIVE DELIBERATIONS**

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

### **4. Proposal for a Directive of the European Parliament and of the Council on seafarers amending Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and 2001/23/EC** **[First reading]**

*Interinstitutional file: 2013/0390 (COD)*

– General approach

16472/13 SOC 960 MAR 180 CODEC 2641

16148/1/14 SOC 832 EMPL 182 MAR 185 CODEC 2378 REV 1

+ ADD 1 REV 1

The Council reached a general approach on the text of the proposal, as set out in the Annex of doc. 16148/1/14 REV1.

MT did not agree on the general approach and entered a statement into the Council minutes.

DE (joined by EL and PL) entered a statement into the Council minutes, as well as UK. All

3 statements are set out in the Annex.

### **5. Proposal for a Regulation of the European Parliament and of the Council on a European network of Employment Services, workers' access to mobility services and the further integration of labour markets (EURES)** [First reading]

*Interinstitutional file: 2014/0002 (COD)*

– General approach

5567/14 SOC 33 ECOFIN 57 CODEC 154 MI 63 EMPL 9 JEUN 13

+ ADD 1

16333/14 SOC 849 ECOFIN 1143 CODEC 2406 MI 966 EMPL 194 JEUN 117

The Council reached a general approach on the text of the proposal, as set out in the Annex to doc. 16333/14 + COR 1.

## **NON-LEGISLATIVE ACTIVITIES**

### **6. Investing in Youth Employment: Youth guarantee, Education and Skills**

– Exchange of views

*(Public debate in accordance with Article 8(2) of the Council's Rules of Procedure [proposed by the Presidency])*

15949/14 EMPL 172 SOC 815 ECOFIN 1081 EDUC 332 JEUN 112

(a) **Implementation of the Youth Guarantee and contribution of the European Alliance for Apprenticeships**

(b) **Indicator Framework for Monitoring the Youth Guarantee**

- Endorsement of EMCO key messages

15415/14 SOC 774 EMPL 161 ECOFIN 1041 EDUC 323 JEUN 106  
+ ADD 1

The Council held an exchange of views on youth employment; including the contribution of the TRIO Ministers of Education. It called upon Member States to step up their on-going efforts to tackle the problem of youth unemployment. Implementing measures to integrate young people into the labour market need to be pursued as a matter of urgency. The Council endorsed EMCO key messages.

7. **Annual Growth Survey 2015 (AGS), draft Joint Employment Report (JER) and Alert Mechanism Report (AMR)**

- Presentation by the Commission

- Exchange of views

*(Public debate in accordance with Article 8(2) of the Council's Rules of Procedure [proposed by the Presidency])*

15985/14 ECOFIN 1088 SOC 823 POLGEN 171 EMPL 177  
EDUC 335 ENV 933 RECH 458 ENER 479 FISC 208  
TELECOM 221

15953/14 EMPL 173 SOC 816 ECOFIN 1082 EDUC 333 JEUN 113  
+ ADD 1

15988/14 UEM 371 ECOFIN 1089 SOC 824

15954/14 EMPL 174 SOC 817 ECOFIN 1083 EDUC 334

After a presentation by the Commission, the Council held an exchange of views on the Annual Growth Survey, the draft Joint Employment Report and the Alert Mechanism Report. The new three pillar structure of the 2015 AGS was widely welcomed. A large majority of Member States was in favour of streamlining, simplifying and increasing the ownership of the Semester process. As far as the implementation of modifications is concerned, the preference goes towards starting right away in 2015. Concerns were expressed about integrating the social and employment indicators into the MIP. The Investment Plan for Europe presented by Commission President Juncker was welcomed in this context. The main elements of this exchange of views will be part of the Presidency report summarising various debates in other Council formations on the mid-term review of the Europe 2002 Strategy.

## **LEGISLATIVE DELIBERATIONS**

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

8. **Proposal for a Directive of the European Parliament and of the Council amending Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding [First reading]**

*(Legal basis proposed by the Commission: Articles 157(3) and 153(2) of the TFEU)  
Interinstitutional file: 2008/0193 (COD)*

- Report from the Presidency  
13983/08 SOC 575 SAN 217 CODEC 1285  
+ COR 1  
15764/14 SOC 804 SAN 441 EGC 51 CODEC 2298

The Council took note of the information provided by the Presidency as set out in doc. 15764/14.

9. **Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures [First reading]**

*(Legal basis proposed by the Commission: Article 157(3) of the TFEU)  
Interinstitutional file: 2012/0299 (COD)*

- General approach <sup>(1)</sup>  
16433/12 SOC 943 COMPET 708 DRS 130 CODEC 2724  
16300/14 SOC 845 EGC 58 ECOFIN 1125 DRS 166 CODEC 2401

The Council was unable to reach an agreement on a general approach and invited the preparatory bodies to continue their work on the file.

10. **Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation [First reading]**

*Interinstitutional file: 2008/0140 (CNS)*

- Orientation debate
- Progress report  
11531/08 SOC 411 JAI 368 MI 246  
15705/14 SOC 797 EGC 49 JAI 899 MI 906 FREMP 212  
+ ADD 1 REV 2  
15819/1/14 SOC 807 EGC 52 JAI 916 MI 920 FREMP 216 REV 1  
+ REV 1 COR 1

The Council held an orientation debate based on a note from the Presidency (15705/14 + ADD 1 REV 2). A large majority of delegations broadly supported the draft Directive, further work being nevertheless required on the provisions related to the division of competences between the EU and its Member States, on clarifying the concrete obligations to be created by the Directive and on the implementation calendar.

The Chair concluded that there was considerable support for continuing the work on the Commission's proposal with a view to reaching the required unanimity, and that there was at this stage no support for establishing enhanced cooperation in this area.

The Council also took note of the Presidency's Progress Report (15819/1/14 REV 1).

## **NON-LEGISLATIVE ACTIVITIES**

### **11. Gender equality in the EU: the way forward after 2015. Taking stock of 20 years of implementation of the Beijing Platform for Action**

#### **• Draft Conclusions on the review of the implementation of the Beijing Platform for Action by the Member States and the EU institutions**

##### **– Adoption**

*(Public debate in accordance with Article 8(2) of the Council's Rules of Procedure [proposed by the Presidency])*

16304/14 SOC 846 EGC 59 EMPL 191 CONUN 192 ONU 153 COHOM 172  
JAI 978

+ ADD 1

The Council adopted the conclusions as set out in doc. 16304/14. The final version of the conclusions is to be found in doc. 16891/14.

MT, DE and HU issued statements as set out in doc. 16304/14 ADD 1 to be entered in the minutes of the Council.

PT also issued a statement to be entered into the minutes of the Council.

These 2 statements are set out in the Annex.

### **12. Any other business**

#### **(a) Conference "Unlocking the potential of the Social Economy for EU growth (Rome, 17 and 18 November 2014)**

##### **– Information from the Presidency**

15905/14 SOC 814 EMPL 170 MI 931 FSTR 68 ECOFIN 1073

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

#### **(b) Work programme of the incoming Presidency**

##### **– Information from the Latvian delegation**

The Council took note of the information provided by the incoming Latvian Presidency on its work programme. .

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**STATEMENTS FOR THE COUNCIL MINUTES**

**Ad "B" item 3:**            **Proposal for a Council Directive implementing the European Agreement concluded by the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF) concerning certain aspects of the organisation of working time in inland waterway transport**

**STATEMENT BY CYPRUS, THE CZECH REPUBLIC, ESTONIA, GREECE, HUNGARY, IRELAND, MALTA AND THE UNITED KINGDOM**

"On 7 July 2014, the Commission presented a proposal to implement the Social Partner Agreement on Working Time in Inland Waterways. This draft Directive, and the underlying Agreement, aim to improve conditions for mobile workers involved in the Inland Waterways sector, taking full account of the specific needs of both employers and employees.

We share the view of the Commission and the Social Partners that it is important to ensure the protection of workers and provide legal certainty for businesses, especially in cross-border situations where rules can be unclear. We also fully respect the right of initiative of the social partners in such situations. However, the extensive scope of this proposal, which includes Member States that do not have a significant inland waterways sector, or, indeed any inland waterways; and the lack of flexibility for the specific characteristics of the inland waterway sector of some Member States is not in accord with the principles of subsidiarity and proportionality set out in Article 5 TEU. Nor can it prejudice existing or future legislative exemptions for Member States without inland waterways.

We do not consider that the preparation for the law-making process was adequately transparent in this instance as Member States were not properly informed at an early stage about the scope of the negotiations or about their outcome. The Impact Assessment undertaken by the Commission was not comprehensive. It failed to ensure that the impact on each Member State was fully taken into account as part of the Commission's consideration.

From a better regulation perspective, we also consider the Impact Assessment to be deficient because it failed to consider the precedents in European law that already differentiate between the national territories and the types of waterways to which other inland waterways measures apply. In particular the Impact Assessment did not include an assessment of proportionality for Small and Medium Enterprises (SMEs).

Whilst fully respecting the autonomy of the Social Partners, we consider that the Commission should take account of these concerns in ensuring that legislative proposals brought forward under Article 155(2) TFEU are consistent with better law-making and with full transparency of the legislative process."

## **STATEMENT BY HUNGARY, MALTA AND THE UNITED KINGDOM**

"Further to the joint statement signed by several Member States, Hungary, Malta and the United Kingdom also have concerns regarding the lack of representativeness in this Agreement. We believe the Commission should consider further raising the threshold for representativeness for Agreements to be implemented through legislation. As Ministers from all Member States will be asked to approve any resulting legislation without the possibility of amendment, adequate representativeness is key in ensuring the legitimacy of the process."

## **STATEMENT BY DENMARK AND SLOVENIA**

"On 7 July 2014, the Commission presented a proposal to implement the Social Partner Agreement on Working Time in Inland Waterways. The draft Council Directive, and the underlying Agreement, aim to improve conditions for mobile workers involved in the Inland Waterways sector.

We respect fully the social partners' right of initiative in these situations as well as the fact that the legal base of the draft Council Directive does not allow the Council to amend the content of the underlying social partners' agreement. We also find it is important to ensure the protection of workers and provide legal certainty for businesses, especially in cross-border situations.

Nevertheless, we are concerned that the scope of draft Council Directive includes Member States, which neither have inland waterway sectors nor any inland waterways. We find it unfortunate that the opportunity to follow the tradition and well established practice that has been the guiding principle in terms of existing legislation on inland waterways where the Member States, which have neither inland waterways nor vessels registered specifically to operate on inland waterways are exempted from the scope of such legislation, has not been sufficiently addressed in this case. To that end, the chosen approach of the draft Council Directive cannot prejudice such existing or future legislative exemptions for Member States without inland waterways.

Additionally, Denmark is concerned that the delimitation between the proposal and existing EU legislation relative to the regulation of working hours/rest hours for seafarers on seagoing vessels, which are already covered by Council Directive 2009/13/EC of 16 February 2009, is unclear."

**Ad "B" item 4:            **Proposal for a Directive of the European Parliament and of the Council on seafarers amending Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and 2001/23/EC [First reading]****

**STATEMENT BY MALTA**

"On 19 November 2013, the Commission presented a proposal for a Directive of the European Parliament and of the Council on seafarers amending Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and 2001/23/EC for the purpose of including seafarers in the scope of and the protection afforded by the abovementioned Directives.

Malta fully supports the amending Directive's objective of improving the living and working conditions of seafarers and increasing the attractiveness of maritime employment. However, it considers that extending the same EU legislative framework applicable to land based workers to seafarers is not the right means to attain such objectives. In maritime transport, internationally-agreed rules and Conventions, in particular by IMO and ILO, and their worldwide ratification, effective implementation and enforcement, are needed to ensure a global level playing-field for safe, secure and environmentally friendly maritime transport, the protection of seafarers and secure the long-term competitiveness of the EU's maritime industry. The only way to ensure the protection of EU seafarers is to adopt global policies rather than regional measures which might lead to flagging out and diluting the possibility to implement and enforce EU maritime related requirements on board ships.

The fact that the possibility for applying exclusions has been used by certain Member States but not by others does not in itself justify action at EU level to suppress such flexibility.

Malta considers that the provisions of the proposal, in particular, Article 4 (regarding the inclusion of seafarers in the collective redundancies directive) and Article 5 (concerning the application of the transfer of undertakings Directive to the crews of seagoing vessels), do not sufficiently cater for the particular characteristics of the shipping sector.

Although in principle Malta welcomes the negotiations between the social partners, it considers that the application of the existing five Directives to seafarers will introduce practical and other difficulties in implementation.

Malta also contests that the adoption of the Directive can be based on Article 153(2) TFEU in conjunction with Article 153(1) paragraphs (b) and (e) TFEU. Malta is of the view that the correct legal basis for amendments to the Collective Redundancies Directive and to the Transfer of Undertakings Directive is Article 153(2) in conjunction with Article 153 (1) paragraph (d) TFEU since they both relate to the protection of workers where their employment is terminated. In line with this, the amendments to these Directives were to be adopted by unanimous decision.

Therefore, for the abovementioned reasons, while Malta firmly supports the objectives of improving the living and working conditions of seafarers, it cannot support the text of the draft Directive as set out in document 16148/14."

## **STATEMENT BY GERMANY (JOINED BY GREECE AND POLAND)**

"On 19 November 2013, the Commission presented a proposal for a Directive of the European Parliament and of the Council on seafarers amending Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and 2001/23/EC for the purpose of including seafarers in the scope of and the protection afforded by the above Directives.

The Federal Republic of Germany supports the amending Directive's objectives of improving the living and working conditions of seafarers.

Nonetheless, the Federal Republic of Germany doubts that the adoption of the Directive can be founded on Article 153 (2) TFEU in conjunction with Article 153 (1) point (b) and point (e) TFEU and issued in accordance with the ordinary legislative procedure. This notably applies to the amendments to Directive 98/59/EC of the Council of 20 July 1998 (Collective Redundancies Directive) provided for in Article 4 and the amendments to Directive 2001/23/EC of the Council of 12 March 2001 (Acquired Rights Directive) provided for in Article 5.

From the point of view of the Federal Republic of Germany, Article 153 (2) in conjunction with Article 153 (1) point (d) TFEU is the proper legal basis for amendments to the Collective Redundancies Directive and for amendments to the Acquired Rights Directive since it relates to the protection of workers where their employment is terminated. This is clearly the thematic focus of the two instruments to be amended. Pursuant to this legal basis the Council shall adopt the Directive by unanimous decision in accordance with a special legislative procedure. In line with this, the Directives were adopted by unanimous decision.

In the opinion of the Federal Government the focus of the regulatory substance of the two aforementioned Directives is not on "working conditions" (Article 153(1)(b)) TFEU nor on "information and consultation of workers" (Article 153(1)(e)) TFEU to which the ordinary legislative procedure could be applied, i.e. that could be adopted by qualified majority decision.

The Federal Government underlines that it shares and supports the substantive objectives pursued by the amending Directive. The Federal Republic of Germany therefore endorses the present Decision notwithstanding its legal opinion concerning the issue of the appropriate rule governing competence."

## **STATEMENT BY THE UNITED KINGDOM**

"On 19 November 2014, the Commission presented a proposal for a Directive of the European Parliament and of the Council on seafarers amending Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and 2001/23/EC for the purpose of including seafarers in the scope of and the protection afforded by the above Directives.

We recognise the desire of the Commission and the Social Partners to provide for better working conditions for seafarers that more closely match those afforded to those who work on land. The United Kingdom supports the objectives of improving the living and working conditions of seafarers.

However, we have concerns over the adoption of the Directive on the principles of Article 153 (2) TFEU in conjunction with Article 153 (1) point (b) and point (e) TFEU. Particularly in regard to the amendments to:

- Directive 98/59/EC of the Council of 20 July 1998 (Collective Redundancies Directive) provided for in Article 4;
- Directive 2001/23/EC of the Council of 12 March 2001 (Acquired Rights Directive) provided for in Article 5;
- Directive 2008/94/EC of the European Parliament and of the Council on the protection of employees in the event of the insolvency of their employer (Insolvency Directive) provided for in Article 1.

We believe that Article 115 is the proper legal base for amendments to the Collective Redundancies Directive and the Acquired Rights Directive. If Article 153(2) is to be the legal basis, then, it is our view that for all three of these Directives the primary objective is not “working conditions” (Article 153(1)(b) TFEU), nor “information and consultation of workers” (Article 153(1)(e) TFEU), to which the ordinary legislative procedure could be applied. Instead the primary objective is Article 153(1)(d), since these Directives predominantly relate to the protection of workers where their employment is terminated.

Therefore, on the basis of this legal basis the Council should adopt this Directive by unanimous decision in accordance with a special legislative procedure."

**Ad "B" item 11:            Gender equality in the EU: the way forward after 2015. Taking stock of 20 years of implementation of the Beijing Platform for Action**

**STATEMENT BY MALTA  
Paragraphs 14, 16 and 20(k)**

"While recognising the contribution of the EIGE's Report "Beijing + 20: the 4th Review of the Implementation of the Beijing Platform for Action in the EU Member States" and acknowledging that the implementation of the Beijing Platform for Action and the Programme of Action of the International Conference on Population and Development should indeed contribute to the promotion, protection and fulfilment of all human rights, Malta would like to recall that any recommendation or commitments made by the European Union in relation to critical areas of concern under the Beijing Platform for Action, including any development of indicators, should in *no way create an obligation on any party to consider abortion as a legitimate form of reproductive health or rights or commodities.*"

## STATEMENT BY GERMANY

### Paragraph 20(i)

"Germany welcomes the Council Conclusions.

Regarding Para 20(i), Germany recalls Resolution 68/309 of the UN General Assembly, in which the UN General Assembly welcomed the report of the Open Working Group on Sustainable Development Goals and decided that the proposal of the Open Working Group on Sustainable Development Goals shall be the main basis for integrating the Sustainable Development Goals into the post-2015 agenda.

Germany supports the decision of the UN General Assembly and is committed to preserve the substance of the proposal in its entirety. In this context, we understand Paragraph 20 (i) as a confirmation of the proposal of the Open Working Group."

## STATEMENT BY HUNGARY

"The adoption of the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action marked a remarkable consensus. They placed the enjoyment of human rights at the heart of development and important gains in the fields of health, gender equality and education have been achieved since their adoption.

Hungary remains dedicated to its commitments in the field of human rights and to the implementation of the Programme of Action and Platform for Action as primary points of reference to the terms of sexual health, reproductive health and reproductive rights. As the term "sexual and reproductive health and rights" remains undefined, Hungary can only interpret "sexual and reproductive health and rights" in line with its national legislation."

## STATEMENT BY PORTUGAL

### Paragraph 20 (i)

"Portugal considers that the fight against all forms of violence against women and girls must be upheld by the European Union as a stand-alone goal of the UN Post-2015 Development Agenda, alongside the goals of gender equality and the empowerment of women and girls. Regarding paragraph 20(i), Portugal reiterates that the European Union should "*seek to ensure that gender equality and the human rights and empowerment of women and girls, **and** the fight against all forms of violence against women and girls, are reflected as a stand-alone goal in the forthcoming UN post-2015 agenda and integrated into all goals through targets and indicators measured by sex-disaggregated data*"."