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Subject: **3410th** meeting of the Council of the European Union
(**COMPETITIVENESS (Internal Market, Industry, Research and Space)**
held in Brussels on 1 October 2015)

PUBLIC DELIBERATION ITEMS¹

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"A" ITEMS (doc. 12292/15 PTS A 66)

LEGISLATIVE DELIBERATIONS

1. Draft Regulation of the European Parliament and of the Council laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union [First reading] (LA) 3
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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. Draft Regulation of the European Parliament and of the Council laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union [First reading] (LA+S)

= Adoption

a) of the Council's position at first reading

b) of the statement of the Council's reasons

12279/15 CODEC 1226 TELECOM 177 COMPET 418 MI 576 CONSOM 152
+ ADD 1 REV 2

10788/15 TELECOM 161 COMPET 361 MI 481 CONSOM 126 CODEC 1038
+ REV 1 (de)

+ ADD 1 + ADD 1 COR 1

approved by Coreper, Part 1, on 30.9.2015

The Council approved its position at first reading, with the Netherlands and Slovenian delegations voting against and the Croatian and Greek delegations abstaining, in accordance with Article 294(5) of the Treaty on the Functioning of the European Union. (Legal basis: Article 114 of the TFEU)

Statement by of Slovenia

"Slovenia commends the last few Council presidencies on the work accomplished on the TSM Regulation.

While Slovenia supports the compromise solution on roaming, it cannot support the final text on the protection of Internet neutrality. The Internet is the core of the modern digital society, a facilitator of globalisation, innovation, and the development of entrepreneurship, and a basin for the free flow of information and democracy. In order to maintain its positive role, it must remain free and open. Slovenia emphasises the importance of the neutral character of the Internet and is committed to its strong and clear protection.

Although the final compromise text of the TSM regulation on Internet neutrality contains certain improvements, it fails to eliminate our concerns. Slovenia fears that the new arrangements will result in a two-layer Internet: a slow "best effort" service model and a high-speed Internet with guaranteed quality for an additional charge. Slovenia believes that this is the wrong response to the competitive challenges facing the European industry in the global digital market.

Also, given the current legal protection of Internet neutrality in Slovenia, we cannot support the final TSM regulation."

Statement by the Netherlands

"The Netherlands wishes to thank the presidencies involved for all their efforts to reach a final compromise on the proposal for a Regulation laying down measures concerning the European single market for electronic communications and to achieve a connected continent.

More than two years ago the Netherlands was the first member state to set national rules to protect the open internet. We have since pleaded for European net neutrality rules that effectively safeguard the internet as an open platform for communication and internet services. An open platform that respects the freedom of choice for end-users as a fundamental right and creates a level playing field for providers of services and applications.

The Regulation provides the EU with a harmonised set of net neutrality rules. It contains positive elements like a clear rule against discriminatory traffic management. However effective net neutrality rules also require discriminatory pricing practices to be clearly prohibited. Such a clear ban on price discrimination is unfortunately not included in the final compromise. The Netherlands will therefore be obliged to withdraw this ban from its national net neutrality rules, even though it was applied effectively.

The lack of a clear ban on price discrimination has been a fundamental concern for the Netherlands throughout the negotiations. This fundamental concern is expressed by a vote against the Regulation."

Statement by Finland

"Finland welcomes the agreement reached between the Council and the Parliament on the Telecom Single Market Regulation. The Regulation is a step to the right direction as it reduces roaming charges and thus contributes to the overall target of providing well-functioning, reliable and affordable mobile connections to all end-users. However, Finland finds it problematic that the final outcome of this Regulation and benefits achieved are highly dependent on the implementing acts to be prepared by the Commission and the forthcoming legislative proposal for wholesale price regulation.

For the reasons of legal certainty for economic actors and consumers it is very important to prepare following elements as soon as possible: 1) new wholesale price regulation significantly reducing the current level of wholesale charges, 2) implementing acts of the Telecom Single Market Regulation further defining the fair use policy and, 3) the mechanism for roaming providers to recover costs due to the abolitions of roaming charges. Implementation of these instruments in an appropriate manner has a significant impact on the functioning of the whole Telecoms Single Market Regulation.

For Finland, the issue of unlimited subscription packages is also of utmost importance. In Finland, unlimited subscription packages are widely used, prices are low and data usage is high by European standards. The implementing acts should therefore ensure the costs are to be covered in this type of subscriptions without raising domestic price level.

Moreover, Finland emphasizes that in order to avoid administrative burden and uncertainty encumbering consumers, the notification and assessment procedures regarding the coverage of the costs should be as clear and simple as possible."

Statement by the Portuguese Republic, the Republic of Bulgaria, the Republic of Croatia and the Hellenic Republic

"The Portuguese Republic, the Republic of Bulgaria, the Republic of Croatia and the Hellenic Republic welcome the agreement reached on the Regulation laying down harmonised rules for an open Internet and for the reduction of roaming costs for users of mobile communications networks.

The legal framework regarding roaming services on public mobile communications networks within the Union will be completed when the European Commission adopts detailed rules by means of implementing acts; those acts will implement a fair use policy and the methodology for assessing the sustainability of the abolition of retail roaming surcharges. A further step will be the approval of the new legislative proposal to amend the wholesale charges for regulated roaming services or to provide for another solution to address the issues identified at wholesale level. The complete legal framework should fully protect the users of mobile communications services from a possible increase in domestic prices if operators are unable to recover the costs associated with the provision of roaming services.

In this context, the Portuguese Republic, the Republic of Bulgaria, the Republic of Croatia and the Hellenic Republic underline that the rules to be approved must ensure that both visited and home network operators recover all the costs associated with the provision of both retail and wholesale services, including direct, joint and common costs and a reasonable rate of return on investment.

In addition, the review of the wholesale roaming market should take into account the impact of seasonality on the cost structure of the service providers operating in tourist areas, as well as all the situations where there are significant traffic imbalances related to seasonality issues or resulting from different travel patterns across Member States, which is likely to be accentuated by the expected surge in demand resulting from the elimination of the surcharges."

2. Regulation of the European Parliament and of the Council amending Regulation (EC) No 1007/2009 on trade in seal products and repealing Commission Regulation (EU) No 737/2010 [First reading] (LA+S)

PE-CONS 44/15 ENV 447 AGRI 370 MI 436 COMER 93 PECHE 231
CODEC 974
+ COR 1 (de)

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with the Swedish delegation voting against and the Danish, Estonian, French and Finnish delegations 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 Sweden

"With regard to the Proposal for a Regulation of the European Parliament and of the Council amending Regulation No 1007/2009 on trade in seal products (6015/15), Sweden wishes to draw the attention to the following concerns.

Sweden considers the dispute settlement system of the WTO as a central element in providing security, credibility and predictability to the multilateral trading system, and fully agrees that the WTO ruling in Seal Products case (DS 400/401) shall be respected. While Sweden support the ban on import of seal products and the goal of the proposal, we regret that various suggestions for reaching a WTO compatible solution were not considered as viable alternatives.

Very limited seal hunting occurs in Sweden and it is controlled protective hunting in order to protect the small scale fisheries. Sweden is of the view that the outcome of the negotiations could have been more balanced. A balanced solution would allow to take into account ethical and environmental aspects of not taking care of the shot animal or its parts. Sweden has emphasized the need for trade possibilities in the interest of fisheries and small scale artisanal production in accordance with long standing traditions.

Sweden will therefore vote against the Proposal for a Regulation of the European Parliament and of the Council amending Regulation No 1007/2009 on trade in seal products."

Statement by Denmark

"Denmark wishes to thank the Presidency, the Commission, Members States and the European Parliament for the good dialogue and joint efforts to reach a common understanding on this very important issue.

Denmark is pleased to see proven beyond any doubt that the EU acknowledges that hunting and trading in seal products is of fundamental socio-economic and cultural importance to Greenland and other Inuit communities.

Denmark further wishes to thank EU partners for acknowledging the need to raise awareness and improve information to European citizens on seal hunt and the legality of trade in seal products of Inuit and other indigenous communities. Denmark sees a strong need to restore consumer confidence in seal products from Greenland by countering widespread misinformation.

Denmark welcomes the Council's commitment to assess the effectiveness of the regulation in meeting its objective, and the impact it has had on the development, culture and identity on Inuit and other indigenous communities.

Denmark welcomes the reaffirmed EU commitment to respecting and promoting indigenous peoples' rights as stated in the UN Declaration of Indigenous Peoples' Rights and other relevant international instruments, including the right to development and to engage freely in all their economic activities.

Denmark respects the WTO dispute settlement body findings. Denmark remains committed to promoting EU interests as a strong partner in the Arctic.

Denmark continues to believe that trade in seal products is an activity that should not be hampered or stigmatized. Denmark wishes to underline that the hunt of seals in Greenland is a legitimate and sustainable activity and that animal welfare is a concern to Inuit and other indigenous communities as it is to European citizens.

Denmark is seriously concerned about the severe negative consequences to Greenland caused by the EU seal regime, contrary to its clear objective of avoiding adverse effect on Inuit and other indigenous communities. Denmark is equally concerned that the proposed amendments to the regulation could have further negative consequences, including by increasing costs and administrative burdens on Inuit communities.

Denmark continues to doubt the marked rationale and justification behind the seal regime, noting that sustainable seal hunting with full respect for legitimate animal welfare concerns is possible. Denmark is concerned that no prior assessment was carried out, including on the perceived concerns of today's European citizens as the basic justification for the regulation and on possible alternative less trade restrictive ways of addressing concerns.

For those reasons Denmark cannot support the proposed amendments to regulation (EC) 1007/2009 and will abstain.

Denmark will remain committed to working with European partners to address the important issue raised above and working towards a common understanding on trade in seal products to the benefit of both the EU and the Arctic communities."

Statement by Finland and Estonia

"With regard to the Proposal for a Regulation of the European Parliament and of the Council amending Regulation No 1007/2009 on trade in seal products (6015/15), Finland and Estonia wish to draw the attention to the following.

Finland and Estonia consider the dispute settlement system of the WTO as a central element in providing security, credibility and predictability to the multilateral trading system, and fully agree that the WTO ruling in Seal Products case (DS 400/401) shall be respected. The purpose of the Commission's proposal for amending Regulation No 1007/2009 on trade in seal products is to bring the EU legislation into compliance with the WTO rules. While Finland and Estonia support the goal of the proposal, we regret that various suggestions for reaching a WTO compatible solution on the basis of conservation of exhaustible natural resources were not considered as viable alternatives.

While welcoming the continuation of the trade possibilities in seal products for Inuit and other indigenous communities, Finland and Estonia emphasize the need of such possibilities for the interest of fisheries and small scale artisanal production in accordance with long standing traditions and cultural heritage. In 2008, the European Commission recognized in its impact assessment the negative consequences a ban on trade in seal products may have to Member States where hunting of seals takes place and products are offered to a limited extent on the local market.

Furthermore, it is imperative that EU legislation is, in accordance with the commitments of the EU institutions, actively managed and reviewed if implementing of such legislation leads to disappointing and unintended consequences whether economic, social or environmental.

Finland and Estonia are of the view that the outcome of the negotiations could have been more balanced. Such a balanced solution would have improved the international animal welfare standards, taken into account the needs of small communities and small scale coastal fisheries and the sustainable use of exhaustible marine resources in preserving the ecosystem balance.

For these reasons, Finland and Estonia abstain from voting on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation No 1007/2009 on trade in seal products."

Statement by France

"France abstained in the vote on the adoption of the Regulation amending Regulation 1007/2009/EC prohibiting trade in seal products. France wishes to clarify the following points with regard to recital 2 and Article 2 of the above-mentioned Regulation.

France, with its commitment to the principle of equality between all individuals, supports any step to guarantee indigenous people full enjoyment of fundamental rights. Referring to the interpretative declaration made at the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, France would note, however, that under the constitutional principles of the indivisibility of the Republic and the unity of the people of France, France grants no collective right to any group whatsoever, defined by a community of origin, culture, language or belief.

Human rights are universal rights which are intended to apply to all persons, without distinction. France remains committed to ensuring that each individual can fully and effectively enjoy these fundamental rights, without any discrimination."
