Council of the
European Union

Brussels, 17 May 2018
(OR. en)

8817/18
PV CONS 25

DRAFT MINUTES

COUNCIL OF THE EUROPEAN UNION
(General Affairs)

14 May 2018

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1. <u>Adoption of the agenda</u>

<u>The Council</u> adopted the agenda set out in 8644/18.

2. <u>Approval of "A" items</u>

a) <u>Non-legislative list</u> 8645/18 + ADD 1

<u>The Council</u> adopted the "A" items listed in 8645/18 + ADD 1 including COR and REV documents presented for adoption. Statements related to these items are set out in the Addendum.

For the following items, the related documents should read as follows:

<u>Economic and Financial Affairs</u>

6. Appointment of the Director-General of OLAF
Letter to be sent to the Commission
Approval
approved by Coreper, Part 2, on 08.05.2018
8671/18 + COR 1
<u>+ COR 2 (fi)</u>

17. Conclusions on "Rural Development Programming: less complexity and more focus on results needed" (CoA SR No 16/2017)
Adoption
approved by Coreper, Part 2, on 08.05.2018
8235/18
<u>+ COR 1 (hu)</u>
AGRI

<u>Justice and Home Affairs</u>

20. Schengen evaluation Recommendation - Portugal management of the external border
Adoption
approved by Coreper, Part 2, on 02.05.2018
C
8284/18
<u>8283/18</u>
SCH-EVAL

<u>Foreign Affairs</u>

33. The former Yugoslav Republic of Macedonia - Transition to the second stage of the Association
Adoption
approved by Coreper, Part 2, on 02.05.2018
8265/18
7325/18
<u>+ COR 1 (it)</u>
14474/09
COWEB

Delegated or Implementing Acts

Internal Market and Industry

42.	Corrigendum of 21.3.2018 to Commission Delegated Regulation (EU) …/... of 15.2.2018 amending and correcting Delegated Regulation (EU) 2015/208 supplementing Regulation (EU) No 167/2013 of the European Parliament and of the Council with regard to vehicle functional safety requirements for the approval of agricultural and forestry vehicles *Delegated act - Intention not to raise objections* approved by Coreper, Part 1, on 08.05.2018		**8350/1/18 REV 1** 7145/18 **+ COR 1 (es)** 6254/18 **+ COR 1 (pl)** + ADD 1 AGRI

Fisheries

50.	Council Decision on the conclusion of a Fisheries Protocol between the European Union and the Republic of Mauritius *Adoption* approved by Coreper, Part 1, on 02.05.2018	C	8226/18 **+ ADD 1** 12476/17 PECHE

Institutional Affairs

Other

51.	Composition of the European Parliament *Agreement in principle* *Request for the consent of the European Parliament* approved by Coreper, Part 2, on 19.04.2018	S	**7335/1/18 REV 1** **+ REV 1 ADD 1** CO-EUR PREP

Foreign Affairs

53.	EUTM Mali - Decision *Adoption* approved by Coreper, Part 2, on 08.05.2018		8328/18 7500/18 **+ COR 1 (de)** CORLX
54.	EUNAVFOR MED operation SOPHIA - Decision *Adoption* approved by Coreper, Part 2, on 08.05.2018		8388/18 7708/18 **+ COR 1 (de)** CORLX

Delegated or Implementing Acts

Transport

58.	Commission Directive (EU) .../… of XXX correcting the German language version of Directive 2006/126/EC of the European Parliament and of the Council on driving licences *Decision not to oppose adoption* approved by Coreper, Part 1, on 08.05.2018		**8533/1/18 REV 1** 7375/18 TRANS

b) **<u>Legislative list (Public deliberation in accordance with Article 16(8) of the Treaty on European Union)</u>** 8646/18

<u>Economic and Financial Affairs</u>

1. **Council position on draft amending budget No 1/2018**
Adoption
approved by Coreper, Part 2, on 25.04.2018

S C — 8107/18 FIN

<u>The Council</u> adopted its position on the draft amending budget No 1/2018 as set out in 8107/18.

2. **Revision of the Fourth Anti-Money Laundering Directive**
Adoption of the legislative act
approved by Coreper, Part 2, on 02.05.2018

❶ C — 8215/18 + **<u>ADD 1 REV 1</u>** **<u>+ ADD 1 REV 2 (fi, sl)</u>** PE-CONS 72/17 EF

<u>The Council</u> 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 50 and 114 TFEU).

Statements related to this item are set out in the Annex.

<u>Environment</u>

3. **Regulation on LULUCF**
Adoption of the legislative act
approved by Coreper, Part 1, on 02.05.2018

❶ C — 8216/18 + ADD 1 REV 2 PE-CONS 68/17 CLIMA

<u>The Council</u> approved the European Parliament's position at first reading and the proposed act has been adopted, with the Polish delegation voting against and the Latvian delegation abstaining, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 192(1) TFEU).

Statements related to this item are set out in the Annex.

4. **Regulation on effort sharing (ESR)**
Adoption of the legislative act
approved by Coreper, Part 1, on 02.05.2018

8217/18 + ADD 1
PE-CONS 3/18
+ REV 1 (lt)
CLIMA

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

Statements related to this item are set out in the Annex.

5. **Decision on environmental reporting**
Adoption of the legislative act
approved by Coreper, Part 1, on 02.05.2018

8214/18 + ADD 1
PE-CONS 67/17
ENV

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) TFEU).

Statements related to this item are set out in the Annex.

Energy

6. **Directive on energy performance of buildings**
Adoption of the legislative act
approved by Coreper, Part 1, on 02.05.2018

8213/18 + ADD 1
~~**REV 1**~~
PE-CONS 4/18
+ COR 1 (fi)
ENER

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with the Croatian and UK delegations abstaining and the Slovak delegation voting against, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 194(2) TFEU).

Statements related to this item are set out in the Annex.

Legislative deliberations

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

3.	**Multiannual Financial Framework (MFF) post 2020** *Presentation by the Commission* *Exchange of views*	S C	8353/18 + ADD 1 -2 8354/18 + ADD 1 8355/18 + ADD 1 8356/18 8357/18 +ADD 1 - 2 8358/18 8359/18 + ADD 1 8360/18

The Council received a presentation by the Commission on the recent proposals for the Multiannual Financial Framework (2021-2027) and held a first exchange of views.

Non-legislative activities

The Council addressed the following non-legislative discussion items (4-6)

4.	Annotated draft agenda for the European Council on 28-29 June 2018 *Exchange of views*	8104/18
5.	Rule of Law in Poland / Article 7(1) TEU Reasoned Proposal *State of play*	
6.	Any other business	

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❶ First reading

S Special legislative procedure

C Item based on a Commission proposal

ANNEX

STATEMENTS FOR THE COUNCIL MINUTES

Statements to legislative "A" items set out in 8646/18

Ad "A" item 2: **Revision of the Fourth Anti-Money Laundering Directive**
Adoption of the legislative act

STATEMENT BY THE COMMISSION

"The Commission regrets that the revised Directive does not provide the same level of transparency on beneficial ownership of profit-making trusts as it does for companies and other legal entities.

The Commission underlines that, in the light of general principles of EU law and of the duty to state reasons, it is of the utmost importance for Union legislation to include sufficient, specific, adequate and legally sound motivation as to the access to the information of beneficial owners included in central registers. The statement of reasons must disclose, clearly and unequivocally, the reasoning of the author of the measure, in such a way as to enable the persons concerned to ascertain the reasons for it and to enable the competent courts to exercise their power of review. The Commission considers that granting public access to beneficial ownership information of companies and firms is justified in light of the general need for transparency of corporate affairs in order to protect the interests of third parties and that this aspect of the Directive pertains to Article 50 TFEU. It regrets that Parliament and Council have considered that this aspect should only be regarded as a positive side effect and does not require citing Article 50 TFEU as an additional legal basis.

However, considering that the choice of Article 114 TFEU as the sole legal basis does not imply legal consequences in this case, the Commission can accept the final version of the Directive."

STATEMENT BY THE COMMISSION

"The Commission underlines the need for identification and verification of beneficial owners, bearing in mind that the specific shareholding or ownership interest threshold specified in the Directive is merely indicative and constitutes one evidential factor among others to be taken into account. In light of the inherent risk posed by non-financial entities which do not engage in an active business activity, obliged entities should therefore apply a lower threshold with respect to establishing their Beneficial Ownership. This should in particular be the case of Passive Non-Financial Entities that are a subset of all Reportable Entities, as defined in the Directive on Administrative Cooperation and referred to in the Global Standard on Automatic Exchange of Information (AEOI) developed by the OECD."

STATEMENT BY AUSTRIA

"Austria is strongly concerned that the current text does not enhance transparency on beneficial ownership necessary to avoid the abuse of trusts for the purpose of money laundering and terrorist financing. There is a clear need to establish mandatory central and public beneficial owner registries for trusts in the Member State by whose laws trusts are governed (Art. 31 of Directive 2015/849). Unfortunately, the current text enhances this lack of transparency of beneficial ownership of trusts even more as it provides for the anonymity of benficial owners of certain types of trusts. Therefore, Austria calls for remedying this apparent deficiency of the future EU AML/CFT framework."

STATEMENT BY THE NETHERLANDS

"While supporting the Directive amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, the Netherlands is concerned about the transposition period of 20 months for Member States to set up a register with beneficial ownership information of trusts and similar legal arrangements. A swift transposition and implementation of the amendments in the individual Member States is important. However, in Member States – such as the Netherlands – where trusts and similar legal arrangements are not governed under national law and where there is no registration requirement for trusts in place yet, it seems highly ambitious to have operational registers with beneficial ownership information in place within 20 months after the entry into force of this amending Directive".

Ad "A" item 3: **Regulation on LULUCF**
Adoption of the legislative act

STATEMENT BY LATVIA AND LITHUANIA

"Latvia and Lithuania appreciate the Estonian Presidency’s efforts to integrate land use, land use change and forestry (LULUCF) sector into the post 2020 climate change policy framework.

However, in noting the final compromise text, both countries have concerns about the mandatory accounting obligations for wetlands starting from 2026.

The importance of wetlands as effective ecosystems for carbon storage should be recognized.

However, geographical conditions determine a significantly higher proportion of wetlands in Northern Europe and in some Western European countries compared to the EU average.

This accordingly makes these lands especially important for setting climate targets (and the fulfilment of the no-debit rule) as well as for effective and sustainable resource management.

According to the United Nations Framework Convention on Climate Change (UNFCCC) framework, countries are encouraged to use the recent technical guidance from the “2013 Supplement to the 2006 IPCC Guidelines for National Greenhouse Gas Inventories: Wetlands” to report their emissions and removals from managed wetlands. Progress in the implementation of the 2013 Wetland Supplement Guidelines varies among the EU Member States.

The importance of countries` progress in implementing the 2013 Wetland Supplement increases when mandatory accounting for wetlands is applied since in this case the comparability of target achievement and financial implication issues are involved.

To secure a robust and transparent accounting system all Member States should use the same guidelines on wetlands before mandatory accounting is applied.

In addition, serious efforts and sufficient time has to be allowed for Member States in order:

To obtain precise national data on wetland management and to decrease uncertainties. Substantial work is still required in this regards; and

To obtain national factors for regions (temperate zone) especially because national factors in the 2013 Wetland Supplement Guidelines have high uncertainties. Appropriate EU level scientific and methodological support should be provided for Member States.

Considering the above-mentioned circumstances, we urge the European Commission during the forthcoming revisions of this Regulation to take into account the possible lack of precise data and national emission factors for estimating emissions and removals under wetland management as well as to ensure that Member States have sufficient time to improve them."

STATEMENT BY POLAND

"Poland expresses deep disappointment with the adopted version of the *Regulation of the European Parliament and of the Council on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry into the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU*. The fact that forest ecosystems are the largest and the most important carbon sink in Europe is not properly reflected in the proposed legislation. Setting the Forest Reference Level (FRL) for managed forest land on the basis of a short period between 2000 and 2009 is an arbitrary decision to the benefit of some countries and to the detriment of others as the period was not representative enough for the management of their forests. Furthermore, an inappropriate picture of forestry in Member States has been created since the accounting system is based on such a constructed FRL, and since the distribution key of the compensation mechanism uses the forest cover parameter as it's basis, despite that this is only one of many parameters related to the forestry sector. The abovementioned accounting methodology may lead to generating debits despite the situation in which forest biomass resources will grow as a result of real net removals.

If the long-term climate benefits provided by forest ecosystems are not sufficiently recognized and are accounted as emissions, despite that the amount of harvested timber is much lower than the annual increment, the planned investments in the forestry and timber sector will be very limited. This places a question mark over the role of forests and timber in the future green economy in the EU. The EU should promote the use of EU forest resources as not only is it an environment-friendly solution, but also contributes to the increase of the role of forests in the bioeconomy and sustainable development of the region. Limiting harvesting in the EU will inevitably lead to the increase in the import of wood materials from outside the EU.

Furthermore, Poland is also deeply concerned with the current structure of the accounting framework regarding the compensation mechanism for managed forest land (Art. 11 para.1) as it will deprive a Member State of the possibility to use the flexibility mechanism between the LULUCF and ESR sectors, subject to Article 7 and the limits defined in Annex III ESR. The use of units from the compensation mechanism implies the resignation from the use of Article 7 of the ESR Regulation.

According to Poland's understanding, this contradicts the initial intention to strengthen the role of the forestry sector in the implementation of the EU climate policy, as there is a justified risk that the above-mentioned conditions for use of the compensation mechanism for managed forest land have been specified so as to reduce the scale of the use of individual limits in the ESR – LULUCF flexibility, which would then constitute an additional element of increasing the reduction target. The above-mentioned, along with the condition of achieving a no-debit rule on the EU level, causes great concern, because the fulfillment of this condition is largely beyond the control of a given Member State, which, in the view of Poland, should not be taking place."

STATEMENT BY PORTUGAL

"Portugal accepts the agreement reached between the Council of the European Union and the European Parliament. However we would like to stress that a number of concerns remain regarding the approach on this sector.

As we have underlined since the beginning of this debate, the LULUCF sector should be fully integrated in the climate policy in a way that addresses and provides incentives to deliver real emission reductions and promotes carbon sequestration. The LULUCF sector is crucial in delivering carbon neutrality foreseen in the Paris Agreement and to Portugal's own carbon neutrality objective by 2050.

We also highlighted from the start the multiple opportunities and avenues to improve a system that was developed under a Kyoto Protocol architecture and which has already demonstrated to be unnecessarily complex and very limited in promoting real action.

The final outcome resulted in enhanced ambiguity, namely in the calculation of the forest reference levels. It also goes beyond the international orientation on the isolated accounting of deadwood.

These two aspects introduce complexity in this regulation making it more difficult to explain and implement.

Portugal also underlines that the mandatory accounting of wetlands will pose a significant effort for a number of Member States for whom wetlands are a negligible source of emissions.

We believe that moving beyond 2030 it will be possible to significantly improve on this model, building on the experience from its implementation and on other sound approaches that are now being followed by other countries under the Paris Agreement."

<u>Ad "A" item 4</u>: **Regulation on effort sharing (ESR)**
Adoption of the legislative act

STATEMENT BY LITHUANIA

"Lithuania stands firmly by the Paris agreement and common EU's climate responsibilities. Lithuania will contribute to the implementation of the EU commitments and agrees to its national greenhouse gas emission reduction target by 2030 as proposed in the Regulation on effort sharing.

The non-ETS sectors of Lithuania account for 66 % of the total greenhouse gas emissions, with the largest shares of emissions coming from transport and agriculture sectors, namely 38% and 35%. Lithuania has one of the lowest levels of greenhouse gas emissions per capita and achieved the highest 58.2% greenhouse gas emission reduction to compare with 1990 level between the EU Member States in 2015[1]. Lithuania sees the mitigation of greenhouse gas emission as a long-term process and a task, which requires adequate preparation and resources.

The final compromise text of the Regulation on effort sharing contains a number of elements that are acceptable to Lithuania. However, advancing the starting date of the linear greenhouse gas emission reduction trajectory to mid-2019 will oblige Lithuania to take on far more demanding obligations than it is ready to accept.

The earlier starting date will impose on Lithuania additional mitigation commitments, which in practice will be counterproductive to achieving the 2030 target in the most cost efficient manner.

The priority is to invest in the climate change mitigation measures rather than spend limited resources on buying annual emission allocations. Therefore, we see no reasonable justification for a very tight annual emission allocations budget already at the beginning of the next period.

Lithuania had raised the above mentioned concerns during the entire negotiations, but they were not taken in to account. As a result, Lithuania is not in a position to support the final compromise text."

STATEMENT BY MALTA

"Malta reaffirms its commitment to address climate issues to its full potential and to contribute <u>to the goals of the Paris agreement and the EU's target</u> to achieve an EU-wide reduction of greenhouse gas emissions, in sectors falling outside the scope of the EU emissions trading system, of 30% by 2030 compared to 2005 levels.

Malta appreciates the effort in recognition of its specific limitations in achieving a very steep trajectory to reduce its GHG emissions from non-ETS sectors from 2013 up to 2030, through the inclusion of Malta in Annex IV in Effort Sharing Regulation. Malta, however considers that the level of the adjustment included does not sufficiently address the reality that Malta will face in the post 2020 period due to it being the Member State with:

- the lowest greenhouse gases emissions per capita across the EU in the non-ETS sectors;
- the Member State with an economic structure that is not carbon intensive.

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[1] Sustainable development in the European Union MONITORING REPORT ON PROGRESS TOWARDS THE SDGS IN AN EU CONTEXT, Eurostat, 2017 Edition, p. 263 http://ec.europa.eu/eurostat/documents/3217494/8461633/KS-04-17-780-EN-N.pdf/f7694981-6190-46fb-99d6-d092ce04083f

The effort Malta is expected to make pursuant to this Regulation is considered disproportionate, also in view that Malta is the lowest emitter in absolute terms and on a per capita basis.

Malta has raised these concerns consistently during the negotiation process and thus in coherence with its previously held position, Malta cannot support adoption of this Regulation as it still leaves this Member State facing a very difficult trajectory till 2030."

Ad "A" item 5: **Decision on environmental reporting**
Adoption of the legislative act

STATEMENT BY THE CZECH REPUBLIC, LITHUANIA, BELGIUM AND HUNGARY

"The Czech Republic, Lithuania, Belgium and Hungary would like to raise a concern about the procedure applied regarding Article 4 of the Decision concerning the **Ship Recycling Regulation**. The proposed change in reporting obligations constitutes an extension of reporting obligations placed on Member States and goes beyond the necessary amendments arising from the repeal of Directive 91/692/EEC. This amendment is therefore a change in substance rather than a technical adjustment.

A Ship Recycling Regulation Committee was established according to Article 25 of the Ship Recycling Regulation to assist the Commission. However, the Committee was neither notified of the proposal nor consulted on the proposed change.

We regret that the Commission did not consult the designated experts on this matter and hopes that in the future such technical issues will be referred to the relevant committees."

Ad "A" item 6: **Decision on environmental reporting**
Adoption of the legislative act

STATEMENT BY SWEDEN

"Buildings are playing an increasingly important role in the energy system and Sweden has been generally supportive of a revised Directive on the energy performance of buildings to integrate buildings into the energy system on market based conditions. In our view, electric vehicles should be a safe investment and obstacles to use electric vehicles should be cleared away, for example through an expansion of charging infrastructure.

However, the compromise with the European parliament in article 8 2a that requires the installation of a minimum number of recharging points by 1 January 2025 risks to become very costly, while it is unclear how the requirement contributes to established goals or leads to other benefits. Sweden takes note that the provision has been widened considerably, not only to new and non-residential buildings undergoing major renovation with more than twenty parking spaces, but to all such non-residential buildings. Sweden deeply regrets that this provision has been included without allowing for an impact assessment of the costs and benefits."

STATEMENT BY GERMANY

Re. Article 10(6a) new:

"The provisions of the new Article 10(6a) do not impose any obligation to set up databases for energy performance certificates. This means that databases are voluntary. This is confirmed by recital 34.

Re. Annex I No. 2

Concerning the energy supplied through the energy carrier (distant energy sources), when calculating primary energy factors, Member States may take into account renewable sources in such a way that the share of renewable energy in the entire national grid (energy mix) is taken as a basis. Concerning the energy generated and consumed on-site or nearby, Member States may assess renewable energy sources individually when calculating primary energy factors for the energy carriers."

STATEMENT BY LUXEMBOURG

"Luxembourg welcomes the agreement on the Energy Performance of Buildings directive. Nevertheless, Luxembourg considers the installation of charging points for electric cars a necessary precondition for the development of this sector. Therefore Luxembourg regrets the overall lack of ambition concerning charging points for electric cars in existing and new, public as well as private buildings in the final text of the directive."

STATEMENT BY CROATIA

"The Republic of Croatia generally supports the objectives of the revised Directive on the energy performance of buildings, the vision of decarbonisation of buildings by 2050, and the increase in the use of smart technologies in the EU building stock, along with the integration of technological development and support of the promotion of electromobility.

However, we cannot support the provisions in Article 14 paragraph 4 and Article 15 paragraph 4 regarding installation of building automation and control systems for all non-residential buildings by 2025. We strongly believe this should be limited only to new non-residential buildings and to non-residential buildings undergoing major renovations with an effective heating rated output for heating systems or systems for combined space heating and ventilation of over 290 kW, as well as to new non-residential buildings and to non-residential buildings undergoing major renovations with an effective rated output for systems for air-conditioning or systems for combined air-conditioning and ventilation of over 290 kW, where technically and economically feasible.

Croatia deeply regrets that the above mentioned provisions have been included without taking into account the optimal level of ambition, the state of economy and the different levels of technological development in the Member States. Therefore, Croatia will abstain when it comes to the adoption of the revised Directive on the energy performance of buildings."